

Application No.: A.20-06-
Exhibit No.: _____
Witness: Miguel A. Duran
Date: June 1, 2020

SAN DIEGO GAS & ELECTRIC COMPANY
PREPARED DIRECT TESTIMONY OF
MIGUEL A. DURAN

PUBLIC VERSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



June 1, 2020

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EXHIBIT A: E&FP Organizational Chart

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EXHIBIT D: SDG&E Direct Testimony of Sue E. Garcia (Electric and Fuel Procurement)

(November 2014) in the 2016 GRC proceeding (A.14-11-003)

ATTACHMENT 1 - CONFIDENTIAL

ACRONYM GLOSSARY

AB	Assembly Bill
AL	Advice Letter
Allegro	Allegro Development Corporation
AZ	Arizona
Bio-Mat	Bioenergy Market Adjusting Tariff
Buyer	Used interchangeably with SDG&E
CA	California
CAISO	California Independent System Operator
Cal PAO	California Public Advocates Office
CEC	California Energy Commission
CECL	Carlsbad Energy Center, LLC
CHP	Combined Heat & Power
COD	Commercial Operation Date
Commission	California Public Utilities Commission
Consent	Consented to a change of control
CPIA	Consumer Price Index adjustment
CRE	Customer Renewable Energy
CRR	Congestion Revenue Rights
CTC	Competitive Transition Charge
D.	Decision
DRAM	Demand Response Auction Mechanism
E&FP	Electric & Fuel Procurement Department
ECEC	El Cajon Energy Center
EEC	Escondido Energy Center
ERM	Energy Risk Management
ERRA	Energy Resource Recovery Account
ES	Energy Storage
ES&D	Energy Supply & Dispatch
ESJ	Energía Sierra Juárez
FERC	Federal Energy Regulatory Commission
FIT	Feed-In-Tariff
GHG	Greenhouse Gas
GMC	Grid Management Charges
G.O.	General Order
GRC	General Rate Case
GTSR	Green Tariff Shared Renewables
HLP	Honey Lake Power Company
ISTs	Inter-SC trades
kW	Kilowatt
kWh	kilowatt hour
LGBA	Local Generation Balancing Account
Miramar	MM San Diego
MW	Megawatt

MDPS	Meter Data Processing System
MWh	Megawatt hour
Midway	Midway Solar Farm III (97WI 8ME LLC)
O&M	Operation & Maintenance
OES&D	Origination, Energy Supply & Dispatch
OMEC	Otay Mesa Energy Center
OGE	Orange Grove Energy
Otay	Otay Landfill Gas, LLC
P.U. Code	California Public Utilities Code
PABA	Portfolio Allocation Balancing Account
PCI	Power Costs Inc.
PCIA	Power Charge Indifference Adjustment
PDF	Portable Document Format in Adobe Acrobat
PMAX	CAISO test where generator maintains maximum output for 30 minutes.
PPA	Power Purchase Agreement
PPEC	Pio Pico Energy Center
PPTA	Power Purchase Tolling Agreement
Prima	MM Prima Deshecha Energy
QF	Qualifying Facility
Ramona 1	Sol Orchard San Diego 21 Ramona 1
Ramona 2	Sol Orchard San Diego 22 Ramona 2
RA	Resource Adequacy
RAM	Renewable Auction Mechanism
REC	Renewable Energy Credit
ReMat	Renewable Market Adjusting Tariff
Respondents	Marketers and Generators
RFO	Request for Offer
RPS	Renewable Portfolio Standard
RP	Resource Planning
S&S	Settlements and Systems
SC	Scheduling Coordinator
SDCWA	San Diego County Water Authority
SDG&E	San Diego Gas & Electric Company
SGWII	San Gorgonio Westwinds II
SOX	Sarbanes-Oxley
SRAC	Short Run Avoided Costs
STC 6	Standard Terms and Conditions 6
TCBA	Transition Cost Balancing Account
TOD	Time of Delivery
TY	Test Year
UOG	Utility Owned Generation
USAs	Utility Services Agreements
V Performance	Versify Solutions
Valley Center 1	Sol Orchard San Diego 22 Valley Center 1
Valley Center 2	Sol Orchard San Diego 23 Valley Center 2

WREGIS	Western Renewable Energy Generation Information
WSPP	Western Systems Power Pool
YCA	Yuma Cogen Associates

1 testimony of SDG&E witness Khoang Ngo. These expenses are recorded in compliance with
2 D.02-12-074.

3 As described in Section III of Ms. Ngo’s prepared direct testimony, the purpose of the
4 PABA is to record the “above-market” costs and revenues associated with all generation
5 resources that are eligible for cost recovery through the PCIA rates, including SDG&E’s Utility-
6 Owned Generation (“UOG”).

7 As described in Section IV of Ms. Ngo’s prepared direct testimony, the purpose of the
8 TCBA is to accrue all Competitive Transition Charge (“CTC”) eligible revenues and recover all
9 Qualifying Facility (“QF”) generation-costs above a calculated market benchmark. The TCBA
10 was authorized by D.02-12-074 and D.02-11-022.

11 Also, described in Ms. Ngo’s prepared direct testimony, the purpose of the LGBA is to
12 record the revenues and costs of generating contracts where the Commission has determined that
13 the resource is subject to a cost allocation mechanism. In the record period, the only projects
14 included in SDG&E’s LGBA were the contracts for Carlsbad Energy Center, LLC (“CECL”),
15 Escondido Energy Center (“EEC”), Pio Pico Energy Center (“PPEC”), CP Kelco CHP and the
16 Grossmont Hospital CHP and the utility-owned El Cajon and Escondido Energy Storage (“ES”)
17 Facilities. The LGBA activity is described in more detail in Ms. Ngo’s prepared direct
18 testimony. The LGBA was authorized by D.13-03-029 and established in Advice Letter (“AL”)
19 2499-E, approved on August 9, 2013 and effective on July 31, 2013.

20 **A. CTC Contract Costs**

21 In accordance with D.02-12-074, this category captured expenses recorded in ERRAs up
22 to the market benchmark value of the QF and transition Combined Heat & Power (“CHP”) PPAs
23 that are non-LGBA. In D.11-12-018, the responsibility of calculating the benchmark changed
24 from the Energy Division to SDG&E. SDG&E calculated a benchmark of \$52.47/MWh in 2019.

1 The expenses for QFs were calculated by multiplying the purchased MWh by the effective
2 market benchmark. This category also includes indirect Greenhouse Gas (“GHG”) costs
3 associated with the PPAs. Any expenses above the benchmark were recorded in the TCBA
4 pursuant to Assembly Bill (“AB”) 1890. The 2019 activity in SDG&E’s TCBA is described in
5 more detail in Attachment B of the Ms. Ngo’s prepared direct testimony.

6 **B. Contract Costs (non-CTC)**

7 This category captured the expenses for renewable PPAs, SDG&E tolling agreements and
8 other bilateral PPAs. The costs include capacity, energy, fuel, fuel transportation costs, and
9 indirect GHG cost associated with the PPAs. Also included in this category are revenues and
10 expenses for real-time bilateral purchases and sales, contract-related California Independent
11 System Operator (“CAISO”) revenue or payment adjustments and revenues for contract damages
12 or awards, broker fees, and other miscellaneous service fees.

13 **C. Generation Fuel & In-Lieu Payments**

14 All monthly recorded fuel and transportation expenses for SDG&E’s utility-owned
15 generation, and fuel purchased for SDG&E’s tolling agreements, were recorded in ERRA. In-
16 Lieu Payments (of franchise fees) were collected for Palomar fuel costs and recorded in ERRA.

17 **D. Other CAISO Related Costs**

18 Included in this category are revenues and charges associated with transmission losses,
19 and ancillary services. This also includes SDG&E’s share of imbalance energy charges and Grid
20 Management Charges (“GMC”).

21 **E. CAISO Supply & Load Costs**

22 This category captures the CAISO payments and charges to SDG&E as the Scheduling
23 Coordinator (“SC”) for its supply resources, including Inter-SC trades (“ISTs”), Day-Ahead and
24 Real-Time Market activities, and their imbalance energy charges and revenues. This category

1 also includes the CAISO payments and charges to SDG&E as the SC for load, GMC, Day-Ahead
2 and Real-Time Market load activities, and load imbalance energy.

3 **F. Hedging Costs & Financial Transactions**

4 This expense category captures the monthly expenses for hedging generation fuel and
5 commissions and other bank fees.

6 **G. Western Renewable Energy Generation Information (“WREGIS”) Costs**

7 This category reflects costs relating to participation in the Renewable Energy Credit
8 (“REC”) management program administered by WREGIS.

9 **H. Congestion Revenue Rights (“CRR”) CAISO Costs**

10 This category includes costs and revenues relating to CRR activity charged to SDG&E by
11 the CAISO.

12 **I. CAISO Convergence Bidding Costs**

13 This category includes revenues and costs related to convergence bidding as authorized in
14 D.10-12-034.

15 **J. Rebalancing Costs related to Otay Mesa Energy Center (“OMEC”)/Calpine**

16 SDG&E recorded the monthly rebalancing costs associated with the Revised OMEC PPA
17 in compliance with D.06-09-021 and D.11-07-041.

18 **K. GHG & Carrying Costs**

19 This category includes costs and cost adjustments related to SDG&E’s procurement of
20 GHG compliance instruments to comply with California Air Resources Board’s Cap-and-Trade
21 program pursuant to AB 32. The 2019 GHG compliance activity is described in more detail in
22 the prepared direct testimony of SDG&E witness Scott Lewis.

1 **III. ELECTRIC & FUEL PROCUREMENT FUNCTIONS**

2 The Electric & Fuel Procurement Department (“E&FP”) is responsible for managing
3 SDG&E’s electric generating portfolios, procuring new resources, managing Renewable
4 Portfolio Standard (“RPS”) compliance, energy and gas contract administration and settlements.
5 This section generally describes the responsibilities of the major functions provided by various
6 sections of E&FP. Also, attached in Exhibit A is an organizational chart of the E&FP
7 department as of the end of the record period.

8 **A. Long-Term Procurement Functions**

9 Origination, Energy Supply and Dispatch (“OES&D”) is comprised of two functional
10 areas: Origination (Origination Analytics & Energy Origination) and Energy Supply & Dispatch
11 (“ES&D”). Origination Analytics supports long-term procurement of energy products such as
12 renewables, conventional generation, ES, demand response, energy efficiency, resource
13 adequacy (“RA”) capacity and RECs. To this end, the group designs, implements and manages
14 competitive solicitations in accordance with Commission directives and executes agreements on
15 a bilateral basis to meet energy procurement needs. Furthermore, the group supports Origination
16 with financial and technical modeling for utilization in PUC proceedings or regulatory approval
17 of SDG&E contracts. Energy Origination negotiates and executes PPA and resource
18 requirements for UOG, to meet SDG&E’s long-term energy and capacity requirements and
19 regularly update the Procurement Review Group. ES&D is described below in the Trading &
20 Scheduling Functions.

21 **B. Resource Planning Section**

22 The Resource Planning (“RP”) Section provides support for several regulatory agencies
23 and filings including the ERRA proceeding. They forecast procurement costs for the ERRA,
24 TCBA, LGBA, and the Power Charge Indifference Adjustment (“PCIA”). SDG&E’s witness

1 Ms. Ngo uses these forecasts to develop ERRRA revenue requirements for each element. The
2 forecasts include expected generation and purchases from SDG&E's resource portfolio including
3 tolling projects, UOG, renewable projects, QFs and market purchases. RP also forecasts the
4 CAISO charges, hedging costs, San Onofre Generating Station Unit 1 Offsite Spent Fuel Storage
5 Costs and a forecast of total GHG costs. RP provides support for the development of the GHG
6 allowance revenue return allocation and the volumetric revenue return for small business and
7 residential customers, as well as rates for the Green Tariff Shared Renewables ("GTSR")
8 program.

9 **C. Trading & Scheduling Functions**

10 ES&D provides trading and scheduling functions in support of UOG, tolling agreements,
11 renewable energy, QFs, demand-side resources and other resources as required. They manage
12 the portfolio of assets consistent with the Commission-approved procurement plans and gas
13 supply plans for UOG. ES&D manages the least-cost dispatch of the UOG and tolling
14 agreements, battery ES, purchases and sales of GHG related products, natural gas and power, and
15 hedges to maintain the portfolio's price risk exposure within the Customer Risk Tolerance limits.
16 They perform all scheduling and interface functions with the CAISO and participate in CAISO-
17 related meetings and working groups. ES&D manages compliance with annual and monthly RA
18 requirements and oversees the real-time scheduling, dispatch, and trading functions. ES&D
19 staffs a real-time desk to manage real-time energy transactions and scheduling activities and
20 ensures that ES&D complies with various regulatory and financial constraints/requirements.
21 Details of the least-cost dispatch are provided in the prepared direct testimony of SDG&E
22 witness Joseph Pasquito.

1 **D. Back-Office Functions**

2 Settlements and Systems (“S&S”) provides back-office support for UOG, renewable
3 energy, QFs and other resources as required. S&S manages PPAs through construction and
4 development phases, up to the commercial operation date (“COD”), monitors and administers
5 energy supply (*e.g.*, PPAs for QFs, renewable energy resources and tolling agreements) and gas
6 marketing contracts delivering energy and capacity to SDG&E and participates in various
7 regulatory proceedings relating to contract administration. During the record period, the
8 responsibility for managing PPAs through construction and development phases, up to the COD,
9 was transferred from OES&D to the S&S Section. S&S also verifies, validates, and processes
10 invoices and billing requests for bilateral transactions, and prepares journal entries to record
11 expenses and revenues. In terms of interaction with CAISO, S&S validates and processes
12 settlement statements and invoices from the CAISO, disputes any questionable charges, and
13 reports generation and load meter data. They also coordinate Sarbanes-Oxley (“SOX”) 404
14 compliance and control activities for many E&FP Functions.

15 The Systems Section is responsible for system administration for departmental software
16 supported by SDG&E's Information Technology department. The primary applications are the a)
17 Allegro Development Corporation’s electronic database (“Allegro”), a repository and payment
18 database, b) Power Costs Inc. (“PCI”) dispatch program, c) Versify Solutions (“V Performance”)
19 for RA requirements and d) the Meter Data Processing System (“MDPS”), which performs the
20 meter reporting and submissions to the CAISO.

21 **E. Mid-Office Functions**

22 SDG&E’s Energy Risk Management (“ERM”) department, which reports to SDG&E’s
23 Vice President - Risk Management & Compliance division, provides mid-office support
24 functions to E&FP by identifying, managing, monitoring and reporting on market, credit,

1 financial and operational risks. The ERM department conducts daily reviews of electric
2 procurement physical and financial positions, including Commission-approved risk metrics,
3 trader authority limits, counterparty credit risk positions and compliance with financial
4 liquidity/collateral limits. ERM also supports the Front Office in the development of hedging
5 plans and monitors compliance with the approved plans.

6 ERM monitors and enforces process controls related to the execution, recording and
7 valuation of trades, including derivatives. ERM is also responsible for compliance with Dodd-
8 Frank requirements, including trade reporting and record retention activities, and for SOX 404
9 compliance and testing for many of the controls related to ERM activities.

10 **IV. SUPPLY PORTFOLIO ADMINISTRATION IN GENERAL**

11 S&S is responsible for: (a) contract administration, (b) preparing, reviewing and issuing
12 invoices, (c) issuing payments associated with energy transactions and generation fuel
13 agreements, and (d) providing mandated regulatory and financial reporting.

14 As of the end of the record period, S&S administered an electric supply portfolio
15 consisting of UOG and bilateral PPAs with conventional and renewable power plants. The UOG
16 portion of the portfolio was comprised of SDG&E’s 100% ownership of the following plants:

SDG&E Power Plants	MW ¹
Miramar Energy Facility 1 & 2	96
Cuyamaca Energy Center	45
Palomar Energy Center	575
Desert Star Energy Center	495
Ramona Solar	4.3
El Cajon Energy Battery Storage	7.5
Escondido Energy Battery Storage	30
Rooftop Solar (combined)	3.4

17

¹ The fossil fueled UOG MWs are consistent with SDG&E’s Resource Data Template (“RDT”) reported to the CAISO as updated when necessary from time-to-time. However, the small SDG&E-owned Vista Fuel Cell and Rooftop Solar (combined) MW’s are not reported to the CAISO.

1 SDG&E's PPAs include the following:

Status as of:
December 31, 2019

Commercial Operations				TOTAL PPA'S				Pre-Operational				TOTAL PPA'S				Expired/Terminated				TOTAL PPA'S			
Contract Summary				Number	MW	MWH	Contract Summary				Number	MW	MWH	Contract Summary				Number	MW	MWH			
QF/CHP	5	136.4	71,579				QF/CHP	0	0.0	0				QF/CHP	0	0.0	0						
Renewable	41	2,499.5	6,859,288				Renewable	4	130.4	0				Renewable	6	69.0	207,578						
Tolling	5	1,055.0	234,012				Tolling	0	0.0	0				Tolling	1	600.0	491,906						
Energy Storage - Pumped Hydro	1	40.0	0				Energy Storage - Pumped Hydro	0	0.0	0				Energy Storage - Pumped Hydro	0	0.0	0						
Energy Storage - Battery	0	0.0	0				Energy Storage - Battery	1	6.5	0				Energy Storage - Battery	2	7.0	0						
WSPP	4	175.0	294,232				WSPP	0	0.0	0				WSPP	1	68.0	150,144						
Total	56	3,905.9	7,459,112				Total	5	136.9	0				Total	10	744.0	849,627						

Commercial Operations				TOTAL PPA'S				Pre-Operational				TOTAL PPA'S				Expired/Terminated				TOTAL PPA'S			
Technology Type				Number	MW	MWH	Technology Type				Number	MW	MWH	Technology Type				Number	MW	MWH			
Bio-Mass	1	24.0	185,059				Bio-Mass	0	0.0	0				Bio-Mass	0	0.0	0						
Conduit-Hydro	3	2.3	1,132				Conduit-Hydro	0	0.0	0				Conduit-Hydro	0	0.0	0						
Bio-Gas	0	0.0	0				Bio-Gas	1	3.0	0				Bio-Gas	1	3.0	0						
Digester Gas/Conduit Hydro	0	0.0	0				Digester Gas/Conduit Hydro	0	0.0	0				Digester Gas/Conduit Hydro	0	0.0	0						
Energy Storage - Pumped Hydro	1	40.0	0				Energy Storage - Pumped Hydro	0	0.0	0				Energy Storage - Pumped Hydro	0	0.0	0						
Energy Storage - Battery	0	0.0	0				Energy Storage - Battery	1	6.5	0				Energy Storage - Battery	2	7.0	0						
Landfill Gas	5	15.9	105,410				Landfill Gas	0	0.0	0				Landfill Gas	4	6.0	35,632						
Market	4	175.0	294,232				Market	0	0.0	0				Market	1	68.0	150,144						
Natural Gas	9	1,191.1	305,296				Natural Gas	0	0.0	0				Natural Gas	1	600.0	491,906						
Solar PV	22	1,326.1	3,296,796				Solar PV	2	22.4	0				Solar PV	0	0.0	0						
Wind	11	1,131.6	2,971,187				Wind	1	105.0	0				Wind	1	60.0	171,946						
Total	56	3,905.9	7,459,112				Total	5	136.9	0				Total	10	744.0	849,627						

2
3
4 S&S performs the following routine tasks to ensure compliance with contract terms and
5 regulatory requirements.

6 **A. Contract Management for New Projects**

7 Before new projects reach COD, S&S provides contract management during a project's
8 construction phase ensuring that all conditions precedent and milestones are met. Additionally,
9 S&S manages the transition between construction and commercial operation including multiple
10 meetings with the new counterparty to introduce staff, review the scheduling communication
11 protocols, and discuss the invoicing and settlement procedures. The purpose of these meetings is
12 to ensure a smooth transition from the construction phase to commercial operation.

13 **B. Invoice Verification**

14 For most non-QF contracts, the Sellers issue monthly invoices to SDG&E. For QFs,
15 SDG&E issues monthly invoices to the Seller. Based on contract terms, and the daily
16 communication records, the S&S staff prepares, reviews and verifies the details of the invoices,
17 including, but not limited to: prices and quantity of energy delivered or scheduled, verification
18 of excused outages, prices of capacity, TOD factors, index prices, startup payments, economic

1 curtailment compensation, and validity of any adjustments to the invoices. S&S staff follows the
2 complete payment process to verify it is done in a timely manner per the contract.

3 S&S staff is also responsible for coordinating, investigating and resolving disputes, if
4 necessary, in a timely manner and in accordance with terms and conditions of the contract and
5 applicable utility and CAISO tariffs.

6 **C. WREGIS Administration**

7 Starting in 2007, as part of the RPS compliance effort, the California Energy Commission
8 (“CEC”), the Western Governors’ Association and Western Electricity Coordinating Council
9 jointly launched the implementation of WREGIS, an online system which tracks renewable
10 energy generation from units that register in the system using verifiable data and creates RECs
11 for this generation. In 2008, SDG&E became an account holder and qualified reporting entity
12 within WREGIS and worked with the renewable counterparties to register each facility into the
13 system. SDG&E started reporting renewable generation from these facilities through WREGIS
14 starting on May 1, 2008. During the record period, S&S staff diligently monitored and
15 administrated the WREGIS accounts.

16 **D. Active Monitoring**

17 Most of the PPAs require Contract Administrators to monitor and track generation to
18 ensure the Generator’s compliance with the contract terms through the life of the contracts. It
19 includes, but is not limited to: generation, insurance, credit requirements and status, and
20 compliance with regulatory and reporting requirements. Contract Administrators work closely
21 with the Generators to immediately address any contractual issues that may arise.

1 Particularly for the renewable contracts, D.10-06-004 mandated SDG&E to actively
2 monitor the Seller’s compliance with Standard Terms and Conditions 6 (“STC 6”), as defined in
3 the P.U. Code.² SDG&E implements the following method of active monitoring:

- 4 I. Request the Seller’s copy of CEC’s certification, both pre-& final;
- 5 II. Request that the Seller register the contracted facility with WREGIS and provide
6 SDG&E their WREGIS ID; and
- 7 III. Request that the Seller certify that the product SDG&E received during the record
8 period was indeed in compliance with STC 6.

9 For the record period, all RPS projects reported they complied with the STC 6 based on
10 above activities (i) and (ii). All Sellers responded to SDG&E’s questionnaire at year end
11 according to (iii) above, confirming their compliance.

12 **E. Contract System Administration**

13 During the record period, E&FP’s front, mid and back offices used Allegro as its primary
14 contract management trading and tracking system. Allegro is a SOX compliance system that is
15 used for regulatory reporting, accounting, commodity trading management, and portfolio
16 valuation. It creates an audit trail when changes are made to contracts in the system. During the
17 record period, S&S supported SDG&E’s goals of complying with SOX requirements,
18 maintaining up-to-date systems, enhancing forecast accuracy, and ensuring compatibility
19 between software systems used within E&FP.

² STC 6 requires the Sellers to warrant throughout the term of the PPA that: (i) the Project qualifies and is certified by the CEC [California Energy Commission] as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in the Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in the law. *See* D.10-06-004 at 4-5 (citation omitted).

1 **F. Summary of SDG&E’s Long-Term Energy Contract Portfolio**

2 During the record period, S&S managed the contract terms and activities of conventional
3 and renewable contracts in its long-term energy contract portfolio. The Electric Contracts tab in
4 Attachment 1 of this testimony lists and summarizes the contract terms and activities during the
5 record period in the following categories:

Contract Class
Contract Name
Contract Terms
Payment Terms
New Contracts
Modifications, Letter Agreements & Amendments filed in AL’s or Applications
Modifications, Letter Agreements & Amendments for Review in ERRA Application
Terminated Contracts

6 **G. Non-QF Contract Types**

7 There are generally three Non-QF contract types in SDG&E’s portfolio that include,
8 among other benefits, the purchase or sale of as-available capacity and energy, RECs and RA
9 benefits. Below is a list and definitions of those contracts:
10

11 **1. Renewable Contracts**

12 Power purchase and sale contracts with power suppliers whose generation fuel (wind,
13 solar, etc.) are certified as renewable. This type includes both bilateral PPAs and standard
14 agreements.

15 **2. Bilateral PPAs**

16 Contracts that originate from a Request for Offer (“RFO”) and are not tariff or regulatory
17 mandated contracts may originate from bilateral negotiations. The Buyer and Seller negotiate

1 the terms and are bound by the provisions. Bilateral PPAs typically include the purchase of
 2 energy and/or capacity and may be firm or dispatchable.

3 **3. Tolling Agreements**

4 These are dispatchable contracts, and SDG&E purchases and transports the natural gas to
 5 the power plants. SDG&E pays for capacity based on the availability of the plants and the
 6 contracts include fixed and variable O&M charges, startup costs, etc. SDG&E economically
 7 bids the plants and available ancillary services into the CAISO market.

8 **H. QF/CHP Contract Administration**

9 As of the end of the record period, the following table list and summarize the names,
 10 sizes, energy and capacity prices and quantities of all exporting and non-exporting QF/CHP's
 11 during the record period:

QF & CHP PLANTS THAT SOLD POWER OR WERE DISPATCHED BY SDG&E					
Plant	PPA Type	Nameplate MW	Fixed Capacity MW	Energy Price	Capacity Price
SF Peak Hydro	SO1	0.4	0	SRAC	SRAC
CP Kelco	CHP	26.7	0	SRAC	SRAC
Goal Line	CHP	49.9	49.9	\$5.63/MWh variable O&M	\$172/KW-yr. + \$23.40-\$33.00/kW-yr.
Grossmont	CHP	4.6	0	SRAC	SRAC
YCA	CHP	55.0	55.0	\$3.14/MWh variable O&M	\$140/kW-yr. with 17.65% bonus adj.
Total		136.6	104.9		

12 The following table lists the percentages of generation (MWh) supplied by QF projects,
 13 but not CHP, relative to SDG&E's total energy supply for the record period.

Total QF Supply (MWh)	SDG&E's Total Energy Supply (retail sales MWh)	% of QF generation relative to SDG&E's total energy supply
72.1	14,405,887	0.001%

15 The following table lists the percentages of QF renewable energy (MWh), but not CHP,
 16 relative to total QF supply for the record period.

QF RPS Eligible Renewable Purchased Energy (MWh)	Total QF Purchases (MWh)	% of QF RPS eligible renewable Purchased Energy relative to total QF Purchases
72.1	72.1	100%

The following table lists the percentages of QF renewable energy (MWh) relative to total RPS supply.

QF Renewable Purchases (MWh)	Total RPS Purchases (MWh)	% of QF RPS eligible Renewable Energy relative to total RPS supply
72.1	6,731,049	0.004%

1. Payments to QFS/CHP

During the record period, there were no unusual or significant payments to, or claims by, the QFs. The table below shows the QF only monthly delivered energy MWh and the energy and capacity payments made to QFs during the record period. The table is also provided in Attachment 1.

2019 QF MONTHLY PAYMENTS		Confidential/privileged pursuant to applicable provisions of D.06-06-066, G.O. 06-D and PUC Code Section 683 and Section 464.5(g).													
Monthly Energy Purchases (MWh)			NOTE: DOES NOT INCLUDE GENERATION FROM, OR PAYMENT TO, COVERED CHP PLANTS												
QFID	Technology	Generating Facility	Jan Total	Feb Total	Mar Total	Apr Total	May Total	Jun Total	Jul Total	Aug Total	Sept Total	Oct Total	Nov Total	Dec Total	Total MWh
119	Conduit Hydro	San Francisco Peak Hydro Plant													72.10
Monthly Energy Purchases			Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total Energy \$
119	Conduit Hydro	San Francisco Peak Hydro Plant													\$2,799.09
Monthly Capacity Purchases			Jan Capacity	Feb Capacity	Mar Capacity	Apr Capacity	May Capacity	Jun Capacity	Jul Capacity	Aug Capacity	Sept Capacity	Oct Capacity	Nov Capacity	Dec Capacity	Total Capacity \$
119	Conduit Hydro	San Francisco Peak Hydro Plant													\$ 635.21

2. Efficiency Monitoring

SDG&E did not review any QF cogeneration efficiency records for year 2019.

3. Insurance Monitoring

During the record period, the S&S staff solicited and tracked insurance certificates for all PPAs to ensure current certificates are maintained by TrackCertsNow, an Ebix Inc. system.

1 **V. EXPIRED AND TERMINATED CONTRACTS**

2 SDG&E normally administers each contract from execution through the end of the
3 contract term at which point, the contract will expire. However, SDG&E can terminate a PPA
4 earlier than the expiration date due to a counterparty event of default. If this occurs, SDG&E
5 will notify the counterparty of the default. If the counterparty fails to cure the default, SDG&E
6 may terminate the contract. The expired and terminated contracts are discussed in the relevant
7 sections below and in Attachment 1. Copies of the applicable termination letters are included in
8 Exhibit B of this testimony.

9 **A. Contract Amendments, Modifications and Letter Agreements**

10 During the record period, SDG&E modified and amended several contracts. Some
11 contract modifications were material in nature and required Commission approval, and some
12 other modifications were not material. The material modifications are discussed in the relevant
13 sections below. Attachment 1 of this testimony summarizes all changes and modifications to
14 contracts during the record period.

15 **B. Contract Administration of Fuel Procurement Contracts**

16 During the record period, SDG&E had fuel procurement contracts in effect or under
17 negotiation, initiation, revision, amendment, or termination. Attachment 1 of this testimony
18 includes a tab entitled “Gas Contracts” that identifies the counterparties, contract types and
19 effective dates of all active fuel procurement contracts in effect or otherwise acted upon during
20 the record period.

1 **C. Hypothetical Maximum Disallowance for Standard of Conduct 4 Violations**

2 For the record period, SDG&E calculated \$18.699 million³ as the hypothetical Maximum
3 Disallowance for Standard of Conduct 4 Violations which equates to twice the estimated
4 administrative expenses of \$9.349 million calculated in the table below. In D.02-12-074, the
5 Commission set “each utility’s maximum disallowance risk equal to two times their annual
6 administrative expenses for all procurement functions, including those related to DWR contract
7 administration, utility-retained generation, renewables, QFs, demand-side resources, and any
8 other procurement resources.”⁴ This hypothetical disallowance cap was established in Ordering
9 Paragraph 25 of D.02-12-074 and modified by Ordering Paragraph 3.a. of D.03-06-067.

10 The record period falls under the 2019 GRC period which is effective from 2019 through
11 2021. In the table below, SDG&E provides a hypothetical disallowance cap utilizing the GRC
12 Authorized Revenues for Procurement Expenses and shows how those costs are hypothetically
13 distributed in three major functions: Long-Term Procurement, Trading & Scheduling, and the
14 Mid and Back Office. More information about the test-year (“TY”) 2019’s O&M costs for non-
15 shared services are summarized in the SDG&E Direct Testimony of Kendall K. Helm (Electric
16 and Fuel Procurement) (October 2017) in the 2019 GRC proceeding (Application (“A.”) 17-10-
17 007) and attached Exhibit D is a copy of this testimony.⁵

³ SDG&E provides this information on a hypothetical basis. SDG&E sees no practical usefulness of this number in this proceeding.

⁴ D.02-12-074 at 55.

⁵ SDG&E uses USA (Federal Energy Regulatory Commission (“FERC”)) Accounts 556 (System Control and Load Dispatch) and 557 (Other Expense – Purchase Power). There are no USA numbers that can be used for the procurement functions in the table. It is SDG&E’s understanding that the USA systems of accounts relates to FERC accounts only.

SDG&E's Hypothetical Disallowance Cap Utilizing the GRC Authorized Revenues for Procurement Expenses

\$ in Millions

#	Administration Expenses for all Procurement Functions	SDG&E's Authorized Revenue Requirement for Procurement Expenses (2019\$)			Maximum Disallowance
		Labor	Non-Labor	Total	
1	Long Term Procurement	2,125	0,264	2,389	18,699
2	Trading and Scheduling	2,536	0,656	3,192	
3	Middle and Back Office	2,640	1,129	3,769	
4	Total	7,301	2,049	9,349	

Note: From CPUC D. 19-09-051

Request (2016\$)		Procurement Expenses (2019\$)			
		Labor	Non-Labor	Total	
1	Long Term Procurement	2,203	2,125	0,264	2,389
2	Trading and Scheduling	2,349	2,536	0,656	3,192
3	Middle and Back Office	3,489	2,640	1,129	3,769
4	Total	8,641	7,301	2,049	9,349

		electric			
		2016\$	2016\$	2019\$	2019\$
		L	NL	L	NL
1EP001	Long Term Procurement	1,355	0,248	2,125	0,264
1EP002	Trading and Scheduling	2,333	0,616	2,536	0,656
1EP003	Middle and Back Office	2,429	1,060	2,640	1,129

		gen			
		2016\$	2016\$	2019\$	2019\$
		L	NL	L	NL
1EP001	Long Term Procurement	0,000	0,000	-	-
1EP002	Trading and Scheduling	0,000	0,000	-	-
1EP003	Middle and Back Office	0,000	0,000	-	-

		gas			
		2016\$	2016\$	2019\$	2019\$
		L	NL	L	NL
1EP001	Long Term Procurement	0,000	0,000	-	-
1EP002	Trading and Scheduling	0,000	0,000	-	-
1EP003	Middle and Back Office	0,000	0,000	-	-

		Total					
		2016\$	2016\$	Total	2019\$	2019\$	Total
		L	NL	L	NL	L	NL
1EP001	Long Term Procurement	1,355	0,248	2,203	2,125	0,264	2,389
1EP002	Trading and Scheduling	2,333	0,616	2,949	2,536	0,656	3,192
1EP003	Middle and Back Office	2,429	1,060	3,489	2,640	1,129	3,769
						9,349	

Escalation Rates		
Elec/Gen/Gas	Elec/Gen	Gas
Labr	NLbr	NLbr
1.056900	1.054800	1.054800

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VI. CONTRACT PORTFOLIO AND STATUS

This section lists each of the executed contracts in SDG&E's portfolio by technology type and provides a brief description of the contract or project status. SDG&E also describes any issues that occurred in the record period.

During the record period, SDG&E conducted resource-specific and Preferred-Resources RFOs requesting solicitations with the following pro-forma agreements:

PROCUREMENT- RELATED RESOURCES SOLICITATION IN 2018

Pro-Forma Agreement Type	Date Issued	Description
2021-2023 IRP Reliability RFO	December 13, 2019	Seeks to procure resources to meet electric system reliability needs as required by the Commission D.19-11-016.

Pro-Forma Agreement Type	Date Issued	Description
2020 Q1 RA RFP	November 13, 2019	Sought to sell excess RA capacity products: CAISO South System RA, RA w/ Flex (February and March 2020), SD-IV Local RA, Local RA w/ Flex (March 2020 only).
2019 Bio-Renewable Auction Mechanism “RAM” RPS REC Sale Request for Proposal (RFP)	September 19, 2019	Sought proposals from third parties who are interested in purchasing bundled energy products from an eligible renewable resource under contract with SDG&E.
2020 DRAM RFO	October 11, 2019	In accordance with Commission D.14-12-024 and D.16-06-029, sought local, system and flexible RA resources via a standard, non-negotiable Demand Response Auction Mechanism (“DRAM”) Purchase Agreement.
2019-2024 Tree Mortality Non-Bypassable Charge RA Sale	August 20, 2019	Sought to sell RA capacity products from HL Power and Owner HL Partners, LP Project, to minimize the procurement cost impact for ratepayers pursuant to Commission D.18-12-003.
2020-2021 Local RA Solicitation	August 8, 2019	Sought to purchase Local RA capacity products with load serving entities, marketers and generators to assist in optimizing its RA portfolio. It is the intention of this solicitation to minimize the procurement cost impact for ratepayers while also meeting SDG&E’s RA Requirement.
2020-2022 Local RA Solicitation	April 5, 2019	Sought to purchase Local RA capacity products with load serving entities, marketers and generators to assist in optimizing our RA portfolio. It was the intention of this solicitation to minimize the procurement cost impact for ratepayers while also meeting SDG&E’s RA Requirement.
2019 ICT RFO E Solicitation	April 5, 2019	Sought to sell Import Capability Transfer (ICT) for months (July-December 2019) at IID-SDGE-BG import location.
2019 Local RA RFO E Solicitation	January 17, 2019	Sought to purchase Local SD-IV RA for the months (April-December 2019).

1 Copies of the pro forma PPAs are attached in a PDF format in Exhibit C of this
2 testimony.

3 In addition to the PPAs listed above, SDG&E had a Bioenergy Market Adjusting Tariff
4 (“Bio-Mat”) and CHP PPA (for CHP Facilities less than 5 MW and less than 20 MW) available
5 during the record period.

6 **A. Renewable Resources**

7 SDG&E’s PPA renewable portfolio is comprised of resources from competitive
8 solicitations, bilateral PPAs, and standard PPAs. This section provides a description of each
9 renewable energy resource project in SDG&E’s electric portfolio that delivered energy to
10 SDG&E during the record period, arranged by technology type, along with discussions of
11 activities unique to each project. Additional details about each project can be found in the
12 Electric Contracts tab of Attachment 1 of this testimony.

13 **1. BIO-GAS & BIO-MASS**

14 During the record period, SDG&E purchased energy from the following bio-fuel projects:

- 15 ○ HL Power Company, LP: This five-year Bio-RAM PPA (with five one-year
16 extensions at SDG&E’s option) was executed on November 14, 2016 and
17 started delivering energy under the PPA in 2017. The PPA price is
18 \$109.00/MWh, adjusted by time-of-delivery (“TOD”) factors. The bio-mass
19 project size is 24 MW, is in Wendel, California (“CA”), and is connected to
20 the Lassen Municipal Utility which delivers their energy to the PG&E
21 system.

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- MM Prima Deshecha Energy LLC (“Prima”): This fifteen-year bilateral PPA was executed on September 6, 2005 and started delivering energy under the PPA in 2007. The PPA price started at \$48.50/MWh and escalates to \$68.53/MWh. The landfill gas project size is 6.1 MW and is in Orange County, CA.
- MM San Diego (“Miramar”): This ten-year RAM PPA was executed on November 9, 2012 and started delivering energy under the PPA in 2013. The PPA price is \$87.00/MWh adjusted by TOD factors. The landfill gas project size is 4.5 MW and is in San Diego, CA.
- Otay Landfill 1: Please see Section VI.H. Expired and Terminated PPAS for information on this expired PPA.
- Otay Landfill 2: Please see Section VI.H. Expired and Terminated PPAS for information on this terminated PPA.
- Otay Landfill V: Please see Section VI.H. Expired and Terminated PPAS for information on this terminated PPA.
- Otay Landfill VI: Please see Section VI.H. Expired and Terminated PPAS for information on this terminated PPA.

- 1 ○ San Marcos Energy, LLC: This twenty-year Customer Renewable Energy
2 “CRE” FIT PPA with SDG&E was executed on November 20, 2009. The
3 plant started delivering energy under the PPA in 2011. The PPA has term at
4 price of \$117.30/MWh adjusted by TOD factors. The landfill gas plant size
5 is 1.5 MW and is in San Marcos, CA.
- 6 ○ Sycamore Energy 1, LLC: This twenty-year CRE FIT PPA was executed on
7 November 20, 2009. The plant started delivering energy under the PPA in
8 2011. The PPA has a price of \$117.30/MWh adjusted by TOD factors. The
9 landfill gas plant size is 1.5 MW and is in Santee, CA.
- 10 ○ Sycamore Energy 2, LLC: This ten-year Renewable Market Adjusting
11 Tariff (“ReMat”) PPA was executed on March 7, 2014. The plant started
12 delivering energy under the PPA in 2014. The PPA price is \$89.23/MWh
13 adjusted by TOD factors. The landfill gas plant size is 2.25 MW and is in
14 Santee, CA.

15 2. HYDRO

16 During the record period, SDG&E purchased energy from the following certified (non-
17 QF PPA) renewable hydro projects:

- 18 ○ Bear Valley Hydro Plant: This evergreen restated bilateral PPA was
19 executed on April 13, 1994. The conduit hydro facility started delivering
20 power in 1994. The PPA price is Short Run Avoided Costs (“SRAC”) with
21 as-available capacity payments. The conduit hydro plant size is 1.5 MW
22 and is in Escondido, CA.
- 23 ○ Olivenhain Municipal Water District: This twenty-year Wastewater FIT
24 PPA with the Public Water and Wastewater was executed on July 23, 2013

1 and started delivering energy under the PPA in 2013. The PPA price is
2 \$93.75/MWh adjusted by TOD factors. The conduit hydro project size is
3 0.45 MW and is in Encinitas, CA.

4 **3. SOLAR**

5 During the record period, SDG&E purchased energy from the following solar projects:

- 6 ○ Arlington Valley Solar: This twenty-five-year bilateral PPA was executed
7 on June 3, 2011 and started delivering energy under the PPA in 2013. The
8 PPA price is \$107.50/MWh adjusted by TOD factors. SDG&E exercised its
9 curtailment rights during the record period. The solar PV project size is 127
10 MW and is in Arlington, Arizona (“AZ”).
- 11 ○ Calipatria Solar: This twenty-year RAM PPA was executed on December
12 13, 2012 and started delivering energy under the PPA in 2016. The PPA
13 price started at \$64.55/MWh in 2016, escalating to \$85.65/MWh throughout
14 the term adjusted by TOD factors. SDG&E exercised its curtailment rights
15 during the record period. The solar PV project size is 19.99 MW and is in
16 Imperial Valley, CA.

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

- 21 ○ Campo Verde Solar: This twenty-year bilateral PPA was executed on
22 October 31, 2006 and started delivering energy under the PPA in 2013. The
23 PPA price started at \$112.52/MWh in year 2013 and escalates to
24 \$135.94/MWh throughout the term adjusted by TOD factors. SDG&E

1 exercised its curtailment rights during the record period. The solar PV
2 project size is 139 MW and is in Imperial Valley, CA.

3 ○ Cascade Solar: This twenty-year RAM PPA was executed on October 19,
4 2012. The plant started delivering energy under the PPA in 2013. The PPA
5 price started at \$64.81/MWh in year 2014 and escalates to \$103.61/MWh
6 throughout the term adjusted by TOD factors. The solar PV project size is
7 18.5 MW and is in Sun Fair, CA.

8 ○ Catalina Solar: This twenty-five-year bilateral PPA was executed on June
9 3, 2011 and started delivering energy under the PPA in 2013. The PPA
10 price started at \$112.19/MWh in year 2013 and escalates to \$142.45/MWh
11 throughout the term adjusted by TOD factors. The solar PV project size is
12 109.44 MW and is in Kern County, CA.

13 ○ Centinela Solar Energy 1: This is a twenty-year bilateral PPA executed on
14 May 10, 2010 and started delivering energy under the PPA in 2013. The
15 PPA price is \$125.00/MWh adjusted by TOD factors. SDG&E exercised its
16 curtailment rights during the record period. The solar PV project size is 125
17 MW and is in Calexico, CA.

18 ○ Centinela Solar Energy 2: This twenty-year bilateral PPA was executed on
19 July 29, 2010. This expansion plant started delivering energy under the
20 PPA in 2014. The PPA price is \$121.00/MWh adjusted by TOD factors.
21 SDG&E exercised its curtailment rights during the record period. The solar
22 PV project size is 45 MW and is in Calexico, CA.

- 1 ○ CSolar IV South: This twenty-five-year bilateral PPA was executed on
2 November 10, 2010 and started delivering energy under the PPA in 2013.
3 The PPA price is \$125.85/MWh adjusted by TOD factors. SDG&E
4 exercised its economic curtailment rights during the record period. The
5 solar PV project size is 130 MW and is in Calexico, CA.
- 6 ○ CSolar IV West: This twenty-five-year bilateral PPA was executed on
7 March 8, 2011 and started delivering energy under the PPA in 2016. The
8 PPA price is \$95.50/MWh adjusted by TOD factors. An Interconnect
9 Adjustment Charge of \$4.00/MWh was added to the PPA price from the
10 date of first delivery of energy through the last day of the second contract
11 year and \$5.30/MWh thereafter until the end of the contract term. SDG&E
12 exercised its economic curtailment rights during the record period. The
13 solar PV project size is 150 MW and is in Imperial Valley, CA.
- 14 ○ Desert Green Solar Farm: This twenty-five-year bilateral PPA was
15 executed on March 31, 2011 and started delivering energy under the PPA in
16 2014. The PPA price is \$139.50/MWh. The solar PV project size is 6.3
17 MW and is in Borrego Springs, CA.
- 18 ○ Imperial Valley Solar 1 (Silver Ridge Mt Signal): This twenty-five-year
19 bilateral PPA was executed on February 3, 2012 and started delivering
20 energy under the PPA in 2013. The PPA price is \$98.59/MWh adjusted by
21 TOD factors. SDG&E exercised its curtailment rights during the record
22 period. The solar PV project size is 200 MW and is in Calexico, CA.

- 1 ○ Maricopa West Solar PV: This fifteen-year RAM PPA was executed on
2 April 16, 2013 and started delivering energy under the PPA in 2015. The
3 RAM PPA price is \$55.00/MWh adjusted by TOD factors. The solar PV
4 project size is 20 MW and is in Taft, CA.
- 5 ○ Midway Solar Farm III (“Midway”) (a.k.a. 97WI 8ME LLC) This twenty-
6 year RAM PPA was executed on December 11, 2015 and started delivering
7 energy under the PPA in 2018. [REDACTED]
8 [REDACTED]. SDG&E exercised its curtailment rights during
9 the record period. The solar plant size is 20 MW and is in Calipatria, CA.
10 *Amendment 1*: On February 27, 2019, the parties reduced the contract price
11 to \$52.98 and changed the contract quantity to 58,000 MW.
- 12 ○ NLP Granger A82 Solar: This twenty-year ReMat PPA was executed on
13 April 3, 2014 and started delivering energy under the PPA in 2016. The
14 solar PV PPA price is \$89.23/MWh adjusted by TOD factors. The solar PV
15 project size is 3 MW and is in Valley Center, CA.
- 16 ○ NLP Valley Center Solar: This twenty-year ReMat PPA was executed on
17 July 20, 2015 and started delivering energy under the PPA in 2016. The
18 PPA price is \$89.23/MWh adjusted by TOD factors. The solar PV project
19 size is 2.33 MW and is in Valley Center, CA.
- 20 ○ SG2 Imperial Valley: This twenty-five-year bilateral PPA was executed on
21 June 24, 2011 and started delivering energy under the PPA in 2014. The
22 PPA price started at \$90.93/MWh escalated to \$129.98/MWh throughout the
23 term adjusted by TOD factors. SDG&E exercised its curtailment rights

1 during the record period. The solar PV project size is 150 MW and is in
2 Imperial Valley, CA.

3 ○ Sol Orchard San Diego 20 LLC (“Ramona 1”): This twenty-five-year
4 bilateral PPA was executed on April 11, 2011 and started delivering energy
5 under the PPA in 2013. The PPA price started at \$111.86/MWh escalates to
6 \$143.46/MWh throughout the term and adjusted by TOD factors. The solar
7 PV project size is 2 MW and is in Ramona, CA.

8 ○ Sol Orchard San Diego 21 LLC (“Ramona 2”): This twenty-five-year
9 bilateral PPA was executed on April 11, 2011 and started delivering energy
10 under the PPA in 2013. The PPA price started at \$111.86/MWh and
11 escalated to \$143.46/MWh and adjusted by TOD factors. The solar PV
12 project size is 5 MW and is in Ramona, CA.

13 ○ Sol Orchard San Diego 22 LLC (“Valley Center 1”): This twenty-five-year
14 bilateral PPA was executed on April 11, 2011 and started delivering energy
15 under the PPA in 2013. The PPA price started at \$111.86/MWh escalates
16 throughout the term to \$143.46/MWh and adjusted by TOD factors. The
17 solar PV project size is 2.5 MW and is in Valley Center, CA.

18 ○ Sol Orchard San Diego 23 LLC (“Valley Center 2”): This twenty-five-year
19 bilateral PPA was executed on April 11, 2011 and started delivering energy
20 under the PPA in 2013. The PPA price started at \$111.86/MWh in Year 1
21 and escalates to \$143.46/MWh throughout the term adjusted by TOD
22 factors. The solar PV project size is 5.0 MW and is in Valley Center, CA.

- 1 ○ Solar Borrego I (formerly NRG Solar Borrego I): This twenty-five-year
2 bilateral PPA was executed on January 25, 2011 and started delivering
3 energy under the PPA in 2013. The PPA price is \$130.00/MWh adjusted by
4 TOD factors. The solar PV project size is 26 MW and is in Borrego
5 Springs, CA.
- 6 ○ TallBear Seville: This twenty-year RAM PPA was executed on December
7 13, 2012. The project started delivering energy under the PPA in 2015. The
8 RAM PPA price is \$76.63/MWh adjusted by TOD factors. SDG&E
9 exercised its economic curtailments during the record period. The solar PV
10 project size is 20 MW and is in Imperial County, CA.

11 **4. WIND**

12 During the record period, SDG&E purchased energy from the following wind projects:

- 13 ○ Coram Energy, LLC: This fifteen-year bilateral PPA was executed on July
14 12, 2010. The plant started delivering energy under the PPA in 2011. The
15 PPA price started at \$95.00/MWh and escalates to \$109.20/MWh through
16 the term adjusted by TOD factors. The wind project size is 7.5 MW and is
17 in the Tehachapi area of CA.
- 18 ○ Energía Sierra Juárez: This twenty-year bilateral PPA with IEnova, a
19 Sempra affiliate, was executed on April 6, 2011 and started delivering
20 energy under the PPA in 2015. The PPA price is \$106.50/MWh adjusted by
21 TOD factors. The wind project size is 155.1 MW and is in Ejido Jacume,
22 Mexico, and it is directly interconnected to SDG&E's East County
23 Substation.

- 1 ○ Kumeyaay Wind LLC: This twenty-year bilateral PPA was executed on May
2 31, 2004 and started delivering energy under the PPA in 2006. The PPA
3 price started at \$49.00/MWh and escalated to \$51.75/MWh in year five and
4 then levelized through the term. SDG&E and Kumeyaay have been
5 transacting ISTs under their Market Redesign and Technology Update
6 Agreement since April 2009. The wind project size is 50 MWs and is
7 located on the Campo Indian Reservation in eastern San Diego County, CA.
- 8 ○ Manzana Wind (Avangrid Renewables): This twenty-year bilateral PPA was
9 executed on February 14, 2012 and started delivering energy under the PPA
10 in 2012. The PPA price is \$95.00/MWh minus the average real-time market
11 prices. SDG&E exercised its economic curtailment rights during the record
12 period. SDG&E purchases 53%, or 100 MW of the 189 MW wind project
13 located in Rosamond, CA.
- 14 ○ Naturener Glacier 1: This fifteen-year bilateral PPA was executed on May
15 16, 2008 and started delivering energy under the PPA in 2008. The
16 transaction is a combination of two products. SDG&E buys the output at
17 \$89.00/MWh which includes the green attributes. Glacier 1 buys back the
18 output at \$68.00/MWh, excluding green attributes, at the same delivery
19 point. The wind project size is 106.5 MW and is in Ethridge, Montana.
- 20 ○ Naturener Glacier 2: This fifteen-year bilateral PPA was executed on May
21 23, 2008 and started delivering energy under the PPA in 2009. The
22 transaction is a combination of two products. SDG&E buys the output at
23 \$98.00/MWh which includes the green attributes. Glacier 2 buys back the

1 output at \$68.00/MWh, excluding green attributes, at the same delivery
2 point. The wind project size is 103.5 MW is in Ethridge, Montana.

3 ○ Naturener Rim Rock: This twenty-year bilateral PPA was executed on May
4 5, 2009 and started delivering energy under the PPA in 2013. The
5 transaction is a combination of two products. SDG&E buys the output at
6 \$105.99/MWh which includes the green attributes. Rim Rock buys back the
7 output at \$62.00/MWh, excluding green attributes, at the same delivery
8 point. The wind project size is 189 MW and is in Toole and Glacier County,
9 Montana.

10 ○ Oak Creek Wind Power, LLC: This ten-year RAM PPA was executed on
11 April 16, 2013 and started delivering energy under the PPA in 2014. The
12 PPA price is \$67.00/MWh adjusted by TOD factors. The wind project size
13 is 3.5 MW and is in Imperial Valley, CA.

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 ○ Oasis Power Partners, LLC: Please see Section VI.H. Expired and
21 Terminated PPAS for information on this expired PPA.

22 ○ Ocotillo Express, LLC: This twenty-year bilateral PPA was executed on
23 February 1, 2011. The project started delivering energy under the PPA in

1 2013. The PPA price is \$105.00/MWh. The wind project size is 265.29
2 MW and is in Imperial Valley, CA. SDG&E exercised its curtailment rights
3 starting during the record period.

- 4 ○ Pacific Wind Lessee, LLC: This twenty-year bilateral PPA was executed on
5 April 20, 2010. The plant started delivering energy under the PPA in 2012.
6 The PPA price is \$115.47/MWh. The wind project size is 140 MW and is in
7 Rosamond, CA.
- 8 ○ San Gorgonio Westwinds II (“SGWII”): This ten-year RAM PPA was
9 executed on April 16, 2013. The wind plant started delivering energy under
10 the PPA in 2015. The PPA price is \$71.00/MWh adjusted by TOD factors.
11 The project size is 11.2 MW and is in Palm Springs, CA.

12 **B. QF/CHP Projects**

13 **1. Renewable**

- 14 ○ San Francisco Peak Hydro Plant: This evergreen SO1 QF PPA was
15 executed on August 29, 1985. The small hydro plant started delivering
16 energy under the PPA effective in December 1985. The energy and capacity
17 prices are SRAC. The conduit hydro plant size is 0.4 MW and is in
18 Oceanside, CA.

19 **2. Conventional**

- 20 ○ C.P. Kelco: This seven-year non-dispatchable CHP PPA was executed on
21 November 19, 2015. The cogeneration plant started delivering energy under
22 the PPA on June 1, 2017. The energy and capacity prices are SRAC. The
23 converted cogeneration QF project size is 26.65 MW and is in San Diego,
24 CA.

- 1 ○ Goal Line, LLP: This seven-year dispatchable CHP PPA was executed on
2 July 2, 2013. The PPA is a restated QF SO2 PPA. The plant started
3 delivering energy under the CHP PPA in 2015. The firm capacity price is
4 \$172.00/kW-yr. plus dispatchable rights from \$23.40 - \$33.00/kW-yr. over
5 the PPA term. The variable O&M is \$5.63/MWh times a Consumer Price
6 Index Adjustment (“CPIA”). The converted cogeneration QF project size is
7 49.9 MW and is in Escondido, CA.
- 8 ○ Grossmont Hospital: This ten-year non-dispatchable CHP PPA - less than 5
9 MW PPA was executed on May 1, 2016. The plant started delivering
10 energy under the PPA in January 2017. The energy and capacity prices are
11 SRAC. The converted cogeneration QF project size is 4.6 MW and is in La
12 Mesa, CA.
- 13 ○ Yuma Cogeneration Associates (“YCA”): This dispatchable CHP PPA was
14 executed on August 19, 2014. The plant started delivering energy under the
15 PPA in 2015. Under the CHP PPA, YCA acts as its own fuel manager and
16 purchases gas from Southwest Gas. The firm capacity price was \$140/kW-
17 yr. with a 17.65% bonus payment during the Summer Peak period and a
18 variable O&M rate of \$3.14/MWh times the CPIA. The converted
19 cogeneration QF project size is 55 MW and is in Yuma, AZ.

20 **C. Energy Storage - Large Hydro Project**

21 During the record period, SDG&E had the following pump storage facility.

- 22 ○ Olivenhain-Hodges Pump Storage Facility: This twenty-five-year Bilateral
23 PPA was executed on January 29, 2004 and started delivering energy under
24 the PPA in 2012. The capacity price is \$65.00/kW-year plus a variable rate

1 at \$5.00/kW-year times CPIA and the variable O&M is \$2.00/MWh times
2 the CPIA. The hydro pump storage facility is 40 MW and is in Escondido,
3 CA.

4 The San Diego County Water Authority (“SDCWA”) project pumps water from
5 Lake Hodges to the Olivenhain Reservoir typically during off-peak hours
6 consuming power, and then generates power typically during on-peak hours by
7 flowing water from Olivenhain back to Lake Hodges. SDG&E utilizes the market
8 price spreads between on-peak and off-peak time periods. SDG&E manages the
9 economics through dispatching the generation and pump load.

10 **D. Tolling Agreements**

11 During the record period, SDG&E had the following operational combined cycle and
12 quick-start gas turbine plants. SDG&E purchases the natural gas and pays the GHG costs.

- 13 ○ CECL: This twenty-year Power Purchase Tolling Agreement (“PPTA”) was
14 executed on June 1, 2015 [REDACTED]
15 [REDACTED]. The capacity price starts at [REDACTED]
16 [REDACTED] throughout the term and the variable O&M price is
17 [REDACTED] The gas turbine quick start *plant has two units –*
18 *one unit consisting of four (4) GE LMS100 PA+ gas turbines* and the other
19 unit consisting of one (1) GE LMS100 PA+ gas turbine. The plant is
20 approximately 527 MW and is in Carlsbad, CA.

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

1 [REDACTED]

2 [REDACTED]

- 3 ○ ECEC: This twenty-five-year Power Purchase & Tolling Agreement
4 (“PPTA”) was executed on May 24, 2010 and started commercial operations
5 in 2010. The capacity price started at \$105.10/kW-year plus \$37.50/kW-
6 year times a CPIA and the variable O&M price started at \$7.00/MWh times
7 CPIA. The quick-start peaking plant is approximately 47 MW and is in El
8 Cajon, CA.
- 9 ○ EEC: This twenty-five-year PPTA was executed in February 25, 2011 and
10 started commercial operations in 2014. The capacity price started at
11 \$106.50/kW-year plus \$43.50/kW-year times CPIA and the variable O&M
12 price started at \$7.00/MWh times a CPIA. The quick-start peaking plant is
13 approximately 47 MW and is in Escondido, CA.
- 14 ○ OGE: This twenty-five-year PPTA was executed on July 14, 2009 and
15 started commercial operations 2010. The capacity price is \$172.12/kW-year
16 plus a base rent of \$125,000 times a CPIA and the variable O&M price was
17 \$5.01/MWh times a CPIA. The two-gas turbine quick-start peaking plant is
18 approximately 99 MW and is in Pala, CA.
19 OGE leased its property for the plant from SDG&E until the end of the
20 PPTA which ends in 2035 after which the lease will expire and the title to
21 the plant will transfer at no cost to SDG&E. SDG&E may, at its option,
22 request OGE to remove the plant and return the property to SDG&E in its
23 original condition.

1 ○ OMEC: Please see Section VI.H. Expired and Terminated PPAS for
2 information on this expired PPA.

3 ○ PPEC: [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED] The

7 quick-start peaking plant is comprised of three GE LMS100 PA+ gas
8 turbines with a total capacity of approximately 336 MW and is in Otay
9 Mesa, San Diego, near the United States/Mexico International Border.

10 **E. Market Purchases**

11 During the record period, SDG&E had two (2) firm market Western Systems Power Pool
12 (“WSPP”) PPA’s:

- 13 ○ BP Energy: Please see Section VI.H. Expired and Terminated PPAS for
14 information on this expired PPA.
15 ○ Morgan Stanley Capital Group (NOB): This ten-year bilateral PPA was
16 executed on October 26, 2011 and started delivering power in 2013. The
17 applicable fixed energy prices are:

Years	Months	MW	Price
2016-2022	Sep-Oct	125 - 175	\$71.00/MWh

18 **F. Bundled Energy & REC Sales**

19 During the record period, SDG&E executed four (4) WSPP Confirmations for the sale of
20 energy plus green attributes:
21

1 ○ Clean Power Alliance of Southern California: This two-year Confirmation
2 was executed on December 18, 2018. [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED] The AL 3331-E for
9 this confirmation was approved by the CPUC Energy division effective May
10 30, 2019.

11 ○ Direct Energy Business Marketing, LLC: This two-year Confirmation was
12 executed on December 16, 2018. [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED] The AL 3310-E for this
19 confirmation was approved by the CPUC Energy division effective
20 November 30, 2018.

21 ○ Peninsula Clean Energy Authority: This two-year plus Confirmation was
22 executed on November 9, 2018. [REDACTED]

23 [REDACTED]

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[REDACTED]

[REDACTED] The AL 3302-E for this confirmation was approved by the CPUC Energy division effective November 15, 2018.

- o Sacramento Municipal Utility District: This two-year plus Confirmation was executed on November 30, 2018. [REDACTED]

[REDACTED]

[REDACTED] The AL 3314-E for this confirmation was approved by the CPUC Energy division effective December 7, 2018.

G. Pre-Operational Contracts

During the record period, SDG&E managed the following pre-operational PPAs.

1. Bio-Gas:

- o Lakeside Biogas, LLC: This fifteen-year BioMAT PPA was executed on February 15, 2019. This project is expected to reach commercial operations in [REDACTED]. The PPA price [REDACTED].

This biogas plant size is 3 MW and will be in Lakeside, CA.

1 **2. Solar**

2 ○ ORNI 33: This twenty-year Green Tariff PPA was executed on April 19,
3 2018. The plant is expected to reach commercial operations [REDACTED]
4 The PPA price is [REDACTED]. This solar plant is 20
5 MW and will be in San Bernardino Base and Meridian, in an unincorporated
6 area of the county of Imperial, CA.

7 ○ FFP CA Community Solar: This twenty-year Green Tariff PPA was
8 executed on May 17, 2018. The plant is expected to reach commercial
9 operations [REDACTED] The PPA price is [REDACTED]
10 [REDACTED]. This solar plant is 2.4 MW and will be in Campo, CA.

11 **3. Wind**

12 ○ Energía Sierra Juárez 2 (“ESJ 2”): This twenty-year RAM PPA was
13 executed on November 16, 2017 with IEnova - a Sempra affiliate and was
14 submitted to the CPUC in AL-3151-E. The plant is expected to reach
15 commercial operations in July 2021. The PPA price is \$56.00/MWh
16 adjusted by TOD factors. The project size is 105 MW and will be in Ejido
17 Jacume, Mexico and interconnected to SDG&E’s East County Substation.
18 The PPA allows economic curtailment.

19 *Amendment:* On January 23, 2019, the parties executed an Amendment to
20 extend the CPUC Approval deadline in Sections 2.3(b) & (d) from six to
21 twelve months.

22 *Assignment:* On March 15, 2019, the parties executed an Assignment and
23 Assumption and Consent Agreement and submitted it to the CPUC in AL
24 3355-E. ESJ 2 US assigned to ESJ 1 US all its rights, title and interest in,

1 and obligations under the agreement. The CPUC approved the Assignment
2 on April 24, 2019

3 *Amendment 2:* On July 19, 2019, the parties executed an Amendment to
4 extend the CPUC Approval deadline in Sections 2.3(b) & (d) from twelve to
5 eighteen months.

6 *Amendment 3:* On February 12, 2020, the parties executed an Amendment
7 to extend the CPUC Approval deadline in Sections 2.3(b) & (d) from
8 eighteen to twenty months.

9 There were no notional value increases to payments for the Amendments
10 and Assignment.

11 **4. Energy Storage**

- 12 ○ *Don Lee Bess I, LLC:* This ten-year PPTA was executed on March 30,
13 2017. The plant is expected to reach commercial operation in June 2021.

14 [REDACTED]

15 [REDACTED] The battery storage facility is 6.5
16 MW and is in Escondido, CA.

- 17 ○ *Hybrid Holdings I:* Please see Section VI.H. Expired and Terminated
18 PPAS for information on this expired PPA.

- 19 ○ *Pomerado ES:* Please see Section VI.H. Expired and Terminated PPAS for
20 information on this expired PPA.

21 **H. Expired and Terminated PPAs**

22 During the record period, the following projects were part of SDG&E's portfolio and
23 may or may not have operated during the record period. The PPAs either expired or were
24 terminated:

1 **1. Renewable**

- 2 ○ Lakeside Biogas, LLC: This fifteen-year BioMAT PPA [REDACTED]
3 [REDACTED]
4 [REDACTED] A
5 new fifteen-year BioMAT PPA was executed on February 15, 2019. See the
6 new project details in Section VI.G Pre-Operational Contracts.
- 7 ○ Otay Landfill 1: This ten-year Customer Renewable Credit (“CRE”) Feed-
8 In-Tariff (“FIT”) PPA expired on April 30, 2019.
- 9 ○ Otay Landfill 2: This twenty-year CRE FIT PPA was terminated on
10 December 12, 2019. In August of 2018, Otay Landfill Gas, LLC approached
11 SDG&E with a proposal for early termination of this PPA, the Otay Landfill
12 V PPA, and the Otay Landfill VI PPA in exchange for a lump sum buyout
13 from SDG&E. SDG&E filed AL 3382-E in June 11, 2019, seeking CPUC
14 approval of a Contract Termination and Settlement Agreement covering the
15 three PPAs and the dismissal without prejudice of a complaint case filed by
16 Otay Landfill Gas, LLC in June of 2016, then pending at the CPUC in
17 docket number C.16-06-011 for Otay Landfill 3. CPUC issued R. E-5025 on
18 October 11, 2019, approving the Contract Termination and Settlement
19 Agreement. [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
- 23 ○ Otay Landfill V: This twenty-year CRE FIT PPA was terminated on
24 December 12, 2019. See discussion in Otay Landfill 2, above for details.

- Otay Landfill VI: This twenty-year CRE FIT PPA was terminated on December 12, 2019. See discussion in Otay Landfill 2, above for details.
- Oasis Power Partners, LLC: This fifteen-year bilateral PPA expired on December 24, 2019.

2. Conventional

- OMEC: This ten-year Amended and Restated Power Purchase & Tolling Agreement expired on October 2, 2019.

3. Energy Storage

- Hybrid Holdings 1: This twenty-year PPTA was mutually terminated on December 20, 2019 [REDACTED]
- Pomerado ES: This fifteen-year PPTA was mutually terminated on February 10, 2020 because of the Seller's inability to obtain Full Deliverability Capacity Status for the project by June 30, 2020 [REDACTED]

4. Market Purchases

- BP Energy: This four-year bilateral PPA expired on September 30, 2019.

5. Bundled Energy & REC Sales

- City of Corona Department of Water and Power: This BioRAM Bundled Renewable Energy Sales agreement for [REDACTED] was terminated after SDG&E withdrew its AL 3465-E on January 24, 2020 due in part to a Public Advocates Office protest to SDG&E's AL 3465-E on December 3, 2019.

- City of Industry Public Utilities Commission: This BioRAM Bundled Renewable Energy Sales agreement [REDACTED] was

1 terminated after SDG&E withdrew its AL 3465-E on January 24, 2020 due
2 in part to a Public Advocates Office protest to SDG&E's AL 3465-E on
3 December 3, 2019.

4 **VII. CONCLUSION**

5 Based on the foregoing, SDG&E's recorded contract expenses to the ERRRA are in
6 conformance with the Public Utilities Code, Commission decisions, and the contract terms for
7 the 2019 record period. SDG&E respectfully requests that the Commission find that SDG&E's
8 contract administration and power procurement-related activities and costs for the record period
9 were reasonable and therefore should be approved.

10 This concludes my prepared direct testimony.

1 **VIII. QUALIFICATIONS**

2 My name is Miguel A. Duran. My business address is 8315 Century Park Court, San
3 Diego, CA 92123. I am employed by SDG&E as the Contracts & Systems Manager in the
4 Electric & Fuel Procurement Department. My present duties include managing the
5 administration of renewable agreements, Tolling and QF agreements, and Bilateral agreements.
6 I have been employed by SDG&E since 2019. I have been in my current position since March
7 2019.

8 I received an MBA from Western Governors University in 2014.

9 I have not previously testified before the Commission.

EXHIBITS & ATTACHMENTS

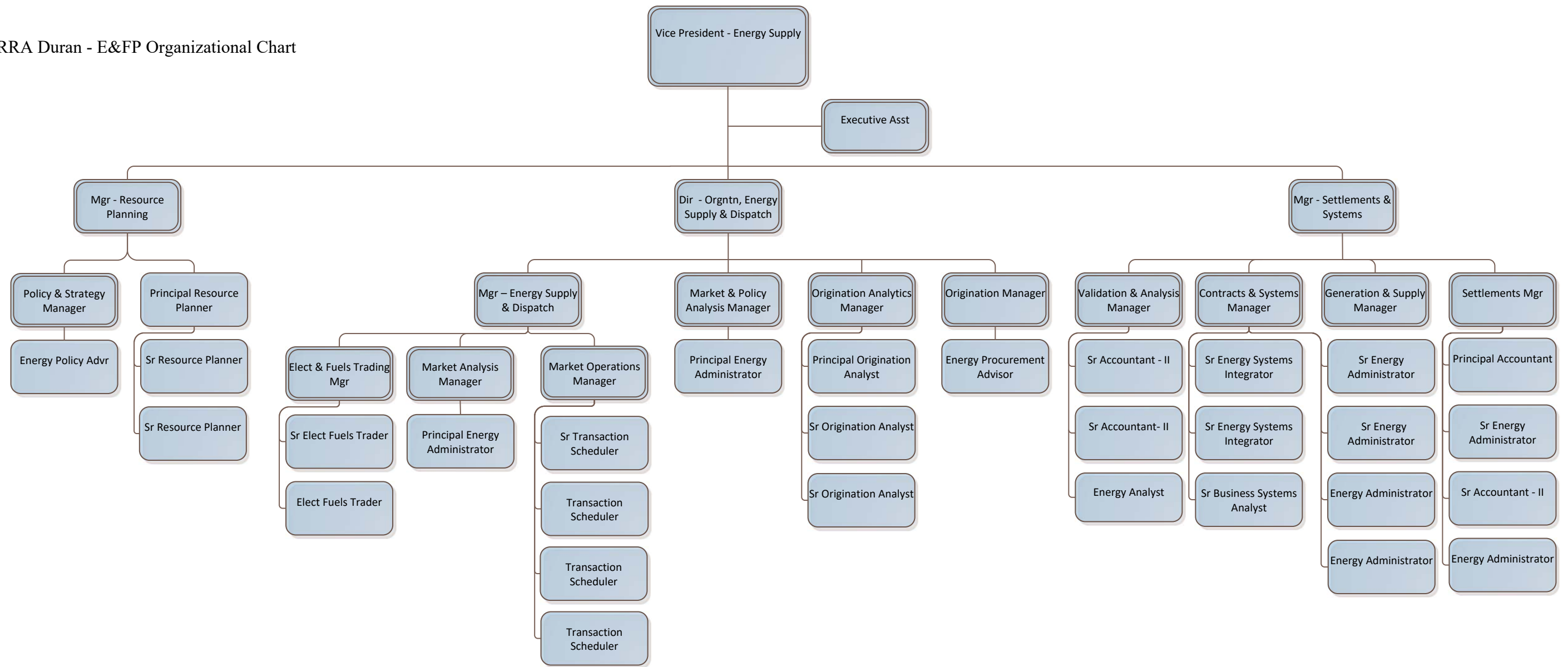
- 1) EXHIBIT A: E&FP Organizational Chart
- 2) EXHIBIT B: 2018 Termination Letters - CONFIDENTIAL
- 3) EXHIBIT C: Pro-Forma Agreements
- 4) EXHIBIT D: SDG&E Direct Testimony of Sue E. Garcia (Electric and Fuel Procurement) (November 2014) in the 2016 GRC proceeding (A.14-11-003)
- 5) ATTACHMENT 1 - CONFIDENTIAL:
 - a) Tab “Summary”
 - b) Tab “Electric Contracts”:
 1. Contract Class & Project Name: Contracts that were in effect and their delivery amounts during the record period.
 2. Contract Terms: Contracts for the procurement of electric power, energy, or ancillary services in effect or under negotiation, initiation, revision, amendment, or termination.
 3. Payment Terms: Energy and capacity payment terms.
 4. New Contracts: New electric power, energy or ancillary services service contracts executed during the record period.
 5. Summary of Contract Modifications, Letter Agreements and Amendments filed in an AL or Application: Electric power, energy, or ancillary services amendments, modifications and/or letters agreements executed during the record period.
 6. Amendments & Modifications for Review in the ERRA Application: Amendments, modifications, renegotiations, and/or letter agreements executed during the record period that are being submitted for review through the ERRA application.

7. Terminated Contracts: Summary of all its contracts which expired or terminated during the record period, and their relevant termination information.
- c) Tab GAS CONTRACTS - Contracts for the procurement of fuel services in effect or under negotiation, initiation, revision, amendment, or termination.
- d) Tab QF CONTRACTS – Monthly payments to QFs that sold energy to SDG&E during the record period.

EXHIBIT A

E&FP ORGANIZATIONAL CHART

Exhibit A
2019 SDG&E ERRA Duran - E&FP Organizational Chart



CONFIDENTIAL

**EXHIBIT B
COPIES OF TERMINATION LETTERS**

THIS DOCUMENT IS CONFIDENTIAL IN ITS ENTIRETY

CONFIDENTIAL

EXHIBIT C

RPS RAM PRO-FORMA AGREEMENT

Exhibit C
2019 SDG&E ERRR Duran - RFO Pro Forma PPA

Pro-Forma Agreement Type	Date Issued	Description
2021-2023 IRP Reliability RFO	December 13, 2019	Seeks to procure resources to meet electric system reliability needs as required by California Public Utilities Commission ("CPUC") Decision D.19-11-016.
2020 Q1 RA RFP	November 13, 2019	Sought to sell excess Resource Adequacy ("RA") capacity products: CAISO South System RA, RA w/ Flex (February and March 2020), SD-IV Local RA, Local RA w/ Flex (March 2020 only).
2019 BioRAM RPS REC Sale Request for Proposal (RFP)	September 19, 2019	Sought proposals from third parties who are interested in purchasing bundled energy products from an eligible renewable resource under contract with SDG&E.
2020 DRAM RFO	October 11, 2019	In accordance with Decision ("D.") 14-12-024 and D.16-06-029, sought local, system and flexible Resource Adequacy ("RA") resources via a standard, non-negotiable Demand Response Auction Mechanism Purchase Agreement.
2019-2024 Tree Mortality Non-Bypassable Charge Resource Adequacy Sale	August 20, 2019	Sought to sell Resource Adequacy ("RA") capacity products from HL Power and Owner HL Partners, LP Project, to minimize the procurement cost impact for ratepayers pursuant to Decision (D.) 18-12-003.
2020-2021 Local Resource Adequacy Solicitation	August 8, 2019	Sought to purchase Local Resource Adequacy ("RA") capacity products with load serving entities, marketers and generators to assist in optimizing its RA portfolio. It is the intention of this solicitation to minimize the procurement cost impact for ratepayers while also meeting SDG&E's Resource Adequacy Requirement.
2020-2022 Local Resource Adequacy Solicitation	April 5, 2019	Sought to purchase Local Resource Adequacy ("RA") capacity products with load serving entities, marketers and generators to assist in optimizing our RA portfolio. It was the intention of this solicitation to minimize the procurement cost impact for ratepayers while also meeting SDG&E's Resource Adequacy Requirement.
2019 ICT RFO E Solicitation	April 5, 2019	Sought to sell Import Capability Transfer (ICT) for months (July-December 2019) at IID-SDGE-BG import location.
2019 Local RA RFO E Solicitation	January 17, 2019	Sought to purchase Local SD-IV RA for the months (April-December 2019).

SDG&E 2021-23 IRP RFO
DEMAND RESPONSE RESOURCE
PURCHASE AGREEMENT

between

[NAME OF SELLER]

and

SAN DIEGO GAS & ELECTRIC COMPANY

**DEMAND RESPONSE AUCTION MECHANISM RESOURCE PURCHASE AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS AND ELECTRIC
COMPANY**

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[SELLER] AND SAN DIEGO GAS AND ELECTRIC COMPANY**

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[SELLER] AND SAN DIEGO GAS AND ELECTRIC COMPANY**

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BETWEEN
[SELLER] AND SAN DIEGO GAS AND ELECTRIC COMPANY**

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**DEMAND RESPONSE RESOURCE PURCHASE AGREEMENT
BY AND BETWEEN**

[REDACTED]

AND

SAN DIEGO GAS & ELECTRIC COMPANY

PREAMBLE

This Demand Response Resource Purchase Agreement, together with its exhibits (the “Agreement”) is entered into by and between **SAN DIEGO GAS & ELECTRIC COMPANY**, a California corporation (“Buyer”), and [REDACTED], a [REDACTED] (“Seller”), as of the latest signature date hereof (“Execution Date”). Buyer and Seller are referred to herein individually as a “Party” and collectively as “Parties.” Unless the context otherwise specifies or requires, capitalized terms in this Agreement have the meanings set forth in Exhibit A.

AGREEMENT

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 agree as follows.

ARTICLE 1. TRANSACTION

1.1. Purchase and Sale of the Product

(a) During the Delivery Period, Seller shall sell and deliver, and Buyer shall purchase and receive, the Product as indicated in Table 1.1(b) in the amount of the Monthly Contracted Quantity, as indicated in Exhibit E, subject to and in accordance with the terms and conditions of this Agreement. The Product shall be a Proxy Demand Resource (PDR).

(b) The Product is:

Table 1.1(b)

Product Selected	Type of Product	Local Capacity Area (as applicable)
<input type="checkbox"/>	Product A: System Capacity	Not applicable

Product Selected	Type of Product	Local Capacity Area (as applicable)
<input type="checkbox"/>	Product B-1: Local Capacity with System Capacity	SDG&E
<input type="checkbox"/>	Product B-2: Local Capacity with System Capacity	SDG&E
<input type="checkbox"/>	Product C1: Flexible Capacity (Flexible Category 1) with System Capacity	Not applicable
<input type="checkbox"/>	Product C2: Flexible Capacity (Flexible Category 2) with System Capacity	Not applicable
<input type="checkbox"/>	Product C3: Flexible Capacity (Flexible Category 3) with System Capacity	Not applicable
<input type="checkbox"/>	Product D1-1: Flexible Capacity (Flexible Category 1) with Local and System Capacity	SDG&E
<input type="checkbox"/>	Product D3-1: Flexible Capacity (Flexible Category 3) with Local and System Capacity	SDG&E

- (c) Seller to indicate whether the Product is:
 ____ a Residential Customer Product; or
 ____ not a Residential Customer Product



(d) If Seller has chosen to deliver Product that is not Residential Customer Product, its DRAM Resource may nevertheless include Residential Customers and Small Commercial Customers.

1.2. Term

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

1.3. Delivery Period

The “Delivery Period” shall commence on the later of (a) the first day of the first month that begins after seventy-five (75) calendar days following CPUC Approval, and (b) [REDACTED], and shall continue in full force and effect until [REDACTED], unless terminated earlier in accordance with the terms and conditions of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, the Delivery Period will not commence until CPUC Approval is obtained or waived by Buyer in its sole discretion.

[REDACTED]

[REDACTED]

[REDACTED]

1.4. Seller’s Designation of the DRAM Resource

- (a) On or before the date that is seventy-five (75) calendar days prior to the first Showing Month, and on a monthly basis thereafter no less than seventy-five (75) calendar days prior to the applicable Showing Month if any of the information below changes, Seller shall:
- (i) Provide to Buyer the Resource ID(s) for each PDR providing the Product pursuant to this Agreement.
 - (ii) Confirm in writing to Buyer that each PDR identified by Seller pursuant to Section 1.4(a)(i) is comprised solely of Bundled Service Customers, comprised solely of Unbundled Service Customers, or comprised of a mixture of Bundled and Unbundled Service Customers.
 - (iii) If the Product pursuant to this Agreement is a Joint Resource, Seller shall confirm in writing to Buyer (x) the amount of the capacity of such Joint Resource that will be used to show Demonstrated Capacity under this Agreement and (y) the total capacity of such Joint Resource.
- (b) Sellers shall sell and deliver System Capacity, Local Capacity, and/or Flexible Capacity from PDRs, as designated in Section 1.1(b).
- (c) The Parties shall cooperate to implement the requirements of Rule 24 to enroll Resource Customers in order for Seller to designate the PDR(s) pursuant Section 1.4(a)(i).

1.5. Monthly Contracted Quantity and Corresponding Contract Price

- (a) The Monthly Contracted Quantity and Contract Price for the type of Product indicated in Table 1.1(b) for each applicable Showing Month during the Delivery Period is set forth in Exhibit E.
- (b) In the event that Seller is not able to register the DRAM Resource for part or all of a Monthly Contracted Quantity for a Showing Month due solely to (i) the actions or inactions of Buyer or the CAISO, or (ii) insufficient Rule 24 registrations under D.16-06-008 Ordering Paragraph 6, then Seller may, in its sole discretion, by providing Notice to Buyer on or before the date that is sixty (60) calendar days prior to the Showing Month for which Seller is unable to register the DRAM Resource, reduce the Monthly Contracted Quantity for the unregistered capacity by type of Product for such Showing Month; *provided*, Seller shall demonstrate to Buyer's reasonable satisfaction that Seller made commercially reasonable efforts to register the DRAM Resource corresponding to such reduced Monthly Contracted Quantity for the unregistered capacity by type of Product in the applicable Showing Month.
- (c) In the event that material changes to definition of Resource Adequacy, including but not limited to changes in the Resource Adequacy Availability Assessment Hours, are adopted during the Term of this Agreement, then Seller may, in its sole discretion, by providing Notice to Buyer on or before **[month, year]** either (i) reduce the Monthly Contracted Quantity for the following year or (ii) terminate this Agreement.
- (d) Seller's exercise of its rights under Sections 1.5(b) or (c) will not be deemed to be a failure of Seller's obligation to sell or deliver the Product or a failure of Buyer's obligation to purchase or receive the Product, and will not be or cause an Event of Default by either Party. Neither Party shall have any further obligation or liability to the other and no Settlement Amount with respect to this Agreement will be due or owing by either Party upon termination of this Agreement due solely to Seller's exercise of its rights under Section 1.5(c).

1.6. Demonstrated Capacity

- (a) Each invoice submitted by Seller to Buyer pursuant to Section 4.2 shall include a statement, in a form substantially similar to Exhibit C, of the amount of the Qualifying Capacity for each type of Product for such Showing Month that Seller was capable of delivering ("Demonstrated Capacity"), utilizing the results from one of the following methods, as provided below (subject to the additional restrictions set forth in Section 1.6(b)):
 - (i) The results of a DC Dispatch of the applicable PDR in the DRAM Resource during such Showing Month. The Demonstrated Capacity for System and Local Capacity will equal the maximum hourly load reduction of such DC Dispatch as calculated using the Capacity Baseline; provided

that, for the Showing Month of August, the Demonstrated Capacity for System and Local Capacity will equal the average hourly load reduction of such DC Dispatch as calculated using the Capacity Baseline. The Demonstrated Capacity for Flexible Capacity will equal the average hourly load reduction of such DC Dispatch as calculated using the Capacity Baseline. If the CAISO issues a dispatch instruction for less than one hundred percent (100%) of the Qualifying Capacity of the applicable PDR in the DRAM Resource (a “Partial DC Dispatch”), then Seller may elect to submit the results of such Partial DC Dispatch during such Showing Month for its Demonstrated Capacity showing. Upon such election, the load reduction resulting from such Partial DC Dispatch shall be compared to the Qualifying Capacity of the entire PDR for purposes of deriving the DC-QC Ratio of the DRAM Resource in accordance with Section 4.1.

- (ii) The results of a DC Test in the event that (A) there is no DC Dispatch of the PDR in the DRAM Resource for one hundred percent (100%) of the Qualifying Capacity of the applicable Showing Month, and (B) Seller does not submit the results of a Partial DC Dispatch during the Showing Month as contemplated under 1.6(a)(i) above. The Demonstrated Capacity for System and Local Capacity will equal the maximum hourly load reduction during any hour of such DC Test as calculated using the Capacity Baseline; provided that, for the Showing Month of August the Demonstrated Capacity for System and Local Capacity will equal the average hourly load reduction during any two (2) consecutive hours as calculated using the Capacity Baseline. The Demonstrated Capacity for Flexible Capacity will equal the average hourly load reduction during any hour of such DC Test as calculated using the Capacity Baseline; provided that, for the Showing Month of August the Demonstrated Capacity for Flexible Capacity will equal the average hourly load reduction during any two (2) consecutive hours as calculated using the Capacity Baseline.
 - (iii) In the event that (A) there is no DC Dispatch of the PDR in the DRAM Resource during the Showing Month for one hundred percent (100%) of the Qualifying Capacity of the applicable Showing Month, (B) Seller does not submit the results of a Partial DC Dispatch as contemplated under 1.6(a)(i) above, and (C) there is no DC Test of the PDR in the DRAM Resource during the Showing Month as contemplated under 1.6(a)(ii) above, the Demonstrated Capacity will equal the average amount of capacity for such PDR in the DRAM Resource that the Seller bid into the applicable CAISO Markets solely during the Availability Assessment Hours of the Showing Month in compliance with the CAISO MOO.
- (b) Seller’s use of the methods described in Sections 1.6(a)(i)-(iii) is subject to the following additional restrictions:

- (i) Demonstrated Capacity for each PDR in the DRAM Resource must be calculated under Section 1.6(a)(i) or 1.6(a)(ii) for the August Showing Month of each year and for at least fifty percent (50%) of all contracted Showing Months during the Delivery Period (rounded downward if the Delivery Period is an odd number of Showing Months). For example, if the Delivery Period consists of seven (7) Showing Months, then a DC Test or DC Dispatch shall be required for at least three (3) of such Showing Months, including the Showing Month of August.
 - (ii) Demonstrated Capacity for any PDR in the DRAM Resource shall not be calculated under Section 1.6(a)(iii) for more than five (5) consecutive Showing Months during the Delivery Period (prorated, if the Delivery Period is less than twelve (12) Showing Months, to a number equal to half of the Showing Months in the Delivery Period minus one: e.g., two consecutive Showing Months for a six-month Delivery Period).
- (c) The same Capacity Baseline must be used (i) to estimate Qualifying Capacity for Seller's month-ahead submissions pursuant to Section 3.1(a) for a Showing Month; (ii) to calculate Demonstrated Capacity for the applicable Showing Month; and (iii) for energy settlement at the CAISO for the applicable Showing Month.
- (d) Solely for purposes of establishing the Demonstrated Capacity pursuant to Section 1.6(a), Seller shall use data available through Buyer's Customer Data Access Systems that has been designated by Buyer as final Revenue Quality Meter Data and such data shall be considered final by the Parties as of the date Seller submits its invoice for the applicable Showing Month to Buyer.
- (e) If the DRAM Resource is composed of more than one PDR, then:
- (i) Seller may establish the portion of the Demonstrated Capacity for each such PDR by using the methods described in Sections 1.6(a)(i) through (iii), in which case the Demonstrated Capacity will equal the sum of the individual PDRs' Demonstrated Capacities.
 - (ii) The Showing Months in which DC Dispatches or DC Tests are conducted may be different for each such PDR except for the Showing Month of August, in which a DC Dispatch or DC Test is required for every PDR in the DRAM Resource pursuant to Section 1.6(b)(i).
- (f) With respect to any DRAM Resource Customer service account that was moved in a Showing Month pursuant to Section 3.4(d), Seller shall include the performance of such DRAM Resource Customer service account only in one PDR for purposes of the calculation of Demonstrated Capacity for such Showing Month.
- (g) If any respective PDR in the DRAM Resource is a Joint Resource, Seller's invoice shall indicate (i) the amount of the capacity of such Joint Resource used to

show Demonstrated Capacity for a specific type of Product for such Showing Month and (ii) the total capacity of such Joint Resource during such Showing Month.

- (h) If the type of Product Seller delivers under this Agreement is a Residential Customer Product, Seller's invoice shall indicate the number of Residential Customer SAID agreements and the number of Small Commercial SAID accounts in each PDR for such type of Product.
- (i) In addition to the requirements in Section 1.6(a), if Seller is electing Demonstrated Capacity for Local Capacity, then, as part of Seller's Demonstrated Capacity for Local Capacity, Seller's invoice shall indicate the number of SAID agreements in the applicable LCA that are associated with the Local Capacity as indicated in Table 1.1(b) and Exhibit C.
- (j) Following Buyer's receipt of Seller's invoice and Notice of Demonstrated Capacity, Buyer may, upon Notice to Seller, require Seller to provide documentation from Seller or Seller's SC that establishes to Buyer's reasonable satisfaction the Demonstrated Capacity of each Product type from a PDR or Joint Resource as stated by Seller in its invoice for the applicable Showing Month. In the event that Seller does not provide such documentation within ten (10) Business Days from Buyer's Notice or such documentation is not reasonably satisfactory to Buyer, then Buyer may require an audit of Seller or Seller's SC records upon Notice ("Audit Notice"). With respect to an Audit Notice, Seller shall cause its SC to allow Buyer or its designated independent third-party auditor to have access to the records and data necessary to conduct such audit within five (5) Business Days of Seller's receipt of an Audit Notice; *provided*, such audit will be limited solely to verification of the data upon which Seller based its claim of the amount of the Demonstrated Capacity. If the type of Product designated in Section 1.1(b) is a Residential Customer Product, then, in addition to the documentation specified above, Buyer may, in its Audit Notice, require Seller or Seller's SC to provide additional documentation that establishes to Buyer's reasonable satisfaction that the type of Product is Residential Customer Product as stated by Seller in its invoice for the applicable Showing Month. Buyer's costs, including the costs for any third-party auditor, incurred in connection with the conducting such audit are the sole responsibility of Buyer.

ARTICLE 2. CPUC APPROVAL

2.1. Obtaining CPUC Approval

Within thirty (30) calendar days after the Execution Date, Buyer shall file with the Commission the appropriate request for CPUC Approval. Seller shall use commercially reasonable efforts to support Buyer in preparing for and obtaining CPUC Approval. Buyer has no obligation to seek rehearing or to appeal a Commission decision which fails to approve this Agreement or which contains findings required for CPUC Approval with conditions or modifications unacceptable to either Party.

2.2. CPUC Approval Termination Right

- (a) Either Party has the right to terminate this Agreement upon Notice, which will be effective five (5) Business Days after such Notice is given, if (i) CPUC Approval has not been obtained or waived by Buyer in its sole discretion within sixty (60) calendar days after Buyer files its request for CPUC Approval and (ii) such Notice of termination is given on or before the ninetieth (90th) day after Buyer files the request for CPUC Approval.
- (b) Failure to obtain CPUC Approval in accordance with this Article 2 will not be deemed to be a failure of Seller to sell or deliver the Product or a failure of Buyer to purchase or receive the Product, and will not be or cause an Event of Default by either Party. No Settlement Amount with respect to this Agreement will be due or owing by either Party, and neither Party shall have any obligation or liability to the other, upon termination of this Agreement due solely to failure to obtain CPUC Approval.

ARTICLE 3. SELLER OBLIGATIONS

3.1. Delivery of Product

- (a) No later than the deadlines set forth in subsections (i) and (ii) below, Seller shall submit, or cause Seller's SC(s) to submit:
 - (i) No later than fifteen (15) calendar days prior to Buyer's Compliance Showing deadlines each year or Showing Month (as applicable), Notice to Buyer which shall include Seller's Supply Plan for such year or Showing Month (as applicable) in (A) a form substantially similar to Exhibit D, or (B) a form as communicated in writing by Buyer to Seller no later than fifteen (15) Business Days prior to Buyer's Compliance Showing deadlines for such year or Showing Month (as applicable). Such Supply Plan shall include the Qualifying Capacity for each PDR identified by Seller pursuant to Section 1.4(a)(i), the sum of which shall not exceed the Monthly Contracted Quantity.
 - (ii) No later than ten (10) Business Days prior to the deadline for Seller's Supply Plan submission in subsection (i) immediately above, the additional information required by the implementation guidelines set forth in D.19-07-009, Appendix A, attached hereto as Exhibit F (the "QC Implementation Guidelines"), including the Qualifying Capacity for each PDR identified by Seller pursuant to Section 1.4(a)(i), presented in the standardized reporting format developed by the CPUC pursuant to Ordering Paragraph 8 of D.19-07-009.
- (b) Seller shall, on a timely basis, submit, or cause its SC to submit, a Supply Plan to CAISO in accordance with the CAISO Tariff. The quantities in the Supply Plan that is submitted to the Buyer under Section 3.1(a)(i) shall exactly match what is

submitted by the Seller or its SC to the CAISO due on the earliest monthly applicable Buyer's Compliance Showing deadlines with CAISO and CPUC.

3.2. Resource Adequacy Benefits

Seller grants, pledges, assigns, and otherwise commits to Buyer the Qualifying Capacity for each PDR specified in the Supply Plan and all Resource Adequacy Benefits of the Product as associated with the DRAM Resource to enable Buyer to meet its RAR, Local RAR and/or Flexible RAR, as applicable. The Parties shall take all commercially reasonable actions, and execute all documents or instruments necessary, to effect the use of the Product for Buyer's sole benefit.

3.3. Provision of Information

Within a reasonable period of time, or such time prescribed by the CPUC, Seller shall provide to the CPUC all information requested by the CPUC relating to Seller's obligations and performance pursuant to this Agreement and the DRAM to which this Agreement relates. In responding to any information request from the CPUC, the Seller may designate information for confidential treatment consistent with CAISO and/or Commission rule, tariff or decision. Any such confidential information provided by Seller to the CPUC shall be held in confidence by the CPUC and excluded from public inspection or disclosure, unless inspection or disclosure is otherwise required by Applicable Laws.

3.4. Seller's Obligations

- (a) Seller shall, and shall cause each of the PDRs in the DRAM Resource and corresponding DRPs and SCs to, comply with all applicable CAISO Tariff provisions, CPUC Decisions and all other Applicable Laws, including the Bidding of the DRAM Resource into the applicable CAISO Markets during the Availability Assessment Hours as required by the CAISO Tariff.
- (b) Seller shall or shall cause Seller's DRP to execute Buyer's Demand Response Provider Service Agreement in accordance with Rule 24.
- (c) Seller shall not include any Customer premises or resource in a PDR in the DRAM Resource that is concurrently enrolled in or otherwise concurrently committed to any other demand response program offered, maintained, or funded by Buyer (e.g., without limitation, behind-the-meter storage products in the Energy Storage RFO), or that is registered with CAISO as a part of any other demand response resource or Distributed Energy Resource Aggregation, other than as provided under this Agreement.
- (d) Seller shall not change or modify the customer composition of the DRAM Resource, including without limitation moving a DRAM Resource Customer service account in or out of any PDR of the DRAM Resource, during any Showing Month except under the following circumstances:

- (i) Seller may add a newly recruited service account to a PDR in the DRAM Resource if that service account is not part of a PDR that is already included in a Supply Plan submitted by Seller to Buyer or any other LSE for the same Showing Month.
- (ii) Seller may remove a service account from a PDR in the DRAM Resource.
- (iii) If as a result of the changes in Sections 3.4(d)(i) and 3.4(d)(ii) a PDR in the DRAM Resource becomes large enough to trigger the CAISO's above 10 MW telemetry requirement, Seller may split the affected PDR into two or more smaller resources as necessary to comply with CAISO requirements.
- (iv) If as a result of the changes in Sections 3.4(d)(i) and 3.4(d)(ii) a PDR in the DRAM Resource becomes small enough to drop below the 100 kW minimum PDR size requirement, Seller may combine the affected PDR with other resources as necessary to comply with CAISO requirements.
- (v) If a service account has moved to a new LSE (e.g., to or from a community choice aggregator), and if the CAISO Tariff requires PDRs to consist of service accounts that are customers of the same LSE, then Seller may add or remove the affected service accounts as necessary to comply with CAISO requirements.

3.5. Indemnities for Failure to Perform.

Seller agrees to indemnify, defend and hold harmless Buyer from any costs, penalties, fines or charges assessed against Buyer by the CPUC, CAISO, FERC, or any other Governmental Body with jurisdiction over Buyer, resulting from Seller's failure to do, or cause to be done, any of the following:

- (a) Provide all of the Monthly Contracted Quantity in any Showing Month, except to the extent (i) such failure is solely the result of a failure by Buyer to perform any of its obligations pursuant to Section 6.2, or (ii) Seller reduces the Monthly Contracted Quantity in accordance with Section 1.5(b) or (c);
- (b) Submit timely and accurate Supply Plans that identify Buyer's right to the Monthly Contracted Quantity for each Showing Month;
- (c) Comply with the requirements in Section 3.2 to enable Buyer to meet its RAR;
- (d) Meet CPUC Resource Adequacy requirements per the CPUC RA Filing Guide; or
- (e) Comply with the CAISO Tariff.

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

to minimize these costs, penalties, fines and charges. If Seller fails to pay the foregoing penalties, fines, charges, or costs, or fails to reimburse Buyer for those penalties, fines, charges, or costs, then Buyer may offset those penalties, fines, charges or costs against any amounts it may owe to Seller under this Agreement.

Notwithstanding Seller’s obligations in Section 3.5(a), Seller is not required to indemnify or reimburse Buyer for any costs allocated to Buyer by the CAISO for any capacity procured by CAISO pursuant to the Capacity Procurement Mechanism with respect to any Shortfall Capacity.

ARTICLE 4. PAYMENT AND BILLING

4.1. Delivered Capacity Payment

Buyer shall make a monthly payment to Seller, after the applicable Showing Month, (“Delivered Capacity Payment”) equal to the product of (A x B x C).

$$\text{Delivered Capacity Payment} = [A \times B \times C]$$

Where:

A = The Contract Price for the applicable Showing Month, including SC costs.

B = The value from the chart below corresponding to the applicable ratio of Demonstrated Capacity (which shall be a total sum of the individual PDRs in the DRAM Resource) as a percentage of the Qualifying Capacity (which shall be a total sum of the individual PDRs in the DRAM Resource) (“DC-QC Ratio”):

Delivered Capacity (DC) Payment Values		
Band	DC- QC Ratio	Value for B
Tolerance	> 90.00%	Qualifying Capacity (kW)
Pro-rated	> 70.00% to 90.00%	Demonstrated Capacity (kW)
De-rated	50.00% to 70.00%	Demonstrated Capacity (kW) * 75%
Forfeiture	< 50.00%	0

C = 1.0 if Seller has chosen (i) not to deliver Residential Customer Product in Section 1.1(c) or (ii) to deliver Residential Customer Product in Section 1.1(c) and the Product delivered meets the definition of Residential Customer Product, or 0.90 if the Product delivered does not meet the definition of Residential Customer Product.

4.2. Invoice and Payment Process

- (a) Within thirty (30) calendar days after Seller has received Revenue Quality Meter Data for at least ninety-five percent (95%) of all intervals required for settlement of the DRAM Resource for the applicable Showing Month, Seller will render to Buyer an invoice for the Demonstrated Capacity and associated payment amount due, if any, with respect to such Showing Month. Seller's failure to render any invoice on or before the deadline set forth herein shall be deemed to be a submission by the Seller of a DC Dispatch-based invoice with Demonstrated Capacity at an amount below fifty percent (50%) of the Qualifying Capacity for the applicable Showing Month (i.e., within the "forfeiture" payment band in the chart in Section 4.1).
- (b) Buyer will pay Seller all undisputed invoice amounts on or before the later of (i) the twentieth (20th) day of each month, or (ii) the tenth (10th) day after receipt of Seller's invoice and Demonstrated Capacity or, if such day is not a Business Day, then on the next Business Day.
- (c) 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 amounts not paid by the due date will be deemed delinquent and will accrue interest at the Cash Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.
- (d) Buyer may offset against any future payments by any amount(s) that were previously overpaid.
- (e) Either Party may, in good faith, dispute the correctness of any invoice, bill, charge, or any adjustment to an invoice, rendered under this Agreement, or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, bill, charge, or adjustment to an invoice, was rendered. Disputes are subject to the provisions of Article 10 below. In the event an invoice or portion thereof, or any other claim or adjustment 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. Upon resolution of the dispute, any required payment shall be made within ten (10) Business Days of such resolution.

- (f) Buyer may deduct any amounts that would otherwise be due to Seller under this Agreement from any amounts owing and unpaid by Seller to Buyer under this Agreement.
- (g) With respect to any Joint Resource, if Seller and any third party both submit claims to Buyer for payment with respect to such Joint Resource which, when added together, exceed the total capacity of the Joint Resource, Buyer shall not be obligated to make payment to Seller in respect of such Joint Resource until Seller reconciles the error with such third party and Seller re-submits the corrected invoice to Buyer.
- (h) With respect to a Joint Resource, if such Joint Resource's Demonstrated Capacity for a particular type of Product in any Showing Month is less than such Joint Resource's QC for such type of Product (as set forth in Exhibit C), Seller shall have the right to demonstrate to Buyer the Joint Resource's actual performance, and shall be compensated in accordance with Section 1.6. In the event Buyer finds Seller's demonstration inconclusive, the Joint Resource's total capacity shall be allocated pro-rata among the parties with rights to a portion of such Joint Resource's type of Product based on the information required to be provided in Section 1.6(g), and Seller's compensation shall be calculated using its percentage allocation of such PDR's capacity, accordingly.

4.3. Allocation of Other CAISO Payments and Costs

As between Buyer and Seller, Seller shall retain any revenues Seller or Seller's SC may receive from and pay all costs, penalties, charges charged to Seller or Seller's SC by the CAISO or any other third party in connection with the DRAM Resource, except as expressly provided otherwise in this Agreement.

ARTICLE 5. CREDIT AND COLLATERAL [NOTE TO BIDDERS: COLLATERAL POSTING MAY BE REQUIRED.]

5.1. Seller's Credit and Collateral Requirements

- (a) If, at any time during the Term Seller does not have a Credit Rating, or if its Credit Rating is below BBB- from S&P or Baa3 from Moody's, if rated by both S&P and Moody's or below BBB- from S&P or Baa3 from Moody's, if rated by either S&P or Moody's, but not both, Seller shall provide and maintain collateral with Buyer in an amount equal to twenty percent (20%) of the sum of the estimated Delivered Capacity Payments for all of the remaining months of the Delivery Period including the current month, with such estimated Delivered Capacity Payments being based on the applicable Monthly Quantity values times the applicable Contract Price ("Performance Assurance").
- (b) If Seller's Credit Rating is at or above BBB- from S&P and Baa3 from Moody's, if rated by both S&P and Moody's, or at or above BBB- from S&P or Baa3 from Moody's, if rated by either S&P or Moody's, but not both, Seller shall have no

obligation to provide Performance Assurance to Buyer, and Sections 5.2 through 5.5 will not be applicable.

- (c) If required pursuant to Section 5.1(a), Seller shall post the Performance Assurance with Buyer within ten (10) Business Days of the Execution Date.

5.2. Grant of Security Interest/Remedies

- (a) To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing security interest in, and lien on (and right of setoff against), and collateral assignment of, the Performance Assurance and all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Buyer, and each Party agrees to take such action as the other Party reasonably requires in order to perfect Buyer's first-priority security interest in, and lien on (and right of setoff against), such Performance Assurance and collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, Buyer, if it is the Non-Defaulting Party, may do any one or more of the following: (i) exercise any of the rights and remedies of a Buyer with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. In such an event Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under the Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

5.3. Reduction and Substitution of Performance Assurance

- (a) If the amount of Performance Assurance held by Buyer exceeds the amount required pursuant to Section 5.1, on any Business Day, Seller may give Notice to Buyer requesting a reduction in the amount of Performance Assurance previously provided by Seller for the benefit of Buyer, provided that, (i) after giving effect to the requested reduction in Performance Assurance, no Event of Default or Potential Event of Default with respect to Seller has occurred and is continuing, (ii) no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to Seller for which there exist any unsatisfied payment obligations, and (iii) no amounts are owing and unpaid from Seller to Buyer hereunder. A permitted reduction in Performance Assurance may be effected by the Transfer of Cash to Seller or the reduction of the amount of an

outstanding Letter of Credit previously issued for the benefit of Buyer. Seller shall have the right to specify the means of effecting the reduction in Performance Assurance. In all cases, the cost and expense of reducing Performance Assurance (including, but not limited to, the reasonable costs, expenses, and attorneys' fees of Buyer) shall be borne by Seller. Unless otherwise agreed in writing by the Parties, if Seller's reduction demand is made on or before the Notification Time on a Business Day, then Buyer shall have five (5) Business Days to effect a permitted reduction in Performance Assurance, and if Seller's reduction demand is made after the Notification Time on a Business Day, then Buyer shall have six (6) Business Days to effect a permitted reduction in Performance Assurance, in each case, if such reduction is to be effected by the return of Cash to Seller. If a permitted reduction in Performance Assurance is to be effected by a reduction in the amount of an outstanding Letter of Credit previously issued for the benefit of Buyer, Buyer shall promptly take such action as is reasonably necessary to effectuate such reduction.

- (b) Except when an Event of Default or Potential Event of Default with respect to Seller shall have occurred and be continuing or an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to Seller for which there exist any unsatisfied payment obligations, Seller may substitute Performance Assurance for other existing Performance Assurance of equal value upon five (5) Business Days' Notice (provided such Notice is made on or before the Notification Time, otherwise the notification period shall be six (6) Business Days) to Buyer. Upon the Transfer to Buyer of the substitute Performance Assurance, Buyer shall Transfer the relevant replaced Performance Assurance to Seller within five (5) Business Days. Notwithstanding anything herein to the contrary, no such substitution shall be permitted unless (i) the substitute Performance Assurance is Transferred simultaneously or has been Transferred to Buyer prior to the release of the Performance Assurance to be returned to Seller and the security interest in, and general first lien upon, such substituted Performance Assurance granted pursuant hereto in favor of Buyer shall have been perfected as required by applicable law and shall constitute a first priority perfected security interest therein and general first lien thereon, and (ii) after giving effect to such substitution, the substitute Performance Assurance shall equal the amount of Performance Assurance being replaced. Each substitution of Performance Assurance shall constitute a representation and warranty by Seller that the substituted Performance Assurance shall be subject to and governed by the terms and conditions of this Article 5, including without limitation the security interest in, general first lien on and right of offset against, such substituted Performance Assurance granted pursuant hereto in favor of Buyer pursuant to this Article 5.
- (c) The Transfer of any Performance Assurance by Buyer in accordance with this Section 5.3 shall be deemed a release by Buyer of its security interest, general first lien and right of offset granted pursuant to this Article 5 hereof only with respect to such returned Performance Assurance. In connection with each Transfer of any Performance Assurance pursuant to this Article 5, Seller will,

upon request of Buyer, execute a receipt showing the Performance Assurance Transferred to it.

5.4. Administration of Performance Assurance

- (a) Cash. Performance Assurance provided in the form of Cash to Buyer shall be subject to the following provisions:
- (i) Notwithstanding the provisions of applicable law, if no Event of Default has occurred and is continuing with respect to Buyer and no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to Buyer for which there exist any unsatisfied payment obligations, then Buyer shall have the right to sell, pledge, rehypothecate, assign, invest, use, commingle or otherwise use in its business any Cash that it holds as Performance Assurance hereunder, free from any claim or right of any nature whatsoever of Seller, including any equity or right of redemption by Seller.
 - (ii) So long as no Event of Default or Potential Event of Default with respect to Seller has occurred and is continuing, and no Early Termination Date has occurred or been designated as the result of an Event of Default with respect to Seller, and no amounts are owing and unpaid from Seller to Buyer hereunder, and to the extent that an obligation to Transfer Performance Assurance would not be created or increased by the Transfer, in the event that Buyer is holding Cash, Buyer will Transfer (or caused to be Transferred) to Seller, in lieu of any interest or other amounts paid or deemed to have been paid with respect to such Cash (all of which may be retained by Buyer), the Interest Amount when Buyer returns the Cash to Seller following the termination or expiration of this Agreement, as applicable and in conformity with Section 9.6. On or after the occurrence of a Potential Event of Default or an Event of Default with respect to Seller or an Early Termination Date as a result of an Event of Default with respect to Seller, Buyer shall retain any such Interest Amount as additional Performance Assurance hereunder until the obligations of Seller under the Agreement have been satisfied in the case of an Early Termination Date or for so long as such Event of Default is continuing in the case of an Event of Default.
- (b) Letters of Credit. Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions:
- (i) Each Letter of Credit shall be maintained for the benefit of Buyer. Seller shall (A) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (B) if the bank or financial institution that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide either a substitute Letter of Credit or Cash, in each case at least thirty (30) calendar

days prior to the expiration of the outstanding Letter of Credit, and (C) if a bank or financial institution issuing a Letter of Credit shall fail to honor Buyer's properly documented request to draw on an outstanding Letter of Credit, provide for the benefit of Buyer either a substitute Letter of Credit that is issued by a bank or financial institution acceptable to Buyer or Cash, in each case within one (1) Business Day after such refusal.

- (ii) As one method of providing Performance Assurance, Seller may increase the amount of an outstanding Letter of Credit or establish one or more additional Letters of Credit.
 - (iii) Upon the occurrence of a Letter of Credit Default, Seller agrees to Transfer to Buyer either a substitute Letter of Credit or Cash, in each case on or before the first (1st) Business Day after the occurrence thereof (or the fifth (5th) Business Day after the occurrence thereof if only clause (i) under the definition of Letter of Credit Default applies).
 - (iv) Upon or at any time after the occurrence and continuation of an Event of Default or Letter of Credit Default with respect to Seller, or if an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to Seller for which there exist any unsatisfied payment obligations, then Buyer may draw on the entire, undrawn portion of any outstanding Letter of Credit upon submission to the bank or financial institution issuing such Letter of Credit of one or more certificates specifying that such Event of Default, Letter of Credit Default or Early Termination Date has occurred and is continuing. Cash proceeds received from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for Seller's obligations to Buyer and Buyer shall have the rights and remedies set forth in Section 5.5 with respect to such Cash proceeds. Notwithstanding Buyer's receipt of Cash proceeds of a drawing under the Letter of Credit, Seller shall remain liable (A) for any failure to Transfer sufficient Performance Assurance and (B) for any amounts owing to Buyer and remaining unpaid after the application of the amounts so drawn by Buyer.
 - (v) In all cases, the costs and expenses of establishing, renewing, substituting, canceling, and increasing the amount of a Letter of Credit shall be borne by Seller.
- (c) Care of Performance Assurance. Except as otherwise provided in Section 5.4(a)(i) and beyond the exercise of reasonable care in the custody thereof, Buyer shall have no duty as to any Performance Assurance in its possession or control or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto. Buyer shall be deemed to have exercised reasonable care in the custody and preservation of the Performance Assurance in its possession if the Performance Assurance is accorded treatment substantially equal to that which it accords its own property, and shall not be liable or

responsible for any loss or damage to any of the Performance Assurance, or for any diminution in the value thereof, except to the extent such loss or damage is the result of Buyer's willful misconduct or gross negligence. Buyer shall at all times retain possession or control of any Performance Assurance Transferred to it.

5.5. Exercise of Rights against Performance Assurance

- (a) If an Event of Default with respect to Seller has occurred and is continuing or an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to Seller, Buyer may exercise any one or more of the rights and remedies provided under this Agreement, or as otherwise available under Applicable Law. Without limiting the foregoing, if at any time an Event of Default with respect to Seller has occurred and is continuing, or an Early Termination Date occurs or is deemed to occur as a result of an Event of Default with respect to Seller, then Buyer may, in its sole discretion, exercise any one or more of the following rights and remedies:
 - (i) All rights and remedies available to a Buyer under the Uniform Commercial Code and any other applicable jurisdiction and other Applicable Laws with respect to the Performance Assurance held by or for the benefit of Buyer;
 - (ii) The right to set off any Performance Assurance held by or for the benefit of Buyer against and in satisfaction of any amount payable by Seller in respect of any of its obligations; and
 - (iii) The right to draw on any outstanding Letter of Credit issued for its benefit.
- (b) Buyer shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available hereunder. Seller shall in all events remain liable to Buyer for any amount payable by Seller in respect of any of its obligations remaining unpaid after any such liquidation, application and set off.

5.6. Financial Information

If requested by a Party, the other Party shall deliver, if available, (a) within one hundred twenty (120) calendar days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year setting forth in each case in comparative form the figures for the previous year for the Party, as the case may be, and (b) within sixty (60) calendar days after the end of each of its first three fiscal quarters of each fiscal year, a copy of a quarterly report containing unaudited consolidated financial statements for such fiscal quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year, and if the Party files reports with the Securities and Exchange Commission, certified in accordance with all applicable laws and regulations, including without limitation all applicable Securities and

Exchange Commission rules and regulations. If the Party does not file reports with the Securities and Exchange Commission, the reports must be certified by a Chief Financial Officer, Treasurer or any Assistant Treasurer as being fairly stated in all material respects (subject to normal year end audit adjustments); provided, for the purposes of this Section 5.6, if a Party's financial statements are publicly available electronically on the Securities and Exchange Commission's website, then this requirement shall be deemed satisfied. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

5.7. Access to Financial Information

- (a) If Buyer shall determine, through consultation with its internal accountants and review with their independent registered public accounting firm, that Buyer is required to consolidate Seller's financial statements with Buyer's financial statements for financial accounting purposes under Accounting Standards Codification (ASC) 810/Accounting Standards Update 2009-17, "Consolidation of Variable Interest Entities" (ASC 810), or future guidance issued by accounting profession governance bodies or the SEC that affects Buyer accounting treatment for this Agreement (the "Financial Consolidation Requirement").
- (b) If the Financial Consolidation Requirement is applicable, then:
 - (i) Within twenty (20) calendar days following the end of each calendar year (for each year that such treatment is required), Seller shall deliver to Buyer unaudited financial statements and related footnotes of Seller as of the end of the year. It is permissible for Seller to use accruals and prior months' estimates with true-up to actual activity, in subsequent periods, when preparing the unaudited financial statements. The annual financial statements should include quarter-to-date and yearly information. Buyer shall provide to Seller a checklist before the end of each year listing the items which Buyer believes are material to Buyer and required for this purpose, and Seller shall provide the information on the checklist, subject to the availability of data from Seller's records. It is permissible for Seller to use accruals and prior month's estimates with true-up to actual activity, in subsequent periods, when preparing the information on the checklist. If audited financial statements are prepared for Seller for the year, Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.
 - (ii) Within fifteen (15) calendar days following the end of each fiscal quarter (for each quarter that such treatment is required), Seller shall deliver to Buyer unaudited financial statements and related footnotes of Seller as of the end of the quarterly period. The financial statements should include quarter-to-date and year-to-date information. Buyer shall provide to Seller

a checklist before the end of each quarter listing items which Buyer believes are material to Buyer and required for this purpose, and Seller shall provide the information on the checklist, subject to the availability of data from Seller's records. It is permissible for Seller to use accruals and prior months' estimates with true-up to actual activity, in subsequent periods, when preparing the unaudited financial statements.

- (iii) If Seller regularly prepares its financial data in accordance with GAAP, IFRS, or Successor, the financial information provided to Buyer shall be prepared in accordance with such principles. If Seller is not a SEC registrant and does not regularly prepare its financial data in accordance with GAAP, IFRS or Successor, the information provided to Buyer shall be prepared in a format consistent with Seller's regularly applied accounting principles, e.g., the format that Seller uses to provide financial data to its auditor.
- (c) If the Financial Consolidation Requirement is applicable, then promptly upon Notice from Buyer, Seller shall allow Buyer's independent registered public accounting firm such access to Seller's records and personnel, as reasonably required so that Buyer's independent registered public accounting firm can conduct financial statement audits in accordance with the standards of the Public Company Accounting Oversight Board (United States), as well as internal control audits in accordance with Section 404 of the Sarbanes-Oxley Act of 2002, as applicable. All expenses for the foregoing shall be borne by Buyer. If Buyer's independent registered public accounting firm during or as a result of the audits permitted in this Section 5.7(c) determines a material weakness or significant deficiency, as defined by GAAP, IFRS or Successor, as applicable, exists in Seller's internal controls over financial reporting, then within ninety (90) calendar days of Seller's receipt of Notice from Buyer, Seller shall remediate any such material weakness or significant deficiency; provided, Seller has the right to challenge the appropriateness of any determination of material weakness or significant deficiency. Seller's true up to actual activity for yearly or quarterly information as provided herein shall not be evidence of material weakness or significant deficiency.
- (d) Buyer shall treat Seller's financial statements and other financial information provided under the terms of this Section 5.7 in strict confidence and, accordingly:
 - (i) Shall utilize such Seller financial information only for purposes of preparing, reviewing or certifying Buyer's or any Buyer parent company financial statements, for making regulatory, tax or other filings required by law in which Buyer is required to demonstrate or certify its or any parent company's financial condition or to obtain credit ratings;
 - (ii) Shall make such Seller financial information available only to its officers, directors, employees or auditors who are responsible for preparing, reviewing or certifying Buyer's or any Buyer parent company financial

statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Buyer parent company financial statement and to those persons who are entitled to receive confidential information as identified in Article 13; and

- (iii) Buyer shall ensure that its internal auditors and independent registered public accounting firm (A) treat as confidential any information disclosed to them by Buyer pursuant to this Section 5.7, (B) use such information solely for purposes of conducting the audits described in this Section 5.7, and (C) disclose any information received only to personnel responsible for conducting the audits.
- (e) If the Financial Consolidation Requirement is applicable, then, within two (2) Business Days following the occurrence of any event affecting Seller which Seller understands, during the Term, would require Buyer to disclose such event in a Form 8-K filing with the SEC, Seller shall provide to Buyer a Notice describing such event in sufficient detail to permit Buyer to make a Form 8-K filing.
- (f) If, after consultation and review, the Parties do not agree on issues raised by Section 5.7(a), then such dispute shall be subject to review by another independent audit firm not associated with either Party's respective independent registered public accounting firm, reasonably acceptable to both Parties. This third independent audit firm will render its recommendation on whether consolidation by Buyer is required. Based on this recommendation, Seller and Buyer shall mutually agree on how to resolve the dispute. If Seller fails to provide the data consistent with the mutually agreed upon resolution, Buyer may declare an Event of Default pursuant to Section 9.1. If the independent audit firm associated with Buyer still determines, after review by the third-party independent audit firm, that Buyer must consolidate, then Seller shall provide the financial information necessary to permit consolidation to Buyer; provided, in addition to the protections in Article 13, such information shall be password protected and available only to those specific officers, directors, employees and auditors who are preparing and certifying the consolidated financial statements and not for any other purpose.

5.8. Uniform Commercial Code Waiver

This Agreement sets forth the entirety of the agreement of the Parties regarding credit, collateral, financial assurances and adequate assurances. Except as expressly set forth in this Agreement, including, those provisions set forth in Article 5 and Article 9, neither Party:

- (a) has or will have any obligation to post margin, provide Letters of Credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, or

- (b) will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of Article 5 and Article 9; and all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived.

ARTICLE 6. SPECIAL TERMS AND CONDITIONS

6.1. Limitation of Liability

Buyer has no obligations to any person or entity that is, or may participate as, a DRAM Resource Customer, DRP (if Seller is not a DRP), or Seller's SC and Seller shall indemnify Buyer against any claim made by any such DRAM Customer, the DRP (if Seller is not a DRP), or Seller's SC with respect to its participation in or with the PDR or DRAM Resource, as applicable.

6.2. Buyer Provision of Information

Buyer shall provide to Seller, to the extent available and permitted by Applicable Law, including Rule 24, provide specific information consistent with the Customer Information Service Request Form for Demand Response Providers (CISR-DRP) adopted by the CPUC in D.13-12-029 and Resolution E-4630 including, but not limited to, usage, and/or meter data of a Customer, if Seller provides to Buyer written authorization from such Customer to release such information. Such written authorization must be provided in a form reasonably acceptable to Buyer. Buyer shall be liable for penalties or charges incurred by Seller from either the CAISO or the CPUC resulting solely from Buyer's failure to provide timely, accurate data to Seller in accordance with this Section 6.2.

6.3. Changes in Applicable Laws

- (a) If a change in Applicable Laws renders this Agreement or any material terms herein incapable of being performed or administered, then either Party, on Notice, may request the other Party to enter into good faith negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed or administered, while attempting to preserve to the maximum extent possible the benefits, burdens and obligations set forth in this Agreement as of the Execution Date. The Parties acknowledge that such changes may require the approval of the CPUC before becoming effective.
- (b) If the Parties have been unable to reach agreement within thirty (30) calendar days after receipt of such Notice, then either Party may terminate this Agreement by providing Notice. A Party's exercise of its rights under this Section 6.3 will not be deemed to be a failure of Seller to sell or deliver the Product or a failure of Buyer to purchase or receive the Product, and will not be or cause an Event of Default by either Party. Neither Party shall have any further obligation or liability to the other and no Settlement Amount with respect to this Agreement will be due or owing by either Party upon termination of this Agreement due solely to a Party's exercise of its right pursuant to this Section 6.3.

6.4. DBE Reporting

No later than twenty (20) calendar days after each semi-annual period ending on June 30th or December 31st during the Term, Seller shall provide to Buyer a report listing all Diverse Business Enterprises that supplied goods or services to Seller during such period, including any certifications or other documentation of such Diverse Business Enterprises' status as such and the amount paid to each Diverse Business Enterprise during such period.

- a. Buyer has the right to disclose to the CPUC all such information provided by Seller pursuant to this Section 6.4.
- b. Seller shall make reasonable efforts to accommodate requests by the CPUC (or by Buyer in response to a request by the CPUC) to audit Seller in order to verify data provided by Seller pursuant to this Section 6.4.

6.5. Governmental Charges

Seller shall pay on request and indemnify Buyer against any taxes (including without limitation, any applicable transfer taxes and stamp, registration or other documentary taxes), assessments, or charges that may become payable by reason of the security interests, general first lien and right of offset granted under this Agreement or the execution, delivery, performance or enforcement of this Agreement, as well as any penalties with respect thereto.

6.6. Customers in Buyer Automated Demand Response Program

Seller agrees to and acknowledges the following with respect to Buyer's non-Residential Customers which are included in Seller's DRAM Resource and have received ADR incentives or rebates to install demand response capable control technologies:

- (a) Customers in Seller's DRAM Resource are eligible for ADR incentives or rebates, subject to the requirements of this Agreement, Commission requirements, and Applicable Laws. The Customer remains responsible for fulfilling its obligations under Buyer's ADR program rules during the time period such ADR Customer is in Seller's DRAM Resource.
- (b) Seller shall be responsible for (i) notification to ADR Customers in its DRAM Resource of each Bid awarded by the CAISO ("Award") for a PDR, and (ii) operation of the ADR Customers' ADR control technology in response to an Award. During the time period that an ADR Customer is enrolled in a DRAM Resource, Buyer (or its agent) will not send notifications to such ADR Customer of Awards and will not operate ADR Customers' ADR control technology.
- (c) If Seller or its DRP enrolls a Customer who has received ADR incentives or rebates in Seller's DRAM Resource, Seller shall provide Buyer (or its agent) with Notice within five (5) Business Days of such enrollment of the ADR Customer's enrollment along with the ADR Customer's name, service account address, SAID,

location, the ADR agreement, and confirmation that the ADR Customer has unenrolled from all or any of Buyer's event-based demand response programs (other than ADR) prior to enrolling in Seller's DRAM Resource. Seller shall provide Buyer (or its agent) with Notice within fifteen (15) calendar days after such Customer leaves Seller's DRAM Resource.

- (d) Customers who have received ADR incentives within the past year who enroll in a DRAM Resource will be required to demonstrate performance through the DRAM Resource to qualify for additional ADR incentive payments as indicated in the statewide ADR Guidelines.
- (e) Buyer (or its agent) may communicate (i) with Seller's Customers who have received ADR incentives or rebates about the requirements for the Customer to participate in a demand response program, and (ii) with Seller's Customers with respect to anything involving their ADR incentive or rebate eligibility.
- (f) Seller shall provide to Buyer (or its agent) all information necessary for Buyer to administer the Customers' ADR incentives or rebates, including, but not limited to: (i) the information described in Section 6.6(c), (ii) the days in each Showing Month of Dispatch of the applicable PDR in the DRAM Resource, (iii) all hours in such Showing Month, corresponding to the days in subsection (ii), when Seller dispatched or called on the ADR Customer to respond to an Award, and (iv) information on ADR Customers that Seller did not dispatch or call on to respond to an Award for such Showing Month. The Customer's participation in the Seller's DRAM Resource as described in this Section 6.6(f) will be used in conjunction with the ADR Customer's participation in Buyer's demand response programs, to calculate the Customer's actual performance and subsequent incentive payments.
- (g) If Seller does not provide all the information Buyer needs to administer the ADR incentives for the Customer, the ADR Customer will be in non-compliance with the requirements of the ADR program.
- (h) Following the termination or expiration of this Agreement, Buyer (or its agent) may notify the Customers in Seller's DRAM Resource that have received ADR incentives or rebates of their commitment to participate in a demand response program for a total of three years.

ARTICLE 7. REPRESENTATIONS, WARRANTIES AND COVENANTS

7.1. Representations and Warranties of Both Parties

On the Execution Date, each Party represents and warrants to the other Party that:

- (a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

- (b) Except for CPUC Approval in the case of Buyer, it has or will timely acquire all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;
- (c) 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) This Agreement constitutes its legally valid and binding obligation, enforceable against it in accordance with its terms;
- (e) 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 become Bankrupt;
- (f) There is not pending or, to its knowledge, threatened against it, any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
- (g) It (i) is acting for its own account, (ii) 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, (iii) is not relying upon the advice or recommendations of the other Party in so doing, and (iv) is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions, and risks of this Agreement; and
- (h) It has entered into this Agreement in connection with the conduct of its business and it has the capability or ability to make available or take delivery of, as applicable, the Product under this Agreement in accordance with the terms of this Agreement.

7.2. Additional Seller Representations, Warranties and Covenants

- (a) On the Execution Date, Seller represents and warrants to Buyer that Seller has not used, granted, pledged, assigned, or otherwise committed any of the Monthly Quantity to meet the RAR, Local RAR and/or Flexible RAR, as applicable, or confer Resource Adequacy Benefits upon, any entity other than Buyer during the Delivery Period.
- (b) Seller covenants that throughout the Delivery Period:
 - (i) Seller will deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person;

- (ii) Seller has been authorized by each Customer, to act as an aggregator on behalf of such Customer to participate as a PDR in the DRAM Resource, if Seller is not also a Customer;
- (iii) The DRP has been authorized by each Customer to act on behalf of such Customer to participate as a PDR for the DRAM Resource, if Seller is not the DRP; and
- (iv) Seller will not use, grant, pledge, assign, or otherwise commit any Monthly Contracted Quantity to meet the RAR, Local RAR, and/or Flexible RAR, as applicable, or confer Resource Adequacy Benefits of the Product upon, any entity other than Buyer during the Delivery Period;
- (v) During each month of the Delivery Period, if any participating Customers in the DRAM Resource have a Prohibited Resource, Seller shall ensure that such Prohibited Resource is not used to reduce load during a Dispatch by any PDR providing Product to Buyer during such month, as follows:
 - A. For all Residential Customers, Seller shall include a provision in its contract forbidding the use of Prohibited Resources to reduce load during a Dispatch by any PDR providing Product to Buyer. Any Customer that does not accept the prohibition will not be eligible to participate in the Seller's DRAM Resource.
 - B. Seller shall require from each of its non-Residential Customers an attestation form attesting to one of the following conditions:
 - 1. the Customer does not have a Prohibited Resource on site;
 - 2. the Customer has a Prohibited Resource on site and will not use the resource to reduce load during a Dispatch by any PDR providing Product to Buyer; or,
 - 3. the Customer has a Prohibited Resource on site and may have to use the resource during Demand Response events for operational, health or safety reasons. The total nameplate capacity in kW of the Customer's resource(s) will be used as the Default Adjustment Value (DAV) to adjust the Demand Response incentives / charge for the Customer's account.

For condition 1 above, the Customer's attestation must include the service account number. For conditions 2 and 3 above, each attestation must provide the service account number, the number of unit(s) of Prohibited Resources on site, and the nameplate capacity of the Prohibited Resource (or, if the Customer has multiple Prohibited Resources, the sum of the nameplate capacity values from all Prohibited Resources on site) (the "Default Adjustment Value"). For condition (3), this Default Adjustment Value will be subtracted from

the Potential Load Reduction or Nominated Capacity. Customers must agree to a default adjustment in which the amount of Product such Customer can provide is reduced by the Default Adjustment Value, regardless of whether the Prohibited Resource was actually used. Customers with multiple service accounts enrolled through Seller may submit one attestation form per attestation scenario.

- C. Seller shall collect and store all such Customer attestations and make them available upon request, to a Verification Administrator or the CPUC. Seller shall also collect and store supporting documentation, such as nameplate capacities for each resource under each attestation scenario, and make them available upon request to Buyer, the Verification Administrator or the CPUC.
- D. For non-Residential Customers, the attestation shall occur at the time of enrollment and may be provided with a wet signature, a click, or an electronic signature. Any non-Residential Customer that does not complete this component of the enrollment process will not be eligible to participate in Seller's DRAM Resource. Consistent with CPUC Resolution E-4906, the Seller's contractual agreement is contingent upon compliance with both the prohibition and the submission of the Customers' attestations, which are subject to verification.
- E. Seller shall include provisions in its contracts that Customers are subject to random annual audits (1) requiring compliance with verification requests and facility access for site visits as deemed necessary by the Verification Administrator; (2) requiring the Customer to provide the Verification Administrator with written operating manifest(s), date and time stamped photo(s) of the Prohibited Resource unit(s), load curtailment plan(s), single line diagram(s) permit copy(ies), or other information or documentation about their onsite Prohibited Resources; and (3) allowing the Buyer or its contractor(s) to install monitoring equipment at the Sites for the purposes of verification of attestations.
- F. Seller shall include additional and separate provisions near the beginning of its contracts with Customers explaining and implementing these restrictions specifying that Customer compliance will be subject to verification, indicating the consequences for noncompliance with the provision. All contracts with non-Residential Customers shall indicate that the non-compliance consequences will be as set forth in this section. If the instance of non-compliance involves clerical or administrative errors, such as an inaccurate listing of a Customer name or the nameplate value of a Prohibited Resource in an attestation, or a failure to include a Customer's Prohibited Resource on an attestation, provided in all cases that such Prohibited Resource is not used in violation of the terms of this Agreement (collectively,

“Type One Non-Compliance”), Seller shall specify that Customers will have sixty (60) calendar days from receipt of notice to cure such Type-One Non-Compliance. If the instance of non-compliance involves either (1) the Customer does not attest to the use of any Prohibited Resource but is using a Prohibited Resource to reduce load during a demand response event; or (2), a Customer submits an invalid nameplate capacity value for the Prohibited Resource(s) that is lower than the actual capacity value on the nameplate (collectively “Type Two Non-Compliance”), then Customer will be removed from Seller’s DRAM Resource as follows. If there is an instance of (x) an uncured Type One Non-Compliance, or (y) a Type Two Non-Compliance, the consequences will be removal from Seller’s DRAM Resource and ineligibility to enroll in any DRAM Seller’s Resource or Buyer’s demand response program subject to the prohibited resource requirement in D.16-09-056 for twelve calendar months from the removal date (for a single instance of noncompliance), or three years from the removal date (for two or more instances of noncompliance).

- G. Seller shall provide such documentation as may be reasonably necessary for Buyer to verify the accuracy of the attestations referenced in subsections B(1)–(3) above and Seller’s compliance with and enforcement of this Section 7.2(b)(v). For all non-Residential Customers, (1) Sellers will provide the Default Adjustment Values (DAVs) monthly (with Demonstrated Capacity information); and, (2) Sellers will ensure that CAISO wholesale market bids reflect portfolio amounts prior to de-rating. Seller shall comply with any Prohibited Resource audit verification plan that is developed in accordance with D. 16-09-056 and approved by the CPUC.
- H. On an annual basis, Seller shall provide to Buyer the language on the prohibition included in its respective Residential Customer contracts. Seller will develop metrics, targets and record keeping systems to assess the effectiveness of its Customer outreach and notification efforts required under this Section 7.2(b)(v), and will provide such materials to the Buyer, the CPUC, and the Verification Administrator upon the request of Buyer or the CPUC.
- I. Seller shall include provisions in its contracts with non-Residential Customers permitting updates to their attestations to (1) add, remove or modify an on-site Prohibited Resource; (2) change the status or use of a Prohibited Resource to reduce load during any Dispatch; or (3) change the Default Adjustment Value, but only if, in each case, the change is supported by documentation that confirms the operational change and can be verified by a Verification Administrator.

- J. Verification methods for Customers under the condition noted in Section 7.2(b)(v)(I)(3) above shall be based on documentation of nameplate capacity, instead of load curtailment plans..
 - K. If further documentation in the form of load curtailment plans are required, Seller shall comply with the Verification Administrator's requests for supporting materials.
 - L. The Buyer has been directed by the CPUC to require a standardized non-disclosure agreement (NDA) that the Verification Administrator executes with the Buyer. This NDA pertains to all sellers and their customers from whom they collect market-sensitive, proprietary data. Verification information obtained from sellers and their customers is only to be submitted to and collected by the Verification Administrator consistent with CPUC Resolution E-4906. Under the terms of this NDA, third party customers' market-sensitive, proprietary information shall not to be shared with the Buyer, will be kept under seal, and shall be made available to the Commission upon request. Per Ordering Paragraph 14 of CPUC Resolution E-4906, all aggregators must store Customer attestations and make them available to the CPUC upon request. The Seller shall store non-Residential Customer attestations and make them available to the Buyer or Commission upon request.
- (vi) If any respective PDR is a Joint Resource, Seller shall ensure that: (A) the use of the Joint Resource does not result in Buyer making payment in respect of Demonstrated Capacity for a type of Product in excess of the total capacity of the Joint Resource, whether to Seller or any other party, regardless of whether payment is made under this Agreement, another agreement in the DRAM, any other demand resource agreement or program, or any combination thereof; (B) the use of the Joint Resource does not result in Buyer making payment more than once in respect of capacity relating to a particular Customer registered in the Joint Resource, regardless of whether payment is made under this Agreement, another agreement in the DRAM, any other demand resource agreement or program, or any combination thereof; and (C) Seller has the right to access and provide to Buyer the records and data regarding any DRAM Resource Customer that is not designated by Seller under Section 1.6(g) as part of the amount to be used to show Demonstrated Capacity for a type of Product under this Agreement to permit Buyer to audit such Joint Resource under Section 1.6(j) to the same extent Buyer may audit PDRs that are not Joint Resources.

ARTICLE 8. NOTICES

8.1. Notices

Notices, requests, statements or payments from one Party to the other Party shall be made to the addresses and persons specified in Section 8.2. All Notices, requests, statements or payments from one Party to the other Party shall be made in writing and may be delivered by hand delivery, first class United States mail, overnight courier service, e-mail or facsimile. Notice from one Party to the other Party by e-mail or facsimile (where confirmation of successful transmission is received) shall be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it shall be deemed received on the next Business Day). Notice from one Party to the other Party by hand delivery or overnight delivery shall be deemed to have been received when delivered. A Party may change its contact information by providing Notice of the same in accordance herewith.

8.2. Contact Information

For Buyer:

Contract General Contact:

Street: 8315 Century Park Court
City: San Diego, CA Zip: 92123
Attn: Demand Response – DRAM –
Brad Mantz
Phone: 858) 654-1588
Email: BMantz@SDGE.com
Duns: 006911457
Federal Tax ID Number: 95-1184800

Supply Plan Contact:

San Diego Gas & Electric Company
8315 Century Park Ct.
San Diego, California 92123-1593
Attn: Electric and Fuel Procurement – Joe Pasquito
Phone: (858) 650-6165
Email: JPasquito@SDGE.com

Other Buyer Contact Information

Payments:

San Diego Gas & Electric Company
PO Box 25110
Santa Ana, CA 92799-5110
Attn: Mail Payments
Phone: (619) 696-4521

Facsimile: (619) 696-4899

Wire Transfer:

BNK: Union Bank of California for: San Diego Gas & Electric Company

ABA: Routing #122000496

ACCT: #4430000352

Reference: SAP # 2130015

Confirmation: SDG&E, Major Markets

Facsimile: (213) 244-8316

Credit and Collections:

San Diego Gas & Electric Company, Major Markets

555 W. Fifth Street, ML 18A3

Los Angeles, CA 90013-1011

Attn.: Major Markets, Credit and Collections Manager

Fax No.: (213) 244-8316

Phone: (213) 244-4343

Notices of an Event of Default or Potential Event of Default:

San Diego Gas & Electric Company

8330 Century Park Ct.

San Diego, California 92123

Attn: General Counsel

Phone: (858) 650-6141

Facsimile: (858) 650-6106

For Seller:

Billing Representative

[Name]

Phone:

Facsimile:

Email:

Contract Representative

[Name]

Phone:

Facsimile:

Email:

Supply Plan Contact

[Name]

Phone:

Facsimile:

Email:

Other Seller Contact Information

ACH

BNK:

Credit and Collections

Attn:

ABA: Phone:
ACCT: Facsimile:
Email:

Notices of Event of Default or Potential Event of Default to:

[Name]

Phone:
Facsimile:
Email:

The Parties acknowledge and agree that those persons set forth in this Section 8.2 are designated by each Party as their respective authorized representatives to act on their behalf for the purposes described therein.

ARTICLE 9. EVENTS OF DEFAULT; TERMINATION

9.1. Events of Default

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

- (a) With respect to either Party:
 - (i) The failure to make, when due, any payment required to be made to the other Party pursuant to this Agreement, if such failure is not remedied within three (3) Business Days after written Notice of such failure is given by the Non-Defaulting Party;
 - (ii) Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature;
 - (iii) The failure to perform any material covenant, obligation, term or condition of this Agreement (except to the extent constituting a separate Event of Default), where such breach is not remedied within five (5) Business Days of Notice of such breach by the Non-Defaulting Party.
 - (iv) Such Party becomes Bankrupt; or
 - (v) A Merger Event occurs with respect to such Party.
- (b) With respect to Seller:
 - (i) The failure of Seller to satisfy the collateral requirements set forth in Article 5;

- (ii) During the Term, Seller makes any material misrepresentation or omission in any report required to be made or furnished by Seller, the Seller's DRP or the Seller's SC pursuant to this Agreement;
- (iii) During the Delivery Period, Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, to any party other than Buyer without Buyer's written consent; or
- (iv) During the Term, the occurrence and continuation of a default, event of default or other similar condition or event (however described) in respect of Seller under one or more agreements or instruments relating to indebtedness for borrowed money (whether present or future, contingent or otherwise), which results in such indebtedness for borrowed money (whether present or future, contingent or otherwise) becoming, or becoming capable at such time of being declared, immediately due and payable under such agreements or instruments, before it would otherwise have been due and payable, or a default by Seller in making one or more payments on the due date thereof in an aggregate amount of not less than [REDACTED] under such agreements or instruments (after giving effect to any applicable notice requirement or grace period).
- (v) During the Term, Seller fails to comply with the requirements of Section 7.2(b)(v), where such breach is not remedied within thirty (30) calendar days of Notice of such breach by Buyer.
- (vi) The aggregate Demonstrated Capacity for the DRAM Resource is less than fifty percent (50%) of the aggregate Qualifying Capacity for the DRAM Resource in any two (2) sequential Showing Months for which Demonstrated Capacity was calculated with reference to the results of a DC Dispatch pursuant to Section 1.6(a)(i) or a DC Test pursuant to Section 1.6(a)(ii) (excluding any intervening months with invoices based on MOO bids pursuant to Section 1.6(a)(iii)).

9.2. Early Termination

If an Event of Default shall have occurred, the Party taking the default (the "Non-Defaulting Party") has the right:

- (a) To designate by Notice, which will be effective five (5) Business Days after the Notice is given, a day, no later than twenty (20) calendar days after the Notice is effective, for the early termination of this Agreement (an "Early Termination Date");
- (b) Withhold any payments due to the Defaulting Party under this Agreement;
- (c) Suspend performance of this Agreement, but excluding Seller's obligation to post and maintain Performance Assurance in accordance with Article 5; and

- (d) To pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages), except to the extent that such remedies are limited by the terms of this Agreement.

9.3. Termination Payment

- (a) As soon as practicable after an Early Termination Date is declared, the Non-Defaulting Party shall provide Notice to the Defaulting Party of the amount of the Termination Payment. The Notice must include a written statement setting forth, in reasonable detail, the calculation of such Termination Payment including the Settlement Amount, together with appropriate supporting documentation.
- (b) If the Termination Payment is positive, the Defaulting Party shall pay such amount to the Non-Defaulting Party within two (2) Business Days after the Notice is provided. If the Termination Payment is negative (i.e., the Non-Defaulting Party owes the Defaulting Party more than the Defaulting Party owes the Non-Defaulting Party), then the Settlement Amount shall be zero dollars (\$0), and the Non-Defaulting Party shall only pay to the Defaulting Party, within thirty (30) calendar days after the Notice is provided, any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date.
- (c) If a Party disputes the other Party's calculation of the Termination Payment, in whole or in part, the disputing Party shall, within two (2) Business Days of receipt of the Party's calculation of the Termination Payment, provide to the other Party a detailed written explanation of the basis for such dispute. Any disputes as to the calculation of the Termination Payment which the Parties are unable to resolve may be submitted to dispute resolution as provided in Article 10.

9.4. Reserved

9.5. Suspension of Performance

Notwithstanding any other provision of this Agreement, if (a) an Event of Default or (b) a Potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon Notice to the Defaulting Party, shall have the right (i) to suspend performance under this Agreement and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

9.6. Rights and Obligations Surviving Termination or Expiration

The rights and obligations that are intended to survive a termination or expiration of this Agreement are all of those rights and obligations that this Agreement expressly provides survive any such termination or expiration and those that arise from a Party's covenants, agreements, representations, and warranties applicable to, or to be performed, at or during any time before or as a result of the termination or expiration of this Agreement, including:

- (a) A Party's obligation to provide information, including but not limited to Sections 3.3, 5.7, 6.2 and 6.4.

- (b) A Party's obligations with respect to invoices and payments pursuant to this Agreement;
- (c) The obligation of Seller to maintain Performance Assurance as set forth in Section 5.1;
- (d) The obligation of Buyer to return any Performance Assurance under Section 5.3;
- (e) The right to pursue remedies as set forth in Sections 9.2(d) and Article 10;
- (f) The obligations with respect to a Termination Payment as set forth in Section 9.3;
- (g) The dispute resolution provisions of Article 10;
- (h) The indemnity obligations expressly set forth in this Agreement;
- (i) The limitation of liabilities as set forth in Sections 3.5, 6.1 and Article 12; and
- (j) The obligation of confidentiality as set forth in Article 13.

ARTICLE 10. DISPUTE RESOLUTION

10.1. Dispute Resolution

Other than requests for provisional relief under Section 10.5, any and all Disputes which the Parties have been unable to resolve by informal methods after undertaking a good faith effort to do so, must first be submitted to mediation under the procedures described in Section 10.3 below, and if the matter is not resolved through mediation, then for final and binding arbitration under the procedures described in Section 10.4 below.

The Parties waive any right to a jury and agree that there will be no interlocutory appellate relief (such as writs) available. Any Dispute resolution process pursuant to this Article 10 shall be commenced within one (1) year of the date of the occurrence of the facts giving rise to the Dispute, without regard to the date such facts are discovered; provided, if the facts giving rise to the Dispute were not reasonably capable of being discovered at the time of their occurrence, then such one (1) year period shall commence on the earliest date that such facts were reasonably capable of being discovered. If the Dispute resolution process pursuant to Article 10 with respect to a Dispute is not commenced within such one (1) year time period, such Dispute shall be barred, without regard to any other limitations period set forth by law or statute.

10.2. Negotiation

Except for disputes arising with respect to a Termination Payment, the Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement by prompt negotiations between each Party's Contract Representative, as identified in

Section 8.2, or such other person designated in writing as a representative of the Party ("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, who shall have authority to settle the dispute ("Executive(s)"). Within five (5) Business Days of the Initial Negotiation End Date ("Referral Date"), each Party shall provide one another written notice confirming the referral and identifying the name and title of the Executive who will represent the Party.

Within five (5) Business Days of the Referral Date the Executives shall establish a mutually acceptable location and date, which date shall not be greater than thirty (30) 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 the relevant information and to attempt to resolve the dispute.

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

If the matter is not resolved within forty-five (45) calendar days of the Referral Date, or if the Party receiving the written request to meet, pursuant to the first paragraph of this Section 10.2, refuses or will not meet within ten (10) Business Days, either Party may initiate mediation of the controversy or claim according to the terms of the following Section 10.3.

If a dispute exists with respect to the Termination Payment, and such dispute cannot be resolved by good faith negotiation of the Parties within ten (10) Business Days of the Non-Defaulting Party's receipt of the detailed basis for the explanation of the dispute then either Party may refer the matter directly to Arbitration, as set forth in Section 10.4 below.

10.3. Mediation

Either Party may initiate mediation by providing Notice to the other Party of a written request for mediation, setting forth a description of the Dispute and the relief requested.

The Parties will cooperate with one another in selecting the mediator ("Mediator") from the panel of neutrals from Judicial Arbitration and Mediation Services, Inc. ("JAMS"), its successor, or any other mutually acceptable non-JAMS Mediator, and in scheduling the time and place of the mediation.

The Parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs (other than each Party's individual attorneys' fees and costs related to the Party's participation in the mediation, which fees and costs will be borne by such Party).

All offers, promises, conduct and statements, whether oral or written, made in connection with or during the mediation by either of the Parties, their agents, representatives, employees, experts and attorneys, and by the Mediator or any of the Mediator's agents, representatives and employees, will not be subject to discovery and will be confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding between or involving the Parties, or either of them; provided, evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

10.4. Arbitration

Either Party may initiate binding arbitration with respect to the matters first submitted to mediation by providing Notice in accordance with Article 8 of a demand for binding arbitration before a single, neutral arbitrator (the "Arbitrator") if mediation pursuant to Section 10.3 above does not result in resolution of the dispute within sixty (60) calendar days after service of a written demand for mediation (as the same may be extended by mutual agreement of the Parties).

If Notice of arbitration is not provided by either Party within sixty (60) calendar days following the unsuccessful conclusion of the mediation provided for in Section 10.3 above, the Dispute resolution process shall be deemed complete and further resolution of such Dispute shall be barred, without regard to any other limitations period set forth by law or statute.

The Parties will cooperate with one another in selecting the Arbitrator and scheduling the arbitration. If, notwithstanding their good faith efforts, the Parties are unable to agree upon a mutually-acceptable Arbitrator, the Arbitrator will be appointed as provided for in California Code of Civil Procedure Section 1281.6.

To be qualified as an Arbitrator, each candidate must be a retired judge of a trial court of any state or federal court, or retired justice of any appellate or supreme court.

Unless otherwise agreed to by the Parties, the individual acting as the Mediator will be disqualified from serving as the Arbitrator in the dispute, although the Arbitrator may be another member of the JAMS panel of neutrals or such other panel of neutrals from which the Parties have agreed to select the Mediator.

Upon Notice of a Party's demand for binding arbitration, such Dispute submitted to arbitration, including the determination of the scope or applicability of this agreement to arbitrate, will be determined by binding arbitration before the Arbitrator, in accordance with the laws of the State of California, without regard to principles of conflicts of laws.

Except as provided for herein, the arbitration will be conducted by the Arbitrator in accordance with the rules and procedures for arbitration of complex business disputes for the organization with which the Arbitrator is associated.

Absent the existence of such rules and procedures, the arbitration will be conducted in accordance with the California Arbitration Act, California Code of Civil Procedure Section

1280 et seq. and California procedural law (including the Code of Civil Procedure, Civil Code, Evidence Code and Rules of Court, but excluding local rules).

Notwithstanding the rules and procedures that would otherwise apply to the arbitration, and unless the Parties agree to a different arrangement, the place of the arbitration will be in San Diego County, California.

Also notwithstanding the rules and procedures that would otherwise apply to the arbitration, and unless the Parties agree to a different arrangement, discovery will be limited as follows:

- (a) Before discovery commences, the Parties shall exchange an initial disclosure of all documents and percipient witnesses which they intend to rely upon or use at any arbitration proceeding (except for documents and witnesses to be used solely for impeachment);
- (b) The initial disclosure will occur within thirty (30) calendar days after the initial conference with the Arbitrator or at such time as the Arbitrator may order;
- (c) Discovery may commence at any time after the Parties' initial disclosure;
- (d) The Parties will not be permitted to propound any interrogatories or requests for admissions;
- (e) Discovery will be limited to twenty-five (25) document requests (with no subparts), three (3) lay witness depositions, and three (3) expert witness depositions (unless the Arbitrator holds otherwise following a showing by the Party seeking the additional documents or depositions that the documents or depositions are critical for a fair resolution of the Dispute or that a Party has improperly withheld documents);
- (f) Each Party is allowed a maximum of three (3) expert witnesses, excluding rebuttal experts;
- (g) Within sixty (60) calendar days after the initial disclosure, or at such other time as the Arbitrator may order, the Parties shall exchange a list of all experts upon which they intend to rely at the arbitration proceeding;
- (h) Within thirty (30) calendar days after the initial expert disclosure, the Parties may designate a maximum of two (2) rebuttal experts;
- (i) Unless the Parties agree otherwise, all direct testimony will be in form of affidavits or declarations under penalty of perjury; and
- (j) Each Party shall make available for cross examination at the arbitration hearing its witnesses whose direct testimony has been so submitted.

Subject to Article 11, the Arbitrator will have the authority to grant any form of equitable or legal relief a Party might recover in a court action. The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms of the Agreement, that money damages would not be a sufficient remedy for any breach of these provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to specific performance and injunctive or other equitable relief as a remedy for a breach of Article 13.

Judgment on the award may be entered in any court having jurisdiction.

The Arbitrator must, in any award, allocate all of the costs of the binding arbitration (other than each Party's individual attorneys' fees and costs related to the Party's participation in the arbitration, which fees and costs will be borne by such Party), including the fees of the Arbitrator and any expert witnesses, against the Party who did not prevail.

Until such award is made, however, the Parties will share equally in paying the costs of the arbitration.

Within thirty (30) calendar days after the conclusion of the arbitration hearing, the Arbitrator shall prepare in writing and provide to each Party a decision setting forth factual findings, legal analysis, and the reasons on which the Arbitrator's decision is based. The Arbitrator shall also have the authority to resolve claims or issues in advance of the arbitration hearing that would be appropriate for a California superior court judge to resolve in advance of trial. The Arbitrator shall not have the power to commit errors of law or fact, or to commit any abuse of discretion, that would constitute reversible error had the decision been rendered by a California superior court. The Arbitrator's decision may be vacated or corrected on appeal to a California court of competent jurisdiction for such error. Unless otherwise agreed to by the Parties, all proceedings before the Arbitrator shall be reported and transcribed by a certified court reporter, with each Party bearing one-half of the court reporter's fees.

10.5. Provisional Relief

The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms of this Agreement, that money damages would not be a sufficient remedy for any breach of these provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to seek a preliminary injunction, temporary restraining order, or other provisional relief as a remedy for a breach of Article 13 in any court of competent jurisdiction, notwithstanding the obligation to submit all other Disputes (including all claims for monetary damages under this Agreement) to arbitration pursuant to this Article 10. The Parties further acknowledge and agree that the results of the arbitration may be rendered ineffectual without the provisional relief.

Such a request for provisional relief does not waive a Party's right to seek other remedies for the breach of the provisions specified above in accordance with Article 10,

notwithstanding any prohibition against claim-splitting or other similar doctrine. The other remedies that may be sought include specific performance and injunctive or other equitable relief, plus any other remedy specified in this Agreement for the breach of the provision, or if the Agreement does not specify a remedy for the breach, all other remedies available at law or equity to the Parties for the breach.

ARTICLE 11. INDEMNIFICATION

11.1. Seller's Indemnification Obligations

- (a) In addition to any other indemnification obligations Seller may have elsewhere in this Agreement, which are hereby incorporated in this Section 11.1, Seller releases, and shall indemnify, defend and hold harmless Buyer, and Buyer's directors, officers, employees, agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, penalty, fine or expense of any kind or nature (including any direct, damage, claim, cost, charge, demand, or expense, and attorneys' fees (including cost of in-house counsel) and other costs of litigation, arbitration or mediation, and in the case of third-party claims only, indirect or consequential loss or damage of such third-party), arising out of or in connection with:
- (i) any breach made by Seller of its representations, warranties and covenants in Article 7 or any payment disputes resulting from the use of a Joint Resource;
 - (ii) Seller's failure to fulfill its obligations regarding Resource Adequacy Benefits as set forth in Article 3;
 - (iii) any violation of Applicable Law or the CAISO Tariff arising out of or in connection with Seller's performance of, or failure to perform this Agreement;
 - (iv) injury or death to persons, including Buyer employees, and physical damage to property, including Buyer property, where the damage arises out of, is related to, or is in connection with, Seller's obligations or performance under this Agreement.

This indemnity applies notwithstanding Buyer's active or passive negligence; *provided*, Buyer will not be indemnified for its loss, liability, damage, claim, cost, charge, demand or expense to the extent caused by its gross negligence or willful misconduct.

11.2. Indemnification Claims

All claims for indemnification by Buyer will be asserted and resolved as follows:

If a claim or demand for which Buyer may claim indemnity is asserted against or sought to be collected from Seller by a third party, Buyer shall as promptly as practicable give Notice to Seller; *provided*, failure to provide this Notice will relieve Seller only to the extent that the failure actually prejudices Seller.

- (a) Seller will have the right to control the defense and settlement of any claims in a manner not adverse to Buyer but cannot admit any liability or enter into any settlement without Buyer's approval.
- (b) Buyer may employ counsel at its own expense with respect to any claims or demands asserted or sought to be collected against it; *provided*, if counsel is employed due to a conflict of interest or because Seller does not assume control of the defense, Seller will bear the expense of this counsel.

ARTICLE 12. LIMITATION OF REMEDIES, LIABILITY, AND DAMAGES

EXCEPT AS SET FORTH HEREIN WITH RESPECT TO THE PRODUCT, THERE ARE NO WARRANTIES BY EITHER PARTY UNDER THIS AGREEMENT, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY WILL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE.

SUBJECT TO SECTION 9.3, IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY WILL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

UNLESS EXPRESSLY PROVIDED IN THIS AGREEMENT, INCLUDING WITHOUT LIMITATION THE PROVISIONS OF ARTICLE 11 (INDEMNIFICATION), NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

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.

NOTHING IN THIS ARTICLE PREVENTS, OR IS INTENDED TO PREVENT BUYER FROM PROCEEDING AGAINST OR EXERCISING ITS RIGHTS WITH RESPECT TO ANY PERFORMANCE ASSURANCE.

ARTICLE 13. CONFIDENTIALITY

13.1. Confidentiality Obligation

Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's or the Party's Affiliates' officers, directors, employees, lenders, counsel, accountants, advisors, or Rating Agencies, who have a need to know such information and have agreed to keep such terms confidential) except (a) in order to comply with any Applicable Law, summons, subpoena, exchange rule, or accounting disclosure rule or standard, or to make any showing required by any applicable Governmental Body other than as set forth in Sections 13.1(e) and (f); (b) to the extent necessary for the enforcement of this Agreement; (c) as may be obtained from a non-confidential source that disclosed such information in a manner that did not violate its obligations to the non-disclosing Party in making such disclosure; (d) to the extent such information is or becomes generally available to the public prior to such disclosure by a Party; (e) when required to be released in connection with any regulatory proceeding (provided that the releasing Party makes reasonable efforts to obtain confidential treatment of the information being released); (f) with respect to Buyer, as may be furnished to its duly authorized Governmental Bodies, including without limitation the Commission and all divisions thereof, to Buyer's Procurement Review Group, a group of participants including members of the Commission and other governmental agencies and consumer groups established by the Commission in Commission decisions 02-08-071 and 03-06-071, and to Buyer's Cost Allocation Mechanism Group established by the CPUC in D.07-12-052, or (g) Seller may disclose the transfer of the Monthly Quantity under this Agreement to its SC in order for such SC to timely submit accurate Supply Plans. The existence of this Agreement is not subject to this confidentiality obligation; *provided*, neither Party shall make any public announcement relating to this Agreement unless required pursuant to subsection (a) or (e) of the foregoing sentence of this Article 13.

13.2. Obligation to Notify

In connection with discovery requests or orders pertaining to confidential information in connection with this Agreement as referenced in Section 13.1(a) ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts to:

- (a) Notify the other Party before disclosing the Confidential Information; and
- (b) Prevent or limit such disclosure.

After using such reasonable efforts, the Disclosing Party will not be:

- (c) Prohibited from complying with a Disclosure Order; or
- (d) Liable to the other Party for monetary or other damages incurred in connection with the disclosure of the Confidential Information.

13.3. Remedies; Survival

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. With respect to information provided in connection with this Agreement, this obligation shall survive for a period of three (3) years following the expiration or termination of this Agreement.

ARTICLE 14. FORCE MAJEURE

To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the “Claiming Party”) gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

ARTICLE 15. MISCELLANEOUS

15.1. General

- (a) 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.
- (b) The term “including,” when used in this Agreement, shall be by way of example only and shall not be considered in any way to be in limitation.
- (c) The headings used herein are for convenience and reference purposes only.
- (d) Each Party agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.

- (e) Words having well-known technical or industry meanings have these meanings unless otherwise specifically defined in this Agreement.
- (f) Whenever this Agreement specifically refers to any Applicable Law, tariff, government department or agency, or Rating Agency, the Parties hereby agree that the reference also refers to any successor to such law, tariff or organization.
- (g) Nothing in this Agreement relieves either Party from, or modifies, any obligation or requirement that exists in any Applicable Law, tariff, rule, or regulation.
- (h) The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a “forward contract” within the meaning of the Bankruptcy Code and that Buyer and Seller are each “forward contract merchants” within the meaning of the Bankruptcy Code.

15.2. Governing Law and Venue

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 LAWS. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY DISPUTE ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

15.3. Amendment

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

15.4. Assignment

Neither Party shall assign this Agreement or its rights hereunder, as the case may be, without the prior written consent of the other Party, which consent may not be unreasonably withheld; *provided*, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof or thereof, as the case may be, in connection with any financing or other financial arrangements to any person or entity whose creditworthiness is equal to or higher than that of such Party, (b) transfer or assign this Agreement to an Affiliate of such Party which Affiliate’s creditworthiness is equal to or higher than that of such Party, or (c) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party and whose creditworthiness is equal to or higher than that of such Party; *provided*, in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request. Notwithstanding the foregoing, Buyer may, without the consent of the Seller (and therefor relieving itself from liability hereunder), assign this Agreement to a Qualified Assignee. Qualified Assignee shall mean: any community choice aggregation entity or joint powers authority formed in the State of

California or any legal entity that is established by statute or by the CPUC to serve load as a central procurement entity.

15.5. Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of, the Parties and their respective successors and assigns. This Agreement is not intended to confer any rights or remedies upon any other persons other than the Parties.

15.6. Waiver

None of the provisions of this Agreement shall be considered waived by either Party unless the Party against whom such waiver is claimed gives the waiver in writing. The failure of either Party to insist in any one instance upon strict performance of any the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishments of such rights for the future but the same shall continue and remain in full force and effect. Waiver by either Party of any default of the other Party shall not be deemed a waiver of any other default.

15.7. No Agency

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

15.8. No Third-Party Beneficiaries

This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound by this Agreement).

15.9. Entire Agreement

This Agreement, when fully executed, constitutes the entire agreement by and between the Parties as to the subject matter hereof, and supersedes all prior understandings, agreements or representations by or between the Parties, written or oral, to the extent they have related in any way to the subject matter hereof. Each Party represents that, in entering into this Agreement, it has not relied upon any promise, inducement, representation, warranty, agreement or other statement not set forth in this Agreement.

15.10. Severability

If any term, section, provision or other part of this Agreement, or the application of any term, section, provision or other part of this Agreement, is held to be invalid, illegal or void by a court or regulatory agency of proper jurisdiction, all other terms, sections, provisions or other parts of this Agreement shall not be affected thereby but shall remain in force and effect unless a court or regulatory agency holds that the provisions are not separable from all other provisions of this Agreement.

15.11. Multiple Originals

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any of the signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

15.12. 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).

15.13. Performance Under this Agreement

Each Party and its representatives shall maintain records and supporting documentation relating to this Agreement, and the performance of the Parties hereunder in accordance with, and for the applicable time periods required by, all Applicable Laws.

[Remainder of Page Intentionally Left Blank]

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

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

[SELLER]

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A

DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below:

"ADR Guidelines" means the guidelines for Buyer's Automated Demand Response Program implemented pursuant to Decisions 12-04-045, 14-05-025, and 18-11-029, as modified or updated from time to time, including the updates to the guidelines that are submitted in the Tier Two advice letter process on September 1 of each year in compliance with Ordering Paragraph 8 of Decision 18-11-029.

"Affiliate" means, with respect to a Party, any entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with that Party. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.

"Agreement" has the meaning in the Preamble.

"Applicable Laws" means all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Body that apply to either or both of the Parties, the DRP, the PDR or the terms of this Agreement.

"Arbitrator" has the meaning set forth in Article 10.4.

"Audit Notice" has the meaning set forth in Section 1.6(j).

"Automated Demand Response" or "ADR" is Buyer's demand response program offering Customers an incentive to install automated communication equipment and associated software that enhances their ability to reduce load during Buyer's demand response program events. For purposes ADR, Seller's participation in the CAISO Markets pursuant to this Agreement is a Buyer demand response program, pursuant to the September 24, 2015 disposition letter from Commission staff. The CPUC approved the ADR programs by Decision 12-04-045 and Decision 14-05-025.

"Automated Demand Response Customer" or "ADR Customer" is a non-Residential Customer that has installed the ADR equipment under Buyer's ADR and received, at minimum, approval from Buyer that it has been approved for its first (60%) incentive payment.

"Availability Assessment Hours" or "AAH" has the meaning set forth in the CAISO Tariff.

"Award" has the meaning set forth in Section 6.6(b).

"Bankrupt" means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of

creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

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

“Bid” shall have the meaning in the CAISO Tariff.

“Bundled Service Customer” means a customer of Buyer as a utility distribution company who takes bundled services from Buyer as a utility distribution company including having all its power requirements purchased by Buyer.

“Business Day” means a day that is not a Saturday, Sunday, a Federal Reserve Bank holiday, or the Friday immediately following the U.S. Thanksgiving holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

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

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

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

“CAISO Tariff” means the most current tariff and protocol provisions, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended or supplemented from time to time, of the CAISO.

“Capacity Baseline” means a CAISO baseline as applicable to the PDR(s) in the DRAM Resource, as specified in the CAISO Tariff and approved by the CPUC for retail settlement purposes in the DRAM, and as limited by the following: (i) a day matching customer load ten-in-ten baseline with a twenty percent (20%) cap; (ii) a weather matching baseline with a forty percent (40%) cap; (iii) the use of control groups; and (iv) a five-in-ten baseline for residential customers, with a forty percent (40%) cap, as utilized for the calculation of Qualifying Capacity and Demonstrated Capacity, and for CAISO settlements, in accordance with Section 1.6 of this Agreement.

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

“Cash” means U.S. Dollars held by or on behalf of Buyer as Performance Assurance hereunder.

“Cash Interest Rate” means the Federal Funds Effective Rate - the rate for that day opposite the caption “Federal Funds (Effective)” as set forth in the weekly statistical release designated as

H.15 (519), or any successor publication, published by the Board of Governors of the Federal Reserve System.

“Claiming Party” has the meaning set forth in Article 14.

“Commission” or “CPUC” means the California Public Utilities Commission, and all divisions thereof, or any successor thereto.

“Compliance Showing(s)” means the RAR compliance or advisory showings (or similar or successor showings), that an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, to the CAISO pursuant to the CAISO Tariff, or to any Governmental Body having jurisdiction.

“Contract Price” means the price for each type of Product as specified in Exhibit E for each Showing Month.

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

“CPUC Approval” means a decision of the CPUC that (i) is final and no longer subject to appeal, which approves (a) the requested relief in the approval filing and (b) the Agreement in full and in the form presented on terms and conditions acceptable to both Parties, including without limitation terms and conditions related to cost recovery and cost allocation of amounts paid to Seller under the Agreement; (ii) does not contain conditions or modifications unacceptable to both Parties; and (iii) finds that any procurement pursuant to this Agreement satisfies the requirement to procure preferred resources under Commission Decision (D.)19-11-016.

“CPUC Decisions” means Commission Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-031, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 09-12-053, 10-06-036, 10-12-038, 11-06-022, 11-10-003, 12-06-025, 13-02-006, 13-04-013, 13-06-024, 14-03-026, 14-06-050, 14-12-024, 15-02-007, 15-06-063, 19-07-009, 19-06-026 and any other existing or subsequent decisions, resolutions, or rulings related to resource adequacy, including, without limitation, the CPUC RA Filing Guide, in each case as may be amended from time to time by the CPUC.

“CPUC RA Filing Guide” is the [REDACTED] annual document issued by the Commission which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the Commission’s resource adequacy program.

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by the Ratings Agencies.

“Customer” means a person or entity that is either a: (i) Bundled Service Customer; (ii) community choice aggregation customer or direct access customer who would otherwise be eligible to be a Bundled Service Customer; or (iii) Unbundled Service Customer.

“Customer Data Access Systems” has the meaning described in CPUC Decision 13-09-025.

“Day-Ahead Market” has the meaning set forth in the CAISO Tariff.

“Day-Ahead Schedule” has the meaning set forth in the CAISO Tariff.

“DC Dispatch” means a Dispatch of a PDR in the DRAM Resource in the CAISO market, in accordance with the CAISO Tariff, for a duration of (i) one (1) hour within the Availability Assessment Hours for all Showing Months except the Showing Month of August or (ii) two (2) consecutive hours within the Availability Assessment Hours for the Showing Month of August that is used to demonstrate capacity; provided that, such two (2) consecutive hours requirement may be satisfied by a combination of a DC Dispatch and a DC Test.

“DC-QC Ratio” has the meaning set forth in Section 4.1.

“DC Test” means a capacity test of a PDR in the DRAM Resource for one hundred percent (100%) of such PDR’s Qualifying Capacity for the applicable Showing Month (where such Qualifying Capacity has been submitted in Seller’s Supply Plan for that Showing Month), with a duration of at least two (2) consecutive Availability Assessment Hours, conducted by the Seller’s SC during the applicable Showing Month, in accordance with the CAISO Tariff and D.14-06-050, Appendix B, that is used to demonstrate capacity.

“Default Adjustment Value” has the meaning set forth in Section 7.2(b)(v)(B), CPUC Resolution E-4838, and CPUC Resolution E-4906.

“Defaulting Party” has the meaning set forth in Section 9.1.

“Delivered Capacity Payment” has the meaning described in and is calculated pursuant to Section 4.1.

“Delivery Period” has the meaning set forth in Section 1.3.

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

“Demonstrated Capacity” has the meaning set forth in Section 1.6(a).

“Dispatch” means the act of reducing all or a portion of the electrical consumption of the PDR pursuant to a Dispatch Instruction.

“Dispatch Instruction” has the meaning in the CAISO Tariff.

“Dispute” means any and all disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Agreement, or to either Party’s performance or failure of performance under this Agreement.

“Distributed Energy Resource Aggregation” has the meaning in the CAISO Tariff.

“Diverse Business Enterprises” or “DBE” means Women, Minority, Disabled Veteran (WMDV) and Lesbian, Gay, Bisexual and Transgender (LGBT) Business Enterprises as defined in CPUC General Order 156.

“DRAM” means the Demand Response Auction Mechanism, which is a procurement mechanism during [*Year*] for the Product as described in CPUC D.14-12-024, D.17-10-017, and D.19-07-009.

“DRAM Resource” means the sum of the PDR(s) that Seller identifies pursuant to Section 1.4 that will provide Product to Buyer.

“DRAM Resource Customer” is a Bundled Service Customer or Unbundled Service Customer account at the Service Account Identification level that is included in the DRAM Resource.

“Early Termination Date” has the meaning set forth in Section 9.2(a).

“EFC” shall mean Effective Flexible Capacity as defined in the CAISO Tariff.

“Event of Default” has the meaning set forth in Section 9.1.

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

“Executive(s)” has the meaning set forth in Section 10.2.

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

“Financial Consolidation Requirement” has the meaning set forth in Section 5.7(a).

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

“Flexible Capacity” means any and all flexible resource adequacy attributes associated with the PDR(s) designated by Seller pursuant to Section 1.4, as such attributes may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction, that can be counted toward Flexible RAR, and which may be (i) exclusive of Local Capacity and (ii) be in Flexible Category 1 (base flexibility), 2 (peak flexibility) or 3 (super-peak flexibility) as described in the CAISO Tariff.

“Flexible RAR” means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.

“Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under this Agreement, which event or circumstance was not anticipated as of the Execution Date, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller’s supply; (iv) Seller’s ability to sell the Product at a greater price; (v) a failure of performance of any other entity that is not a Party, except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure event; or (vi) breakage or malfunction of equipment, except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure event.

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

“Governmental Body” means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

“IFRS” means the International Financial Reporting Standards.

“Initial Negotiation End Date” has the meaning set forth in Section 10.2.

“Interest Amount” means with respect to a Party and an Interest Period, the sum of the daily interest amounts for all calendar days in such Interest Period; each daily interest amount to be determined by such Party as follows: (i) the amount of Cash held by such Party on that day; multiplied by (ii) the Cash Interest Rate for that day, divided by (iii) 360.

“Interest Period” means the period from (and including) the last Business Day on which an Interest Amount was Transferred by a Party (or if no Interest Amount has yet been Transferred by such Party, the Business Day on which Cash was Transferred to such Party) to (but excluding) the Business Day on which the current Interest Amount is to be Transferred.

“JAMS” has the meaning set forth in Article 10.3.

“Joint Resource” means respectively a PDR which includes DRAM Resource Customers registered by the Seller (or its DRP) and other customers registered by another aggregator (or its DRP) who are not considered part of the respective PDR for purposes of meeting Seller’s obligations under this Agreement.

“LCA Customers” means a Customer that either (i) directly takes or receives electricity services from Buyer’s LCA or (ii) directly takes or receives electricity services from a lower voltage substation that electrically connects to Buyer’s LCA.

“Letter of Credit” means an irrevocable, nontransferable standby letter of credit, substantially in the form of Exhibit B and acceptable to Buyer, provided by Seller from an issuer acceptable to Buyer that is either a U.S. financial institution or a U.S. commercial bank or a U.S. branch of a foreign bank with such financial institution or the bank (i) having (a) Credit Ratings of at least "A-" by S&P, "A-" by Fitch and "A3" by Moody's, if such entity is rated by the Ratings Agencies; (b) if such entity is rated by only two of the three Ratings Agencies, a Credit Rating from two of the three Ratings Agencies of at least "A-" by S&P, if such entity is rated by S&P, "A-" by Fitch, if such entity is rated by Fitch, and "A3" by Moody's, if such entity is rated by Moody's; or (c) a Credit Rating of at least "A-" by S&P or "A3" by Moody's, or "A-" by Fitch if such entity is rated by only one Ratings Agency; and (ii) having shareholder equity (determined in accordance with generally accepted accounting principles) of at least \$1,000,000,000.00 (ONE BILLION AND 00/100 DOLLARS). Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

“Letter of Credit Default” means with respect to a Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit shall fail to maintain a Credit Rating of at least (A) "A-" by S&P, "A-" by Fitch, and "A3" by Moody's, if such issuer is rated by the Ratings Agencies, (B) "A-" by S&P, "A-" by Fitch or "A3" by Moody's if such issuer is rated by only two of the Ratings Agencies, or (C) "A-" by S&P, "A-" by Fitch, or "A3" by Moody's, if such issuer is rated by only one Ratings Agency; (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect at any time during the Term of the Agreement, in any such case without replacement; or (v) the issuer of such Letter of Credit shall become Bankrupt; *provided*, no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Agreement.

“Local Capacity” means any and all resource adequacy attributes or other locational attributes associated with the PDR(s) designated by Seller and comprised of LCA Customers pursuant to Section 1.4, from a Local Capacity Resource (as defined in CAISO Tariff) in Buyer's Local Capacity Area, as applicable and as such attributes may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction, that can be counted toward Local RAR, which may be exclusive of any Flexible Capacity, as applicable to the Product.

“Local Capacity Area” or “LCA” means the areas where LCA Customers are electrically interconnected to any of the [INSERT].

“Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

“LSE” means load-serving entity.

“Manager” has the meaning set forth in Section 10.2.

“Mediator” has the meaning set forth in Section 10.3.

“Merger Event” means, with respect to a Party, that such Party consolidates or amalgamates with, merges into or with, or transfers substantially all its assets to another entity and (i) the resulting entity fails to assume all the obligations of such Party hereunder, or (ii) the resulting entity's creditworthiness is materially weaker than that of such Party immediately prior to such action. The creditworthiness of the resulting entity shall not be deemed to be ‘materially weaker’ so long as the resulting entity maintains a Credit Rating of at least that of the applicable Party, as the case may be, immediately prior to the consolidation, merger or transfer.

“Monthly Contracted Quantity” means the respective amount of each type of Product set forth in Exhibit E that Seller has agreed to provide to Buyer from the DRAM Resource for each day of the respective Showing Months.

“Monthly Quantity” means the aggregate amount of all Monthly Contracted Quantities set forth in Exhibit E that Seller has agreed to provide to Buyer from the DRAM Resource for each day of the respective Showing Months for the respective types of Product.

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

“Must-Offer Obligation” or “MOO” means Seller’s obligation to Bid or cause Seller’s SC to Bid the DRAM Resource into the CAISO Markets based on the type of Product and in accordance with the CAISO Tariff.

“NQC” shall mean Net Qualifying Capacity as defined in the CAISO Tariff.

“Notification Time” means the 10:00 a.m. Pacific Prevailing Time on a Business Day.

“Non-Competitive Behavior” means bidding behavior providing clear evidence of market manipulation or collusion.

“Non-Defaulting Party” has the meaning set forth in Section 9.2.

“Notice” means notices, requests, statements or payments provided in accordance with Article 8.

“Partial DC Dispatch” has the meaning set forth in Section 1.6(a)(i).

“Performance Assurance” has the meaning set forth in Section 5.1(a). Performance Assurance must be in the form of Cash or Letter of Credit. Any Cash received and held by Buyer after drawing on any Letter of Credit will constitute Performance Assurance in the form of Cash.

“Potential Event of Default” means an event which, with Notice or passage of time or both, would constitute an Event of Default.

“Procurement Review Group” has the meaning set forth in Section 13.1.

“Product” means either System Capacity, Local Capacity and/or Flexible Capacity. The particular type of Product sold by Seller to Buyer under this Agreement is specified in Table 1.1(b). Buyer and Seller will have separate agreements for separate products and will combine multiple awards of the same product into one agreement at a weighted average price.

“Prohibited Resource” means a distributed generation technology using diesel, natural gas, gasoline, propane, or liquefied petroleum gas, in topping cycle Combined Heat and Power (CHP) or non-CHP configuration. The following resources are exempt: pressure reduction turbines and waste-heat-to-power bottoming cycle CHP, resources using renewable fuels (i.e. renewable gas, renewable diesel, and biodiesel) that have received certification from the California Air Resources Board, as well as energy storage resources not coupled with fossil fueled resources.

“Proxy Demand Resource” or “PDR” has the meaning in the CAISO Tariff.

“QC Implementation Guidelines” has the meaning set forth in Section 3.1(a)(ii).

“Qualified Assignee” has the meaning set forth in Section 13.5.

“Qualifying Capacity” means the load reduction for each PDR in the DRAM Resource, calculated utilizing the Capacity Baseline, consistent with the QC Implementation Guidelines, the CPUC Decisions and the CAISO Tariff.

“RAR” means the resource adequacy requirements established for LSEs by the Commission pursuant to the CPUC Decisions, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Body having jurisdiction, or successor program requirements.

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

“Referral Date” has the meaning set forth in Section 10.2.

“Resource Adequacy” and “Resource Adequacy Benefits” have the meanings set forth in the CPUC Decisions.

“Resource ID” has the meaning in the CAISO Tariff.

“Residential Customer” means a DRAM Resource Customer which is a Single Family or Multi-Family Dwelling customer on a Domestic rate, including RV Parks, Residential Hotels, and Mobile Home Parks and includes electric vehicle charging for customers on Domestic Rate if separately metered, as such capitalized terms are defined in Rule 1.

“Residential Customer Product” means Product that is comprised solely of Residential Customers and Small Commercial Customers; *provided* that the percentage of Residential Customers in the PDR(s) constituting the DRAM Resource is equal to or greater than ninety percent (90%). Where multiple PDRs, or portions thereof, are used to meet Seller’s Demonstrated Capacity obligations, the percentage requirements apply in the aggregate, based on the total number of PDR Customer service accounts in the DRAM Resource used to show Demonstrated Capacity.

“Revenue Quality Meter Data” means interval meter data that has been validated, edited, and estimated in accordance with the Direct Access Standards for Metering and Meter Data as described in Rule 22. [Double check]

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

“SAID” or “Service Account Identification” means a Buyer specific identifier or number for tracking energy service deliveries for a specific load through one or more meters at a customer premises or location as described in Rule 1.

“Scheduling Coordinator” or “SC” has the meaning set forth in the CAISO Tariff.

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

“Settlement Amount” means the sum of the estimated Delivered Capacity Payments for all of the remaining Showing Months of the original Delivery Period as in effect prior to such early termination, including the current Showing Month if not invoiced pursuant to Section 4.2, as of the Early Termination Date, with such estimated Delivered Capacity Payments being based on

the sum of the applicable Monthly Contracted Quantity times the applicable Contract Price for each type of Product.

“Shortfall Capacity” means the amount of capacity with respect to the Monthly Contracted Quantity for a type of Product for any portion of a Showing Month which was shown by Buyer in its Compliance Showing that CAISO determines requires outage replacement in accordance with Section 40.7 of the CAISO Tariff.

“Showing Month” shall be each day of each calendar month of the Delivery Period that is the subject of the Compliance Showing, as set forth in the CPUC Decisions and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and CPUC Decisions in effect as of the Execution Date, the monthly Compliance Showing made in June is for the Showing Month of August.

“Small Commercial Customer” means a DRAM Resource Customer which is a non-Residential Customer with monthly maximum demand of 20 kW or less, including agricultural/pumping customers (PA-1, PA-2, TOU-PA-2 rates) and TOU-EV3, service to electric charging facilities with monthly maximum demand of 20 kW or less. Excludes customers on rate schedules for fixed usage and unmetered service (Schedules LS-1, LS-2, OL-1, TC-1, Wi-Fi-1, and WTR).

“Successor” means any successor accounting practices to GAAP or IFRS.

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

“System Capacity” means system Resource Adequacy Benefits associated with the PDR(s) designated by Seller pursuant to Section 1.4, as such attributes may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction, that can be counted toward RAR, which may be exclusive of any Local Capacity and Flexible Capacity as indicated on Table 1.1(b).

“Term” has the meaning set forth in Section 1.2.

“Termination Payment” means the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement, which shall include the Settlement Amount, less any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date. If Buyer is the Non-Defaulting Party and reasonably expects to incur penalties, fines or costs from the CPUC, the CAISO, or any other Governmental Body, then Buyer may estimate the penalties or fines and include them in the Termination Payment amount.

“Transfer” means, with respect to any Performance Assurance or Interest Amount, and in accordance with the instructions of the Party entitled thereto: (i) in the case of Cash, the payment or transfer by wire transfer into one or more bank accounts specified by the recipient; (ii) in the case of Letters of Credit, delivery of the Letter of Credit or an amendment thereto to the recipient.

“Unbundled Service Customer” means a retail customer of the Buyer acting as a utility distribution company, who takes and receives its electrical power requirements from a different

Load Serving Entity that is not the Buyer, pursuant to CPUC Rule 22 Direct Access or Rule 23 Community Choice Service.

“Verification Administrator” has the meaning set forth in CPUC Resolution E-4838 and CPUC Resolution E-4906.

EXHIBIT B

Form of Letter of Credit

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT

Bank Reference Number: _____

Issuance Date:

Issuing Bank:

[insert bank name and address]

Applicant:

[insert applicant name and address]

BENEFICIARY:

San Diego Gas & Electric Company

[Address]

Available Amount: [insert amount and spell out]

Expiration Date: [insert date]

Ladies and Gentlemen:

_____ (the "Bank") hereby establishes this Irrevocable Nontransferable Standby Letter of Credit ("Letter of Credit") in favor of San Diego Gas & Electric Company, a California corporation (the "Beneficiary"), for the account of _____, a _____ corporation, also known as ID# _____ (the "Applicant"), for the amount stated above (the "Available Amount"), effective immediately.

This Letter of Credit shall be of no further force or effect at 5:00 p.m., California time, on the expiration date stated above or, if such day is not a Business Day (as hereinafter defined), on the next Business Day (as may be extended pursuant to the terms of this Letter of Credit (the "Expiration Date").

For the purpose hereof, "Business Day" shall mean any day other than:

1. A Saturday or a Sunday,
2. A day on which banking institutions in the city of San Diego, California, are required or authorized by Law to remain closed, or
3. A day on which the payment system of the Federal Reserve System is not operational.

It is a condition of this Letter of Credit that the Expiration Date shall be automatically extended without amendment for one (1) year from the Expiration Date hereof or any future Expiration Date unless at least sixty (60) calendar days prior to such Expiration Date, we send notice to you by certified mail or hand delivered courier, at the address stated below, that we elect not to extend this Letter of Credit for any such additional period.

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

1. A copy of this Letter of Credit and all amendments;
2. A copy of the Drawing Certificate in the form of Attachment "A" attached hereto and which forms an integral part hereof, duly completed and bearing the signature of an authorized representative of the Beneficiary signing as such; and
3. A copy of the Sight Draft in the form of Attachment "B" attached hereto and which forms an integral part hereof, duly completed and bearing the signature of an authorized representative of the Beneficiary.

Drawings may also be presented by facsimile transmission ("Fax") to fax number [insert number] under telephone pre-advice to [insert number] or alternatively to [insert number]; provided that such Fax presentation is received on or before the Expiration Date on this instrument in accordance with the terms and conditions of this Letter of Credit. It is understood that any such Fax presentation shall be considered the sole operative instrument of drawing. In the event of presentation by Fax, the original documents should not also be presented.

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

This Letter of Credit is not transferable or assignable. Any purported transfer or assignment shall be void and of no force or effect.

All correspondence and any drawings (other than those made by facsimile) hereunder are to be directed to [Bank address/contact].

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: [INSERT] Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

Banking charges shall be the sole responsibility of the Applicant.

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

or extension of the Expiration Date, this Letter of Credit may not be amended or modified without the Beneficiary's prior written consent.

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

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

AUTHORIZED SIGNATURE for Bank

By

Name: [print name]_____

Title: [print title]_____

ATTACHMENT A

DRAWING CERTIFICATE

TO [ISSUING BANK NAME & ADDRESS]

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT
REFERENCE NUMBER: _____

DATE: _____

[insert Beneficiary name] (the “Beneficiary”), demands *[Issuing Bank Name]* (the “Bank”) payment to the order of the Beneficiary the amount of U.S. \$_____ (_____ U.S. Dollars), drawn under the Letter of Credit referenced above (the “Letter of Credit”), for the following reason(s) [check applicable provision]:

A. An Event of Default, as defined in that certain Demand Response Resource Purchase Agreement between *[insert counterparty name]* or its successor (the “Counterparty”) and Beneficiary, dated as of *[Date of Execution]* (the “Agreement”) with respect to the Counterparty has occurred and is continuing.

B. The Letter of Credit will expire in fewer than twenty (20) Business Days (as defined in the Agreement) from the date hereof, and the Counterparty or its successor has not provided Beneficiary alternative financial security acceptable to Beneficiary.

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

Authorized Signature for Beneficiary:

[insert Beneficiary name]

By:

Name: [print name]

Title: [print title]

ATTACHMENT B

SIGHT DRAFT

[INSERT DATE]

TO:
[ISSUING BANK NAME & ADDRESS]

PAY AT SIGHT TO THE ORDER OF [INSERT BENEFICIARY NAME] (THE
“BENEFICIARY”) THE AMOUNT OF USD [INSERT AMOUNT] DRAWN UNDER
[ISSUING BANK NAME] IRREVOCABLE NON-TRANSFERABLE STANDBY
LETTER OF CREDIT NUMBER [INSERT NUMBER] ISSUED ON [INSERT DATE].

FUNDS PAID PURSUANT TO THE PROVISIONS OF THE LETTER OF CREDIT
SHALL BE WIRE TRANSFERRED TO THE BENEFICIARY IN ACCORDANCE WITH
THE FOLLOWING INSTRUCTIONS:

[INSERT WIRING INSTRUCTION]

AUTHORIZED SIGNATURE
[INSERT BENEFICIARY NAME]

NAME: [PRINT NAME]

TITLE: [PRINT TITLE]

EXHIBIT C-1

Form of Notice of Demonstrated Capacity

Demand Response Auction Mechanism (DRAM)

EXHIBIT C1 - Notice of Demonstrated Capacity (QC)

For use with System and Local Capacity Product

Showing Month: _____
 Seller: _____
 Seller Contact Name: _____
 Seller Contact Phone: _____
 SCID: _____
 Local Capacity Area (LCA): _____ (mark "n/a" if not a Local Capacity product)

Total **"Monthly Quantity"*** (MW): _____
 Total **"Demonstrated Capacity"** (MW): 0.00 MW
Residential Product (Yes/No): _____

PDRs and/or RDRRs in the DRAM Resource			--- "Demonstrated Capacity" (MW) --- <i>The Seller is able to demonstrate which Demonstrated Capacity method is used for each Resource</i>				Joint Resource Adjustment		Prohibited Resources Adjustment		Residential Product Delivery			Local Capacity Product Delivery				
PDR RDRR Resource Name	CAISO Resource ID	Assigned NQC (MW) 0.00 MW	Capacity Test Average hourly load reduction across two consecutive hours during capacity test conducted by Seller's SC during Showing Month		Must Offer Obligation (MOO) Average capacity amount Seller bid into CAISO during Showing Month		Dispatch Results! Average hourly load reduction resulting from Dispatch during Showing Month		MW Claimed Specify the MW portion used to meet the contract obligation		Adjusted MW Claimed Specify the MW portion used to meet the contract obligation		Residential Product This section is only required if delivering Residential Customer Product			Local Capacity Product This section is only required if delivering Local Capacity Product		
			Raw Demonstrated Capacity	Lesser of Assigned NQC or Raw Demonstrated Capacity	Raw Demonstrated Capacity	Lesser of Assigned NQC or Raw Demonstrated Capacity	Raw Demonstrated Capacity	Lesser of Assigned NQC or Raw Demonstrated Capacity	Joint Resource? (Yes/No)	MW Claimed	Default Adjustment Value (DAV) (MW)	Net MW Claimed	Total Service Accounts**	Residential Customer Service Accounts*	Small Business Customer Service Accounts*	Total Service Accounts**	Customer Service Accounts within specified LCA**	
				0.00 MW		0.00 MW		0.00 MW										
				0.00 MW		0.00 MW		0.00 MW										
				0.00 MW		0.00 MW		0.00 MW										
				0.00 MW		0.00 MW		0.00 MW										
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				0.00 MW		0.00 MW		0.00 MW										
				0.00 MW		0.00 MW		0.00 MW										
Demonstrated Capacity ==>				0.00 MW		0.00 MW		0.00 MW		0.00 MW		0.00 MW		0	0	0	0	0
IMPORTANT NOTES:			1) Each capacity test must be at least two (2) consecutive hours long. Only include results during the CAISO Availability Assessment Hours (AAH).		1) PDR must be bid into the Day-Ahead Market; RDRR must be bid into the Real-Time Market		1) An eligible Dispatch requires that the PDR/RDRR provided load reduction in all applicable hours of the CAISO Dispatch Instructions. Only include results during the CAISO AAH.		For PDR/RDRR that are not Joint Resources, MW Claimed = MW Demonstrated (Column F, H or J)		Per pro-forma Section 7.2(b)(v), provide the DAV adjustment, if any.		Percent Residential Accounts			Percent Local Accounts		
			2) Should be calculated using the same PDR/RDRR Capacity Baseline used for Month Ahead Supply Plan		2) Only include bids submitted in compliance with the CAISO AAH.		2) Should be calculated using the same PDR Capacity Baseline used for Month Ahead Supply Plan and CAISO Settlement Baseline		For Joint Resources, MW Claimed is a portion of MW Demonstrated									

The information provided by Seller in this Notice of Demonstrated Capacity is required by Section 1.6 of the DRAM Resource Purchase Agreement with (insert IOU name).

*A combination of a market dispatch and test could be used to satisfy the August two consecutive hour requirement if the CAISO market dispatch does not cover the two consecutive hours.

EXHIBIT C-2

Form of Notice of Demonstrated Capacity

EXHIBIT C2 - Notice of Demonstrated Capacity (EFC)

Demand Response Auction Mechanism (DRAM)

For use with Flexible Capacity Product

Showing Month: _____
 Seller: _____
 Seller Contact Name: _____
 Seller Contact Phone: _____
 SCID: _____
 Local Capacity Area (LCA): _____ (mark "n/a" if not a Local Capacity product)

Total "Monthly Quantity"* (MW): _____
 Total "Demonstrated Capacity" (MW): 0.00 MW
Residential Product (Yes/No)

PDRs in the DRAM Resource				--- "Demonstrated Capacity" (MW) --- <i>For Seller to able observation on to which Demonstrated Capacity method is used for each Resource</i>						Joint Resource Adjustment		Prohibited Resources Adjustment		Product Delivery			Local Capacity Product Delivery			
PDR Resource Name	CAISO Resource ID	Assigned EFC (MW)*	Flexible Category (1, 2, or 3)	Capacity Test Average hourly load reduction across two consecutive hours during capacity test conducted by Seller's SC during Showing Month			Must Offer Obligation (MOO) Average capacity amount Seller bid into CAISO during Showing Month		Dispatch Results! Average hourly load reduction resulting from Dispatch during Showing Month		MW Claimed Specify the MW portion used to meet the contract obligation		Adjusted MW Claimed Specify the MW portion used to meet the contract obligation		Residential Product This section is only required if delivering Residential Customer Product			Local Capacity Product This section is only required if delivering Local Capacity Product		
				Row Demonstrated Capacity	Lesser of Assigned EFC or Row Demonstrated Capacity	Row Demonstrated Capacity	Lesser of Assigned EFC or Row Demonstrated Capacity	Row Demonstrated Capacity	Lesser of Assigned EFC or Row Demonstrated Capacity	Joint Resource? (Yes/No)	MW Claimed	Default Adjustment Value (DAV) (MW)	Net MW Claimed	Total Service Accounts**	Residential Customer Service Accounts**	Small Business Customer Service Accounts**	Total Service Accounts**	Customer Service Account within specified LCA**		
		0.00 MW			0.00 MW		0.00 MW		0.00 MW											
					0.00 MW		0.00 MW		0.00 MW											
					0.00 MW		0.00 MW		0.00 MW											
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					0.00 MW		0.00 MW		0.00 MW											
					0.00 MW		0.00 MW		0.00 MW											
Demonstrated Capacity ==>					0.00 MW		0.00 MW		0.00 MW		0.00 MW		0.00 MW		0	0	0		0	0
IMPORTANT NOTES:																				
<p>* "Monthly Quantity" is from the quantity & pricing Table in Exhibit E.</p> <p>** In case of a Joint Resource, report full PDR EFC here.</p> <p>** If using a Joint Resource, report Service Account information (count) only for the portion used.</p>				<p>1) Each capacity test must be at least two (2) consecutive hours long Only include results during the CAISO Availability Assessment Hours (AAH).</p>		<p>1) Must be bid into the Day-Ahead and Real-Time Market</p>		<p>1) An eligible Dispatch requires that the PDR provided load reduction in all applicable hours of the CAISO Dispatch Instructions. Only include dispatch results during the CAISO AAH.</p>		<p>For PDRs that are not Joint Resources, MW Claimed = MW Demonstrated (Column F, H or J)</p>		<p>Per proforma Section 7.2(b)(v), provide the DAV adjustment, if any.</p>		<p>Percent Residential Accounts</p>			<p>Percent Local Accounts</p>			
				<p>2) Should be calculated using the same PDR Capacity Baseline used for Month Ahead Supply Plan</p>		<p>2) Only include bids submitted in compliance with the CAISO AAH</p>		<p>2) Should be calculated using the same PDR Capacity Baseline used for Month Ahead Supply Plan and CAISO Settlement Baseline</p>		<p>For Joint PDRs, MW Claimed is a portion of MW Demonstrated</p>										

The information provided by Seller in this Notice of Demonstrated Capacity is required by Section 1.6 of the DRAM Resource Purchase Agreement with (insert IOU name).

* A combination of a market dispatch and test could be used to satisfy the August two consecutive hour requirement if the CAISO market dispatch does not cover the two consecutive hours.

EXHIBIT D

Form of Notice of Showing Month Supply Plan

Sample Counterparty Monthly Supply Plan Template																
Contact Information			Supply Plan Information for Resources under DRAM Purchase Agreement to [insert IOU name]													
Contact Person	Phone Number	Email	Seller (or Seller's agent) SCID	Resource ID in CAISO Master File	System RA Capacity (QC) (MW 00.00 No rounding)	Local RA Capacity (QC) (MW 00.00 No rounding)	Flex RA Capacity (EFC) (MW 00.00 No rounding)	Flex RA Category (1, 2, or 3)	If Joint Resource			RA Capacity Effective Start Date (mm/dd/yyyy hh: mm:ss)	RA Capacity Effective End Date (mm/dd/yyyy hh: mm:ss)	Resource Capacity Contract Number	SCID of Load Serving Entity	
									System RA Capacity used for Contract (MW 00.00)	Local RA Capacity used for Contract (MW 00.00)	Flex RA Capacity used for Contract (MW 00.00)					

The information provided by Seller in this monthly Supply Plan template is required by Section 1.4 of the DRAM Resource Purchase Agreement with Buyer.

**EXHIBIT E
MONTHLY CONTRACTED QUANTITY
AND
CORRESPONDING CONTRACT PRICE**

Showing Month	Product [Insert]	
	[Year]	
	Monthly Quantity (kW for each day of Showing Month)	Contract Price (\$/kW-month)
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

[Parties to complete one table for each type of Product indicated in Table 1.1(b) and accepted bid information.]

EXHIBIT F
IMPLEMENTATION GUIDELINES FOR QUALIFYING CAPACITY
(D.19-07-009 Appendix A)

- A. Sellers should provide the following details to the Utility for demand response resources being offered, with the auction capacity bid submission no later than 15 calendar days before the year-ahead filings and monthly Supply Plans are due for the Seller:
1. Customer class (or percent of mix): Residential, Non-residential
 2. Nature of load being aggregated: such as, whole house, Air Conditioning load, storage, building load, pumps, Electric Vehicles, or other (describe)
 3. Dispatch method: automated via cloud control, or other (describe)
 4. Projected number of Service Accounts
 5. Projected aggregated load (if storage based, projected aggregated capacity)
 6. Projected percentage of load impact or reduction (if storage based, projected percentage of capacity delivered)
 7. Supporting historical performance data for A.6 (from a prior test or market dispatch for a demand response resource with similar characteristics as A.1, A.2, and A.3). Where historical data is not available, the Provider should reference suitable publicly available performance data that best represents the anticipated performance of the resource. Along with the supporting performance data, the following details for the resource associated with the supporting performance data should be provided to establish similar characteristics:
 - a. Customer class (or percentage mix): Residential, Non-residential
 - b. Nature of load being aggregated: such as, whole house, Air Conditioning load, storage, building load, pumps, Electric Vehicles, or other (describe)
 - c. Dispatch method: automated via cloud control, or other (describe)
 - d. Number of Service Accounts
 - e. Aggregated load (if storage based, aggregated capacity)
 - f. Percentage of load impact or reduction delivered (if storage based, percentage of capacity delivered.)
 8. Estimated Qualifying Capacity = A.5 x A.6
- B. Qualifying Capacity estimates should be provided for the resource adequacy measurement hours and are expected to align with the CAISO Availability Assessment Hours.
- C. The same baseline must be used for estimation of Qualifying Capacity at different stages of the contract.
- D. To the extent the projected percentage load impact for capacity delivered in A.6 deviates from the supporting data in A.7, the Provider should provide supplemental information to explain the reasonableness of the resulting “Estimated Qualifying Capacity” provided in A.8.

EXHIBIT F (Cont'd)

- E. To the extent the contract/ resource consists of heterogenous combination of load types (in terms of A.1 through A.3 characteristics), the Provider could subdivide the contract/resource and provide the above information for each component and apply a weighted average to estimate Qualifying Capacity in A.8.
- F. For auction bid submissions and the year-ahead resource adequacy filing, it is sufficient to provide the above information for the month with the highest megawatts. For monthly resource adequacy Supply Plan submissions, the above information should correspond to the actual delivery month.
- G. At the auction bid submissions and the year-ahead resource adequacy filing, it is sufficient to provide the above information at the contract level. For monthly resource adequacy Supply Plan submissions, the above information must be provided at the resource level.

ENERGY STORAGE POWER PURCHASE AGREEMENT

between

**SAN DIEGO GAS & ELECTRIC COMPANY
as Buyer**

and

**[INSERT NAME OF SELLER]
as Seller**

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ENERGY STORAGE POWER PURCHASE AGREEMENT

This Energy Storage Power Purchase Agreement (“Agreement”) is made and entered into as of this _____ day of _____, 20____ (“Effective Date”) by SAN DIEGO GAS & ELECTRIC COMPANY, a California corporation (“Buyer”), and **[insert name and type of legal entity]** (“Seller”). Buyer and Seller are sometimes referred to herein individually as a “Party” and jointly as the “Parties.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Appendix A to this Agreement.

RECITALS

This Agreement is made with reference to the following facts, among others:

A. Buyer is an investor-owned electric utility serving customers in San Diego and Orange counties.

B. Seller will develop, permit, design, procure, construct, commission, test, own, operate and maintain **[insert description of facility]** as more particularly described in Appendix 1.2.2 attached hereto (“Project”), consisting of **[insert number]** **[insert type:]** (the “Energy Storage System”) to be constructed on an approximately **[insert number]** acre parcel of land (the “Site”) located adjacent to **[insert name of substation]** in **[enter city and state]**. **[NOTE to Bidders: conforming changes needed if multiple Energy Storage Systems.] [NOTE to Bidders: for existing facilities, there will be a fixed start date and all facility construction related terms shall be removed.]**

C. Seller wishes to sell and deliver to Buyer, and Buyer wishes to provide the electricity to recharge the Energy Storage System and purchase from Seller, Capacity, Energy, Resource Adequacy Benefits, Ancillary Services, and other products that may be produced from the Project, under the conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the Parties agree as follows.

ARTICLE 1. PURCHASE AND SALE OF PRODUCT

1.1 Product. During the Delivery Period, Seller shall operate the Project and make available, deliver, and sell the Product therefrom to Buyer, and Buyer shall provide to Seller all electricity required to charge and recharge the Energy Storage System and purchase and receive the Product therefrom, when and as the Project is available, subject to the terms and conditions of this Agreement, including the Operating Restrictions set forth in Appendix 1.1. Seller represents and warrants that it will deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances. Seller shall not substitute or purchase any Capacity, Delivered Energy, Charging Energy, Ancillary Services or Resource Adequacy Benefits from any other resource or the market for delivery or charging hereunder, nor shall Seller sell, assign or otherwise transfer

any Product, or any portion thereof, to any third party other than to Buyer or CAISO pursuant to this Agreement.

1.1.1 Capacity. Buyer shall have the exclusive right to the Contract Capacity of the Project. As of the Effective Date, the Contract Capacity shall equal the Expected Contract Capacity of the Project, without adjustment for temperature, pressure, humidity or other adjustment factors. The actual Contract Capacity of the Project and each Energy Storage System will be determined upon the completion of the Commercial Operation Test and Contract Capacity Test for the Project and each year of the Delivery Period in accordance with the testing procedures of Sections 7.2 and 7.3, as applicable. Such tests will demonstrate the Capacity of the Project, which shall be the Contract Capacity from and after such tests; provided, that in no event shall the Contract Capacity of the Project (i) exceed P_{MAX} for the Project (i.e. the Contract Capacity shall be limited to P_{MAX} until such time as Seller gets P_{MAX} increased to the tested Contract Capacity), (ii) exceed the **[NOTE - based on bid: system RA quantity, local RA quantity and flex RA quantity]**, nor (iii) exceed the Energy Storage System’s Expected Contract Capacity as identified in Appendix 1.1.1. Seller agrees that the Energy Storage System is subject to the terms of the Availability Standards.

1.1.2 Energy; Efficiency Rate. Buyer shall have the exclusive right to the Charging Energy Capacity and Discharging Energy Capacity of the Project. Subject to the terms and conditions of this Agreement, Seller commits to make the Project available to accept Charging Energy and to deliver any and all Stored Energy of the Project to Buyer, and Buyer shall have the exclusive rights to schedule Charging Energy to the Project and receive any and all Stored Energy of the Project, subject to the Operating Restrictions set forth in Appendix 1.1 and Availability Notices provided in accordance with Section 18.1, including pursuant to a forward schedule or a Supplemental Energy instruction from CAISO. The actual Round-Trip Efficiency Rate of the Project will be determined upon the completion of the Commercial Operation Test for the Project and from time to time in accordance with the testing procedures of Section 7.4. Such test will demonstrate the Tested Round-Trip Efficiency Rate of the Project applicable from and after the completion of such test. **[Note to Bidders: Station use to be served separately.]**

1.1.3 Ancillary Services. Buyer shall have the exclusive rights to any and all Ancillary Services Capacity and Associated Ancillary Services Energy associated with the Project with characteristics determined in accordance with the Tariff, in the amounts set forth in the following table(s): **[NOTE TO BIDDERS: include all bid ancillary services only.]**

Ancillary Service Type	Ancillary Service Amount (MW or MW range, as applicable)
Spinning Reserve	Minimum Operating Level (P _{MIN}) to Contract Capacity (P _{MAX})
Non-Spinning Reserve	Minimum Operating Level (P _{MIN}) to Contract Capacity (P _{MAX})
Regulation Up	
Regulation Down	
Black Start	

1.1.4 Resource Adequacy Benefits. Seller shall maintain ownership of and demonstrable exclusive rights to the Project throughout the Term. Subject to the terms and conditions of this Agreement, Seller grants, pledges, assigns and otherwise commits to Buyer the full Capacity of the Project for use by Buyer in meeting its resource adequacy obligations under any Resource Adequacy Rulings. The Parties shall cooperate and take commercially reasonable actions (including amending this Agreement, executing such documents or instruments as is reasonably necessary, and complying with all applicable Tariff provisions and applicable decisions of the CPUC and/or any other Governmental Authority that address Resource Adequacy performance obligations and penalties hereunder) to effect the use of the Resource Adequacy Benefits of the Project for Buyer's sole benefit through the Delivery Period.

1.1.5 Exclusive Rights. Buyer shall have exclusive rights to the Product and all benefits derived therefrom, including the exclusive right to use, market or sell the Product and the right to all revenues generated from the use, resale or remarketing of the Product.

1.2 Project.

1.2.1 Delivery of Energy. Delivered Energy from the Project shall be delivered to the Energy Delivery Point at a nominal voltage of [_____] volts line-to-line.

1.2.2 Energy Storage Systems. The Energy Storage System will consist of [insert description of storage system] and additional equipment, as described on Appendix 1.2.2 attached hereto. The Stored Energy Measuring Device shall be capable of measuring the instantaneous amount of Stored Energy (in increments of no larger than kilowatt-hours (kWh_{DC})), Maximum Energy Capacity (in kWh_{DC}) and State of Energy (as a %), utilizing a reasonably accurate methodology consistent with applicable Industry Standards, and providing such amount of Stored Energy, Maximum Energy Capacity and State of Energy on a real-time basis to Buyer. Any changes to Appendix 1.2.2 shall require Buyer's written consent in an amendment to be exercised in Buyer's sole discretion.

1.2.3 Station Use. The Project may serve Station Use to the extent the Project is designed in a manner which allows or requires it to do so, and all Product stored or delivered hereunder will be net of Station Use.

1.3 Delivery Points.

1.3.1 Energy Delivery Point. The Energy Delivery Point shall be the PNode at the Project's first point of interface with the CAISO Grid (as described and set forth in the single-line diagram of grid interconnection attached hereto as Appendix 1.3.1). Seller retains title and bears risk of loss related to Delivered Energy up to the Energy Delivery Point, and Buyer shall take title and bear risk of loss related to Delivered Energy at and from the Energy Delivery Point. Buyer retains title and bears risk of loss related to Charging Energy up to the Energy Delivery Point, and Seller shall take title and bear risk of loss related to Charging Energy at and from the Energy Delivery Point. Notwithstanding the above, Seller acknowledges and agrees that any other agreement between it and Buyer, including any interconnection agreement, is separate and apart from this Agreement such that no other agreement shall modify or add to the Parties' obligations under this Agreement.

1.3.2 Electric Retail Delivery Point. Without limiting the provisions of Section 1.2.3, the Electric Retail Delivery Point is the point at the which the Project receives retail electricity from the Retail Electricity Provider for Station Use. Prior to the Project receiving retail electricity from the Retail Electricity Provider for Station Use, Seller shall provide Buyer a true and accurate description and depiction of such Electric Retail Delivery Point, and such description and depiction shall be attached hereto as Appendix 1.3.2.

ARTICLE 2.

TERM; CONDITIONS PRECEDENT; DELIVERY PERIOD

2.1 Term. The “Term” of this Agreement shall commence upon the Effective Date and shall continue, unless terminated earlier in accordance with the terms of this Agreement, until the expiration of the Delivery Period.

2.2 Effectiveness of Agreement Prior to CP Satisfaction Date. Commencing on the Effective Date until the CP Satisfaction Date, this Agreement shall be in full force and effect, enforceable and binding only to the extent required to give full effect to, and enforce, the rights and obligations of the Parties under this Section 2, including, as it relates to Section 2, the rights and obligations under Sections 3, 5, 6, 10, 11, 12, 13, 18, 19, 20, 21, 22, 23, 24 and 25, Appendix A and the other appendices referenced in the foregoing Sections.

2.3 Obligations of the Parties. The Parties shall reasonably cooperate with each other to cause the Conditions Precedent to be satisfied as soon as reasonably practical.

2.3.1 Seller’s Obligations. Prior to the CP Satisfaction Date, Seller shall (i) use commercially reasonable efforts to pursue satisfaction of the Conditions Precedent set forth in Sections 2.4.2 and [insert others], (ii) use commercially reasonable efforts to pursue development of the Project in accordance with Sections 5 and 6, (iii) comply with Section 6 in achieving the applicable milestones in the Milestone Schedule that have due dates occurring prior to the CP Satisfaction Date, (iv) deliver the Monthly Progress Report in accordance with Section 6, and (v) otherwise comply with its obligations, covenants, representations, and warranties under Sections 3, 5, 6, 10-13, and 18-25. Upon an Event of Default of Seller prior to the CP Satisfaction Date, Buyer may terminate this Agreement in which case Seller shall owe Buyer liquidated damages in the full amount of the Pre-Construction Security. Buyer may retain such Performance Assurances to pay such liquidated damages. Each Party agrees and acknowledges that (a) the actual damages that Buyer would incur due to an Event of Default of Seller prior to the CP Satisfaction Date would be difficult or impossible to predict with certainty, (b) the liquidated damages set forth in this section are a reasonable and appropriate approximation of such damages, and (c) the liquidated damages set forth in this section are the exclusive remedy for an Event of Default of Seller prior to the CP Satisfaction Date.

2.3.2 Buyer’s Obligations. Prior to the CP Satisfaction Date, Buyer shall (i) use commercially reasonable efforts to pursue satisfaction of the Conditions Precedent set forth in Section 2.4.1, and (ii) otherwise comply with its obligations, covenants, representations, and warranties under Sections 3, 5, 6, 10-13, and 18-25. Upon an Event of Default of Buyer prior to the CP Satisfaction Date, Seller may exercise remedies in accordance with Section 3.3.

2.4 Conditions Precedent. Subject to Section 2.2, the effectiveness of the remainder of this Agreement is conditioned upon the satisfaction (or waiver by the Party described in Section 2.5) of all of the following conditions precedent (“Conditions Precedent”) by the deadline dates set forth below for each Condition Precedent without extension for Force Majeure or any other reason:

2.4.1 CPUC Approval. No later than [_____], 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 agree to use good faith efforts to renegotiate this Agreement and 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.

2.4.2 Electrical Interconnection. No later than [_____], Seller shall have entered into a Small Generator Interconnection Agreement providing for the construction of Interconnection Facilities necessary to maintain the “Full Capacity Deliverability Status” (as defined in the CAISO Tariff) of the Project and setting forth:

(a) an estimated in-service interconnection date for the “Participating TO’s Interconnection Facilities,” the “Network Upgrades,” and the “Distribution Upgrades” (as each term is defined in the CAISO Tariff) of no later than [_____] months after Seller provides the Participating Transmission Owner with the appropriate security and written authorization to proceed under its Small Generator Interconnection Agreement for the Project; and

(b) no refundable cost for “Network Upgrades” (as defined in the CAISO Tariff) that Seller would be obligated to pay and would be entitled to reimbursement from the CAISO, a Participating Transmission Owner, or any other affected transmission provider thereunder.

2.4.3 [INSERT OTHERS]

2.5 Failure to Meet All Conditions Precedent.

2.5.1 Beneficiary Party.

(a) Both of the Parties are the beneficiaries of the Conditions Precedent set forth in Section 2.4.2, and in order for a waiver of non-satisfaction of such Conditions Precedent to be effective, both of the Parties must waive (exercisable in their sole discretion) non-satisfaction by the deadline date therefor.

(b) Buyer shall be the sole beneficiary of the Conditions Precedent set forth in Section 2.4.1, and in order for a waiver of non-satisfaction of such Conditions Precedent to be effective, Buyer alone must waive (exercisable in its sole discretion) non-satisfaction by the deadline date therefor.

(c) Seller shall be the sole beneficiary of the Conditions Precedents set forth in Section 2.4.3, and in order for a waiver of non-satisfaction of such Conditions Precedent

to be effective, Seller alone must waive (exercisable in its sole discretion) non-satisfaction by the deadline date therefor.

2.5.2 Termination. If the Condition Precedent set forth in Section 2.4.1 is not satisfied or waived in writing by SDG&E on or before the deadline date therefor, without extension for Force Majeure or any other reason, then this Agreement shall automatically terminate (with no additional actions required by either Party to effect such termination) with no further obligation to either Party (other than as set forth in Section 2.5.2(b) below and any other payment obligations which have accrued and are payable at the time of termination). If any of the Conditions Precedent is not satisfied or waived in writing by the beneficiary Party or Parties thereto on or before the applicable deadline date therefor, without extension for Force Majeure or any other reason, then either of the Parties may terminate this Agreement with no further obligation to either Party (other than as set forth in Sections 2.5.2(a) below and any other payment obligations which are accrued and payable at the time of termination) by delivery of Notice to the other Party within fifteen days after the applicable deadline date. If a Party has the right to terminate this Agreement pursuant to this Section 2.5.2, but fails to deliver Notice of termination within each fifteen day period after each deadline date, then such Party's termination right per this Section 2.5.2 for such deadline date shall be deemed waived in its entirety.

(a) Upon a termination of this Agreement by either Party for any reason under Section 2.5 other than the failure of the Conditions Precedent set forth in Section 2.4.1 to be satisfied or waived by Buyer, Seller shall pay to Buyer an amount equal to the full amount of the Pre-Construction Security. Buyer may retain and draw upon the Pre-Construction Security to pay such amount.

(b) Upon a termination of this Agreement by either Party as a result of the failure of the Conditions Precedent set forth in Section 2.4.1 to be satisfied or waived by Buyer, Buyer shall return to Seller the undrawn portion of Pre-Construction Security.

2.6 Effectiveness of Agreement on and after CP Satisfaction Date. This Agreement shall be in full force and effect, enforceable and binding in all respects as of the CP Satisfaction Date until the conclusion of the Delivery Period or earlier termination pursuant to the terms of this Agreement; provided however, that this Agreement shall remain in effect until (i) the Parties have fulfilled all obligations under this Agreement, including payment in full of amounts due for the Product delivered prior to the end of the Delivery Period, the Termination Payment, indemnification payments or other damages (whether directly or indirectly such as through set-off or netting) and (ii) the undrawn portion of the Pre-Construction Security, Construction Period Security, or Delivery Period Security, as applicable, is released and/or returned as applicable (if any is due).

2.7 Guaranteed Initial Delivery Date. Subject to Section 2.10.2, Seller shall achieve the Initial Delivery Date (as defined in Section 2.8 below) by [insert date] ("Guaranteed Initial Delivery Date"). **[NOTE to Bidders: for existing facilities, there will be a fixed start date and all facility construction related terms shall be removed.]**

2.8 Delivery Period. The "Delivery Period" shall be the period during which the Product is available to Buyer, and will commence at 12:01 a.m. PPT on the Initial Delivery Date,

and shall continue until midnight on the date that is the last day of the month in which the [XX] anniversary of the Initial Delivery Date occurs. The “Initial Delivery Date” shall be the date upon which all the following conditions have been satisfied:

(a) Seller has completed, to Buyer’s satisfaction, Seller’s obligations set forth in Articles 5, 6, and 7 in order to bring the Project into full operation as contemplated by this Agreement

(b) The Project has achieved Commercial Operation;

(c) Seller has received its market based rate authority from FERC to sell Product to Buyer under the terms of this Agreement, and has received all other approvals and authorizations required for Seller to perform its obligations under this Agreement;

(d) Seller has executed the Participating Generator Agreement, Meter Service Agreement, any contract for the provision of electric retail service (if required for the operation of the Project), and any other forms or agreements required by the CAISO or any Participating Transmission Owners with respect to the Project (and delivered true and complete copies of all such forms and agreements to Buyer);

(e) The Parties have taken all actions, including executing all documents and instruments, required to authorize Buyer to act as Scheduling Coordinator;

(f) Seller has entered into and complied with all obligations under all interconnection agreements required to enable parallel operation of the Project with the Participating Transmission Owner’s electric system and CAISO Grid;

(g) Seller has delivered to Buyer the required Delivery Period Security and related documents and instruments as set forth in Article 11; and

(h) The Priority Security Interest required under Section 11.4 and the Subordinated Security Interest required under Section 11.5 shall continue to be perfected and in full force and effect.

The Parties agree that, in order for Buyer to dispatch the Energy Storage System on the Initial Delivery Date, the Parties may have to perform certain of their Delivery Period obligations in advance of the Initial Delivery Date, including, without limitation, Seller’s delivering an Availability Notice for the Initial Delivery Date as provided Section 15.1, and Buyer’s delivering a Dispatch Notice and submitting schedules for the Initial Delivery Date as provided in Article 15, in advance of the Initial Delivery Date. The Parties shall cooperate with each other in order for Buyer to be able to dispatch the Energy Storage System on the Initial Delivery Date. Seller shall give Buyer Notice at least [x] days before the Initial Delivery Date.

2.9 Early Initial Delivery Date. If Seller satisfies the conditions precedent set forth in Section 2.8 for the Initial Delivery Date prior to the applicable Guaranteed Initial Delivery Date, then such earlier date shall be the Initial Delivery Date under this Agreement; however, in no event shall the Initial Delivery Date occur any earlier than December 1, 2020 without Buyer’s prior written consent.

2.10 Delayed Initial Delivery Date.

2.10.1 Daily Delay Damages. If Seller has not satisfied the conditions precedent set forth in Section 2.8 for the Initial Delivery Date of the Project by the Guaranteed Initial Delivery Date, Seller shall owe to Buyer the applicable Daily Delay Damages for each day of delay, up to a maximum of one hundred and eighty (180) days of delay (the “Cure Period”). ***[NOTE: for Projects with a Guaranteed Initial Delivery Date occurring on or before August 1, 2021, the Cure Period will be thirty (30 days)]*** Buyer shall be entitled to recover the Daily Delay Damages owed by Seller from the Construction Period Security held by Buyer. Each Party agrees and acknowledges that (a) the actual damages that Buyer would incur due to a delay in achieving the Initial Delivery Date on or before the Guaranteed Initial Delivery Date would be difficult or impossible to predict with certainty, (b) the Daily Delay Damages set forth in this section are a reasonable and appropriate approximation of such damages, and (c) the Daily Delay Damages set forth in this section are the exclusive remedy for Seller’s delay in achieving the Initial Delivery Date on or before the Guaranteed Initial Delivery Date but shall not otherwise act to limit any of Buyer’s rights or remedies arising from any other Event of Default by Seller, including, without limitation, the failure by Seller to achieve the Initial Delivery Date by the end of the Cure Period following the Guaranteed Initial Delivery Date as set forth in Section 3.2(h).

2.10.2 Excused Delays. For all purposes under this Agreement, the Guaranteed Initial Delivery Date will be extended on a day for day basis without imposition of any Daily Delay Damages to the extent that Seller is delayed in its critical path to achieving the Initial Delivery Date by the Guaranteed Initial Delivery Date due to any of the following events:

(a) Force Majeure, provided that all extensions of the Guaranteed Initial Delivery Date for the Project due to Force Majeure shall not exceed 90 calendar days in the aggregate (“Maximum Force Majeure Delay”) ***[NOTE: for Projects with an Initial Delivery Date occurring on or before August 1, 2021, the Maximum Force Majeure Delay will be thirty (30 days)]*** and any delay by Seller in excess of the Maximum Force Majeure Delay shall be subject to Daily Delay Damages in accordance with Section 2.10.1.

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

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

ARTICLE 3. EVENTS OF DEFAULT; REMEDIES; TERMINATION

3.1 Events of Default. An "Event of Default" shall mean, with respect to either Party (a "Defaulting Party"), the occurrence of any of the following:

(a) The failure to make, when due, any payment in a material amount required under this Agreement if such failure is not remedied within three (3) Business Days after receipt of Notice;

(b) Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such failure is not cured within 10 days after receipt of Notice;

(c) The failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default), if such failure is not remedied within 10 days of receipt of Notice, or such longer period not to exceed 60 days if the failure is not capable of being cured within such 10 days with the exercise of reasonable diligence, so long as the Defaulting Party has commenced and is diligently pursuing a cure during such initial 10-day period;

(d) Such Party becomes Bankrupt; or

(e) Such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 28.5.

3.2 Seller Events of Default. An "Event of Default" shall mean, with respect to Seller as the "Defaulting Party", the occurrence of any of the following:

(a) Seller fails to comply with any of its covenants under Section 19.5;

(b) Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity without Buyer's written consent, which consent may be granted or withheld in Buyer's sole discretion;

(c) Seller fails to comply with its obligations under Article 11, including without limitation failing to post or maintain the Construction Period Security or applicable Performance Assurance, within three (3) Business Days of receipt of Notice of such failure;

(d) Seller makes any material misrepresentation or omission in any report, including status and metering report, or any Milestone Schedule or Availability Notice (including without limitation the log, records and reports required under Sections 8.1.2, 8.1.3, 8.1.4, 17.1, and Appendices 6.1(a) and (b), and Article 15) required to be made or furnished by Seller pursuant to this Agreement;

(e) Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, for delivery during the Delivery Period, the Product, or any portion thereof, to any party other than Buyer or CAISO;

(f) During the Delivery Period, the Equivalent Availability Factor is below 0.90 on average for a rolling period of twelve (12) consecutive months;

(g) During the Delivery Period, the Contract Capacity falls below seventy percent (70%) of the Expected Contract Capacity;

(h) During the Delivery Period, the Round-Trip Efficiency Rate Factor is below 0.90 for more than four (4) months during any rolling period of twelve (12) consecutive months (for the avoidance of doubt, such four (4) months need not be continuous);

(i) Seller fails to achieve the Initial Delivery Date for the Project within the Cure Period following the Guaranteed Initial Delivery Date;

(j) Seller starts-up or operates, or permits or causes any third party to start-up or operate, the Project other than as expressly permitted under this Agreement;

(k) The ownership interest in Seller is pledged or assigned or caused or permitted to be pledged or assigned as collateral to any party other than pursuant to a Permitted Lien or in accordance with Section 12.1 or Section 25.5;

(l) Seller fails to remediate any deficiency in internal controls over financial reporting in accordance with Section 21.2;

(m) Seller defaults under any Security Document in any material respect and such default is not cured within the applicable cure period, if any, set forth in the Security Document, or Seller repudiates, disaffirms, disclaims or rejects, in whole or in part, or challenges the validity of, any Security Document;

(n) With respect to Guarantor, if there is one:

(i) Any representation or warranty made by Guarantor in the Guaranty Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such failure shall not be cured within 10 days after receipt of Notice;

(ii) The failure of Guarantor to make, when due, any payment required or to perform any other material covenant or obligation in the Guaranty Agreement, if such failure is not remedied within one (1) Business Day (in the case of a failure to pay) and three (3) Business Days (in all other cases) after receipt of Notice;

(iii) Guarantor becomes Bankrupt;

(iv) The failure by Guarantor to maintain a Credit Rating of at least ["BBB-"] by S&P or ["Baa3"] by Moody's and a tangible net worth of at least [\$XX] Billion; **[Note to Bidders: subject to credit review];**

(v) The Guaranty Agreement fails to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the indefeasible satisfaction of all of Seller's obligations hereunder to which such Guaranty Agreement relates; or

(vi) Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of, its Guaranty Agreement; or

(o) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days after Seller receives Notice of the occurrence of any of the following events:

(i) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least "A-" by S&P or "A3" by Moody's;

(ii) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(iii) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(iv) such Letter of Credit fails or ceases to be in full force and effect at any time;

(v) the issuer of such Letter of Credit becomes Bankrupt; or

(vi) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit.

3.3 Remedies. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right to (a) terminate this Agreement by providing Notice of such termination to the Defaulting Party, which termination shall be effective on a day no later than 20 days after such Notice is effective ("Early Termination Date"), and the Defaulting Party shall pay the Non-Defaulting Party a Termination Payment as set forth below, (b) require immediate payment of all amounts owed but not yet paid by the Defaulting Party under this Agreement, (c) withhold any payments due to the Defaulting Party under this Agreement, (d) suspend performance, and (e) pursue any other remedies available at law or in equity, including where appropriate, specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement. If the Non-Defaulting Party elects to terminate this Agreement under clause (a) of this Section 3.3, then the sole and exclusive remedy available to the Non-Defaulting Party shall be the Termination Payment as set forth below.

3.4 Calculation of Termination Payment. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, the amounts owing between the Parties under this Agreement

as of the Early Termination Date (the “Termination Payment”) in accordance with this Section. The Non-Defaulting Party shall calculate its Costs, and its Gains or Losses with respect to the Product from the Project in a commercially reasonable manner by reference to information supplied to it by one or more third parties including, without limitation, index prices, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information, provided that such third parties shall not be Affiliates of either Party. Only in the event the Non-Defaulting Party is not able, after using commercially reasonable efforts, to obtain such third party information, then the Non-Defaulting Party may calculate its Gains and Losses in a commercially reasonable manner using relevant market data it has available to it. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to calculate its Gains and Losses. The Termination Payment shall equal the Settlement Amount plus any or all other amounts due to the Non-Defaulting Party (less amounts due to the Defaulting Party) netted into a single amount. Except in the case of a termination of this Agreement by the Non-Defaulting Party solely as a result of an Event of Default by the Defaulting Party under Section 3.1(d) [Bankruptcy], if the Non-Defaulting Party’s aggregate Gains exceeds its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the net Settlement Amount shall be zero (0). Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a termination of this Agreement under Section 3.3(a) would be difficult or impossible to predict with certainty, (b) the Termination Payment described in this section is a reasonable and appropriate approximation of such damages, and (c) the Termination Payment described in this section is the exclusive remedy of the Non-Defaulting Party in connection with such termination but shall not otherwise act to limit any of the Non-Defaulting Party’s rights or remedies if the Non-Defaulting Party does not elect to terminate this Agreement as its remedy for an Event of Default by the Defaulting Party.

3.5 Notice of Payment of Termination Payment. As soon as practicable, but in no event later than fifteen (15) Business Days following the Early Termination Date, the Non-Defaulting Party shall give the Defaulting Party Notice of the amount of the aggregate Termination Payment, if any. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount. The aggregate Termination Payment, if any, shall be made by the Defaulting Party to the Non-Defaulting Party within two (2) Business Days after receipt of such Notice.

3.6 Disputes Regarding Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party’s calculation of the aggregate Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute, provided that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer collateral in the form of a Letter of Credit, Guaranty Agreement, or other security (acceptable to the Non-Defaulting Party in its sole discretion) to the Non-Defaulting Party in an amount equal to the aggregate Termination Payment, as calculated by the Non-Defaulting Party.

3.7 Suspension of Performance. If an Event of Default occurs and shall be continuing, the Non-Defaulting Party shall have the right to suspend performance under this Agreement upon

Notice to the Defaulting Party. At any time prior to or after the receipt of such Notice by the Defaulting Party, the Non-Defaulting Party may exercise any remedies available to it at law or in equity, including without limitation the right to seek damages or injunctive relief to prevent irreparable injury to the Non-Defaulting Party.

3.8 Bankruptcy Without Early Termination. In the event that Guarantor becomes Bankrupt, but Buyer does not declare an Early Termination Date, the bankruptcy shall not extinguish the Parties' obligations under this Agreement.

3.9 Effect of Termination. Termination of this Agreement shall not operate to discharge any liability which has been incurred by either Party prior to the effective date of such termination.

ARTICLE 4. INSURANCE

4.1 Required Insurance. From the CP Satisfaction Date and thereafter throughout the Term, Seller shall, at its own expense, maintain in force throughout the remaining Term of this Agreement and until released by Buyer the following minimum insurance coverages:

4.1.1 Workers' Compensation insurance or self-insurance in accordance with the laws and regulations of the State of California, providing statutory benefits and covering loss resulting from injury, sickness, disability or death of employees of Seller. In lieu of such insurance, Seller may maintain a self-insurance program meeting the requirements of the State of California.

4.1.2 Employer's liability insurance in the amount of not less than One Million Dollars (\$1,000,000) per accident and per employee for disease.

4.1.3 Commercial General Liability Insurance insuring against liability for damages for personal injury (including bodily injury and death) and property damage. Such insurance shall provide premises/operations, products-completed operations, blanket contractual liability, explosion, collapse and underground coverage, broad form property damage, independent contractor's and personal injury insurance, punitive damages to the extent insurable under the laws of the State of California, in the amount of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the annual aggregate for combined bodily injury and property damage. There shall be no wildfire exclusion. Defense costs shall be provided as an additional benefit and may be included within the limits of liability.

4.1.4 Commercial or Business Automobile Liability Insurance insuring against liability for damages for bodily injury, death, or damage to property (including loss of use thereof), and occurring in any way related to the use, loading or unloading of any of Seller's automobiles for coverage of owned, non-owned, leased and hired vehicles, in the amount of not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage. Seller's automobile liability insurance coverage shall contain appropriate no-fault insurance provisions or other endorsements in accordance with applicable laws. Coverage shall be at least as broad as the Insurance Services Office Business Auto Coverage form covering Automobile Liability, code 1 "any auto". If the services involve hauling hazardous materials, coverage shall be endorsed to include MCS 90 endorsement.

4.1.5 Excess or Umbrella Liability Insurance over and above the insurance required above in the amount of not less than [_____] Million Dollars (\$[____],000,000.00) per occurrence/[_____] Million Dollars (\$[____],000,000.00) aggregate.

The amounts of insurance required in Sections 4.1.2 through 4.1.4, may be satisfied by Seller purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

4.1.6 During the construction period for the Project, Builder's Risk insurance on an "all risk of physical loss or damage" basis, including coverage against damage or loss caused by earthquake, flood, windstorm, boiler, engine, and machinery accidents and performance testing and "Delay in Start-up" coverage. The Builder's Risk coverage shall include (i) coverage for the buildings, structures, boiler, machinery, equipment, facilities, fixtures, supplies, and other properties constituting a part of the Project, with an overall limit sufficient to cover repair or replacement; (ii) inland transit coverage for property and equipment that has been off-loaded from a vessel or aircraft until delivered to the Site; (iii) off-site coverage to insure any property or equipment described in (i) above not stored on the Site; (iv) removal of debris; (v) coverage for foundations and other property below the surface of the ground; (vi) expediting expenses; and (vii) hazardous substance cleanup. The Builder's Risk coverage shall modify the standard exclusion for damage caused by faulty workmanship, design or materials so as to insure resulting damage to property free of defective conditions.

4.1.7 After construction has been completed, All Risk property insurance coverage in the amount not less than the full replacement value of the Project, including a full replacement cost endorsement (no co-insurance) with no deduction for depreciation of property if actually replaced, providing, without limitation, (i) coverages against loss or damage by fire, lightning, windstorm, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, other risks from time to time included under "all risk" or "extended coverage" policies, earthquake, flood, collapse, sinkhole, subsidence and such other perils, (ii) off-site coverage as is sufficient to cover off-site equipment for which there have been progress payments, (iii) transit coverage (including ocean cargo where ocean transit will be required) as is sufficient to cover property in transit, and (iv) boiler and machinery coverage on a "comprehensive" basis including breakdown and repair with limits not less than the full replacement cost of the insured objects. The policy/policies shall include increased cost of construction coverage, debris removable, and building ordinance coverage to pay for loss of "undamaged" property which may be required to be replaced due to enforcement of local, state, or federal ordinances.

4.1.8 If applicable to the scope of work during construction phase of the term of this Agreement, Aircraft/Watercraft Insurance, for all owned, non-owned and hired aircraft or watercraft used in connection with the operation of the Project, with a \$10,000,000 limit per occurrence for property damage and bodily injury, including passengers and crew; provided, such insurance may be provided by the provider of the non-owned or hired aircraft or watercraft.

4.1.9 Pollution Liability Insurance insuring against liability arising out of activities contemplated hereunder or as might be required by federal, state, regional, municipal and local laws, with minimum limits of Two Million Dollars (\$2,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) aggregate. Seller may satisfy this requirement under Commercial

General Liability insurance and Excess or Umbrella Liability insurance policies if such policies provide coverage as is provided for under a Pollution Liability insurance policy. The Buyer shall have the right to review such coverage within such policy and accept the terms or require additional coverage in Buyer's reasonable discretion.

4.2 Additional Terms and Conditions.

4.2.1 All required insurance policies shall name Buyer, its parent, associated and affiliated companies and their respective directors, officers, agents, servants and employees as loss payees under the policy required in Section 4.1.6 and 4.1.7 as its interest may appear under this Agreement, and as additional insureds by endorsements under the policies required in Sections 4.1.3, 4.1.5, and 4.1.9.

4.2.2 All policies required under Sections 4.1.1, 4.1.2, 4.1.5, and 4.1.9 shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of this Agreement against Buyer.

4.2.3 All policies shall provide thirty (30) days' advance written notice to Buyer for cancellation or any material change in coverage or condition and ten (10) days' notice for non-payment.

4.2.4 All policies required under Sections 4.1.3 and 4.1.5 shall contain provisions that specify that the policies are primary and are not excess to or contributing with any insurance or self-insurance maintained by Buyer, and shall contain a severability of interest or cross-indemnity clause.

4.2.5 Seller shall be responsible for its respective deductibles or retentions.

4.2.6 If any of the required insurance policies are written on a "claims made" basis, such policies shall be maintained in full force and effect for two (2) years after termination of this Agreement, which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by the Parties.

4.2.7 Certificates of insurance (including applicable endorsements and renewal certificates of insurance thereafter, executed by a duly authorized representative of each insurer, or by the insurance agent or broker authorized to do so, as evidence of all insurance policies under this Article) and summaries of all such insurance documents shall be sent to Buyer.

4.2.8 Buyer or Buyer's agent may inspect the original policies or require complete certified copies, at any time.

4.2.9 Seller shall require, and shall furnish Buyer with evidence of, the same insurance for its agents or contractors as Buyer requires of Seller.

4.2.10 The requirements contained herein as to the types and limits of all insurance to be maintained by the Parties are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Parties under this Agreement.

4.3 Market Practicability.

4.3.1 In the event any insurance required to be maintained hereunder shall not be reasonably available and commercially feasible in the commercial insurance market, Buyer shall waive such requirement to the extent the maintenance thereof is not so available and feasible; provided, however, that (a) Seller shall first request any such waiver in writing, which request shall be accompanied by written reports prepared by an independent insurance broker, or an insurance consultant selected by Seller and reasonably acceptable to Buyer, explaining the extent to which such insurance is not reasonably available and commercially feasible (and, in any case where the required amount is not so available, certifying as to the maximum amount which is so available) and explaining in detail the basis for such conclusions, the form and substance of such reports to be reasonably acceptable to Buyer; (b) at any time after the granting of any such waiver, but not more often than once a year, Buyer may request, and Seller shall furnish to Buyer supplemental reports reasonably acceptable to Buyer from such insurance broker updating its prior reports and reaffirming such conclusion; and (c) any such waiver shall be effective only so long as such insurance shall not be reasonably available and commercially feasible in the commercial insurance market.

4.3.2 If Buyer determines that the types or amounts of any insurance required to be maintained hereunder shall no longer be reasonably adequate, then Buyer may require revisions to the types or amounts of any insurance required hereunder but only if such revisions are commercially reasonable.

4.4 Application of Proceeds. Subject to the requirements of the Lenders' financing documents and the rights or remedies of the Lenders thereunder, Seller shall apply any and all insurance proceeds received in connection with the damage or destruction of the Project toward the repair, reconstruction or replacement of the Project; provided, however, that if the Project is damaged or destroyed due to an event of Force Majeure to an extent that results, or could reasonably be expected to result, in a repair schedule exceeding twelve (12) months, then, notwithstanding anything in this Agreement to the contrary, Seller shall not be obligated to repair, reconstruct or restore the Project unless and until Buyer waives termination under Section 18.3 for the reasonable duration of the repair. Seller shall use commercially reasonable efforts to include in the Lenders' financing documents an obligation on the part of Seller and the Lenders to apply the proceeds of physical damage, and similar insurance obtained by Seller in connection with the Project to repair and maintain the Project in order to effectuate Seller's obligations under this Agreement. In no event shall Seller enter into an agreement with the Lenders respecting the use of insurance proceeds that is not consistent with generally accepted practices in similar financings within the electric industry.

ARTICLE 5. DESIGN AND CONSTRUCTION OF PROJECT

5.1 Seller's Obligations. At no cost to Buyer, Seller shall:

(a) Develop, design, procure, construct, commission, test, own, operate and maintain the Project as required for Seller to perform its obligations under this Agreement;

(b) Acquire and maintain all entitlements, consents, franchises, permits, certificates, licenses, authorizations and approvals required by any applicable Governmental Authority (other than the CPUC Approval and requirements of Buyer as the Scheduling Coordinator pursuant to Article 17) for the design, development, construction, installation, testing, interconnection, operation, maintenance, monitoring, removal, and ownership of the Project, (the “Required Permits”);

(c) Pay all costs allocated to the Project related to acquiring and/or maintaining rights of way and upgrades to, and construction of, facilities required to interconnect the Project to the electric retail system and the Participating Transmission Owner’s electric system and CAISO Grid under Full Capacity Deliverability Status (as defined in the Tariff), consistent with Applicable Laws and Seller’s interconnection agreement.

5.2 Design Review.

5.2.1 In the event that construction of the Project has not commenced by the Effective Date, at Buyer’s request, Seller shall provide to Buyer information related solely to operational characteristics of the Project for Buyer’s review prior to finalizing design of the Project and before beginning construction work.

5.2.2 Seller shall provide to Buyer Notice of any changes Seller proposes to make to the Project which will materially impact its operational characteristics and the operational characteristics of such changes, for Buyer’s review as far in advance as practicable, but in no event less than 30 days before the changes are to be made.

5.2.3 Buyer may notify Seller in writing of the results of Buyer’s review of the information provided by Seller pursuant to Section 5.2.1 or 5.2.2, within 30 days of Buyer’s receipt of the specifications for the Project or the change, as appropriate, including a description of any flaws perceived by Buyer in the design.

5.2.4 Seller shall in good faith consider any of Buyer’s proposed revisions to Seller’s design provided, however, that Seller shall be solely responsible for the final design and shall have no obligation to implement any of Buyer’s proposed revisions to Seller’s design.

ARTICLE 6. CONSTRUCTION PERIOD AND MILESTONES

6.1 Milestone Schedule. In order to meet the Guaranteed Initial Delivery Date, Seller shall use reasonable efforts to meet the construction milestones set forth on Appendix 6.1(a) (“Milestone Schedule”) and to avoid or minimize any delays in meeting such Milestone Schedule. No later than the 10th day of each month while the Project has not yet met its Initial Delivery Date, Seller shall deliver to Buyer a monthly progress report, substantially in the form set forth in Appendix 6.1(b) (“Monthly Progress Report”), describing its compliance with the Milestone Schedule, including projected time to completion of any milestones, for the Project. Seller shall include in any Monthly Progress Report a list of all letters, notices, applications, approvals, authorizations and filings referring or relating to Required Permits, and provide any such documents as may be reasonably requested by Buyer. In addition, Seller shall advise Buyer

as soon as reasonably practicable of any problems or issues of which it is aware which could materially impact its ability to meet the Milestone Schedule.

6.2 Inspection Rights. Buyer shall have the right, upon reasonable prior notice to Seller, during the Term to enter onto the Site, inspect the Project and otherwise inspect or audit Seller's EPC Contracts and its books and records in order to verify Seller's compliance with the Milestone Schedule.

ARTICLE 7. COMMISSIONING; TESTING

7.1 Testing Costs. Seller will, at times and for durations reasonably agreed to by Buyer, conduct necessary testing set forth in this Article 7 to assess whether the Project is functioning properly and the Energy Storage System is able to respond to Buyer Dispatch Notices or CAISO dispatch instructions. If a test is deemed a "Buyer Cost Test" hereunder, Buyer shall be obligated to pay for the electricity required to charge the Energy Storage System relating to such test, and Energy from the Energy Storage System shall be treated as dispatched pursuant to Dispatch Notices by Buyer hereunder. If a test is deemed a "Seller Cost Test" hereunder, (a) Seller shall be responsible for paying (i) the costs of all electricity required to charge the Energy Storage System relating to such test, (ii) the costs of purchasing, scheduling and delivering Charging Energy necessary to recharge the Energy Storage System so as to restore the Stored Energy that existed immediately prior to such test, and (iii) all CAISO costs and charges related to such test, and (b) Seller shall be entitled to all CAISO revenues and other revenues associated with the Energy delivered from the Energy Storage System during such test. If a Seller Cost Test is performed during any period during which Buyer is the Scheduling Coordinator for the Project, Buyer shall pay Seller such revenues in the month following Buyer's receipt of such revenues.

7.2 Commercial Operation Test. At least seven (7) Business Days prior to the Initial Delivery Date, but no earlier than thirty (30) days prior to the Initial Delivery Date, Seller shall schedule and complete a Commercial Operation test for the Energy Storage System ("Commercial Operation Test"). Such Commercial Operation Test shall be scheduled and conducted in accordance with Appendix 7 hereto and shall be deemed a Buyer Cost Test. Seller shall use commercially reasonable efforts to undertake such activities in sufficient time to achieve Commercial Operation by the Guaranteed Initial Delivery Date and Buyer will reasonably cooperate with Seller to meet such deadline. The Commercial Operation Test shall establish the initial level of Contract Capacity and Tested Round-Trip Efficiency Rate for purposes of calculating the Monthly Capacity Payment under Section 9.2.

7.3 Annual Contract Capacity Testing. At least once per Contract Year after the initial Contract Year, upon no less than 24 hours prior Notice to Seller, subject to Article 17 and the Availability Notices delivered by Seller hereunder, Buyer shall schedule and complete a Contract Capacity Test in accordance with Appendix 7. Such Contract Capacity Test shall be deemed a Buyer Cost Test unless the results of such test demonstrate that the actual Contract Capacity has been reduced by more than two percent (2%) from the results of the most recent tests, in which case Buyer may (but is not obligated to) deem such test a Seller Cost Test. No more frequently than once per calendar quarter, Seller shall have the right to run a retest of the Contract Capacity

Test at any time upon 24 hours prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Accepted Electrical Practices). Buyer shall have the right, exercisable in its sole and absolute discretion to deem such Seller-requested retest as either a Seller Cost Test or a Buyer Cost Test. For all purposes of this Agreement, including Section 1.1.1 and Appendix 9.2, the Contract Capacity determined pursuant to a Contract Capacity Test shall become the new Contract Capacity at the beginning of the day following the completion of the test, subject to the limitations in Section 1.1.1.

7.4 Efficiency Rate Testing. From time to time during the Delivery Period, upon no less than 48 hours prior Notice to Seller, and provided that the Maximum Lifetime Delivered Energy Amount has not yet been reached, Buyer may schedule and complete an Efficiency Rate Test in accordance with Appendix 7. The Efficiency Rate Test shall be deemed a Buyer Cost Test. No more frequently than once per calendar quarter, Seller shall have the right to run a retest of an Efficiency Rate Test at any time upon 24 hours prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Accepted Electrical Practices). Buyer shall have the right, exercisable in its sole and absolute discretion to deem such Seller-requested retest as either a Seller Cost Test or a Buyer Cost Test. For all purposes of this Agreement, including Sections 1.1.2, 1.2.2 and Appendix 9.2, the Tested Round-Trip Efficiency Rate determined pursuant to an Efficiency Rate Test shall become the new Tested Round-Trip Efficiency Rate at the beginning of the day following the completion of the test. For the avoidance of doubt, Buyer shall not schedule an Efficiency Rate Test from and after the time that the Maximum Lifetime Delivered Energy Amount has been reached.

7.5 Seller-Initiated Tests. Seller may conduct any other discretionary tests, at times and for durations reasonably agreed to by Buyer (provided that it shall be deemed reasonable for Buyer to require such discretionary test to be performed on a day in which Buyer has not dispatched the Energy Storage System), that Seller deems necessary for purposes of reliably operating the Project or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest) (“Seller Initiated Test”). All such Seller Initiated Tests shall be considered Seller Cost Tests, unless any such test is conducted during a time during which Buyer has dispatched the Energy Storage System, in which case such test will be deemed a Buyer Cost Tests. Buyer shall (at Seller’s request and in Buyer’s capacity as the Scheduling Coordinator hereunder) take commercially reasonable efforts to submit schedules to CAISO in accordance with the Tariff, Applicable Laws, and Accepted Electrical Practices for the Product delivered in connection with each such Seller Initiated Test. Seller shall notify Buyer of any Seller-Initiated Test no later than 24 hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Accepted Electrical Practices).

7.6 Independent Witness. Buyer shall be entitled to have an independent third party witness any testing under this Article 7, provided that (a) such third party enters into a confidentiality agreement reasonably satisfactory to Seller, and (b) Buyer is responsible for all costs, expenses and fees payable or reimbursable to such third party.

7.7 Test Results. Seller will provide all CAISO certification test results for the Energy Storage System within three (3) Business Days of Seller’s receipt for any initial or subsequent test throughout the Term of this Agreement.

ARTICLE 8.
SELLER'S OPERATION, MAINTENANCE AND REPAIR OBLIGATIONS

8.1 Seller's Operation Obligations.

8.1.1 When notified of a dispatch by Buyer (or the CAISO), Seller shall operate the Project in accordance with Accepted Electrical Practices, Applicable Laws, Permit Requirements and applicable California utility industry standards, including without limitation the standards established by the California Electricity Generation Facilities Standards Committee, pursuant to Public Utilities Code Section 761.3, and enforced by the CPUC, and CAISO-mandated standards, as set forth in Section 5 of the Tariff (collectively, "Industry Standards"). In addition, Seller shall at all times maintain and operate the Energy Storage System in a safe manner as required by Accepted Electrical Practices, Industry Standards, statutes, regulations or other Applicable Law.

8.1.2 Seller shall maintain a daily operations log for the Project and the Energy Storage System which shall include but not be limited to information on power production, electricity consumption and efficiency (if applicable), availability, hourly average Stored Energy of the Energy Storage System, hourly average Maximum Energy Capacity of the Energy Storage System, maintenance performed, outages, changes in operating status, inspections and any other significant events related to the maintenance or operation of the Project. In addition, Seller shall maintain all records applicable to the Project, including the electrical characteristics of the Project and settings or adjustments to the control equipment and protective devices of the Project. Information maintained pursuant to this Section 8.1.2 shall be provided to Buyer, within 15 days of Buyer's request.

8.1.3 Seller shall maintain accurate records with respect to the Project's Commercial Operation Test and annual Contract Capacity Tests; including the outcomes of such Tests.

8.1.4 Seller shall maintain and make available to Buyer and the CPUC, or any division thereof, records including logbooks, demonstrating that the Project is operated and maintained in accordance with Accepted Electrical Practices, Applicable Law and Industry Standards, including those related to safety. Seller shall comply with all reporting requirements and permit on-site audits, investigations, tests and inspections permitted or required under any Industry Standards or Applicable Laws.

8.1.5 Buyer or the CAISO may require Seller, at Seller's expense, to demonstrate to Buyer's commercially reasonable satisfaction the correct calibration and operation of Seller's Protective Apparatus at any time Buyer or the CAISO has reason to believe that said Protective Apparatus may impair the integrity of the Participating Transmission Owner's electric system or CAISO Grid. Buyer will reimburse Seller for all costs Seller incurs in such demonstration if the demonstration shows that the Protective Apparatus was functioning properly.

8.1.6 Seller shall, during the Term, only employ appropriately qualified (determined in Seller's reasonable opinion consistent with Accepted Electrical Practices) personnel for the purposes of operating and maintaining the Project. Seller shall at all times require

such personnel to adhere to all applicable safety standards in accordance with Accepted Electrical Practices, Applicable Law and Industry Standards.

8.2 Seller's Maintenance and Repair Obligations.

8.2.1 Seller shall inspect, maintain and repair the Project, and any portion thereof, in accordance with applicable Industry Standards and Accepted Electrical Practices. Seller shall maintain and deliver maintenance and repair records of the Project to Buyer's scheduling representative upon request.

8.2.2 Seller shall promptly make all necessary repairs to the Project, and any portion thereof, and take all actions necessary in order to provide the Product to Buyer in accordance with the terms of this Agreement.

ARTICLE 9. COMPENSATION

9.1 Compensation. Compensation to Seller shall consist of (a) a Monthly Capacity Payment calculated in accordance with Section 9.2, and (b) a Variable O&M Charge calculated in accordance with Section 9.3. The Monthly Capacity Payment and Variable O&M Charge will be paid each month, in arrears in accordance with Article 10, for each month of the Delivery Period.

9.2 Monthly Capacity Payment. Once the Project has achieved its Initial Delivery Date, Buyer shall pay Seller a monthly capacity payment (the "Monthly Capacity Payment"), except that Buyer shall not be required to pay the Monthly Capacity Payment for any month in which the Equivalent Availability Factor is less than 0.90 or the Round-Trip Efficiency Rate Factor is less than 0.90. The Monthly Capacity Payment for the Project payable each month of the Delivery Period shall be determined in accordance with the calculation set forth in Appendix 9.2. For the month in which the Initial Delivery Date occurs, the Monthly Capacity Payment will be prorated for the remaining days of that month. For the last month of the Term, the Monthly Capacity Payment will be prorated for the number of days remaining in the Term.

9.3 Variable O&M Charge. Buyer shall pay Seller a Variable O&M Charge in accordance with the calculations set forth in Appendix 9.3.

ARTICLE 10. PAYMENT AND BILLING

10.1 Billing Period. The calendar month shall be the standard period for all payments under this Agreement (other than Termination Payment). As soon as practicable after the end of each month (but no later than ten (10) Business Days after the end of each month), each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month, together with all supporting documentation and calculation necessary to evidence all amounts charged thereunder.

10.2 Timeliness of Payment. All undisputed amounts in invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later

of the 20th day of each month, or the 10th day after receipt of the invoice, or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable methods, to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Default Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

10.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice, or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error, within 24 months of the date of invoice or adjustment. Any dispute with respect to an invoice is waived unless the other Party receives Notice under this Section 10.3 within 24 months after the invoice is rendered or any specific adjustment to the invoice is made. In the event an invoice or portion thereof, or any other claim or adjustment 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. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Default Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon written request (the "Overpayment Notice") or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Default Rate from and including the date that is two (2) Business Days following receipt of an Overpayment Notice to but excluding the date repaid or deducted by the Party receiving such overpayment.

10.4 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

10.5 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, interest and payments or credits, that Party shall pay such sum in full when due.

ARTICLE 11. CREDIT AND COLLATERAL

11.1 Financial Information. If requested by one Party, the other Party shall deliver:

(a) Within 120 days following the end of each fiscal year, a copy of its (and, if applicable, its Guarantor's) annual report containing audited consolidated financial statements for such fiscal year;

(b) Within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its (and, if applicable, its Guarantor's) quarterly report containing unaudited consolidated financial statements for such fiscal quarter.

A Party shall have satisfied this requirement if such statements are posted and publicly available within the time frames specified above on a Party or its Guarantor's corporate website or the U.S. Securities and Exchange commission website (<http://www.sec.gov/>). In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the producing Party diligently pursues the preparation, certification and delivery of the statements.

11.2 Seller's Credit Requirements.

11.2.1 Credit Requirement During Pre-Construction Period. From the Effective Date to the CP Satisfaction Date, Seller shall provide and maintain Performance Assurance in an amount equal to \$[_____] [**NOTE to Bidders: Please see RFO document for collateral requirements.**] (the "Pre-Construction Security") in order to secure Seller's obligations hereunder. Except to the extent Seller elects to apply the Pre-Construction Security to the Construction Period Security, Buyer shall promptly return to Seller the unused portion of the Pre-Construction Security after the earlier of (a) the date on which Seller has delivered the Construction Period Security, and (b) termination of the Agreement by either Party under Section 2.5.2(b).

11.2.2 Credit Requirement During Construction Period. From the CP Satisfaction Date to the Initial Delivery Date, Seller shall provide and maintain additional Performance Assurance so that the total amount of Performance Assurance is equal to \$[insert] [**NOTE to Bidders: Please see RFO document for collateral requirements.**] (the "Construction Period Security") in order to secure Seller's obligations hereunder. Except to the extent Seller elects to apply the Construction Period Security to the Delivery Period Security, Buyer shall promptly return to Seller the unused portion of the Construction Period Security after the earlier of (a) the date on which Seller has delivered the Delivery Period Security, and (b) the date that all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting) after an Early Termination Date.

11.2.3 Credit Requirements During Delivery Period. Throughout the Delivery Period, Seller shall provide and maintain Performance Assurance to Buyer in an amount equal to \$[insert] [**NOTE to Bidders: Please see RFO document for collateral requirements**] to secure Seller's obligations hereunder ("Delivery Period Security"). Buyer shall promptly return to Seller the unused portion of the Delivery Period Security after the following have occurred: (a) the Delivery Period has expired or terminated early; and (b) all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

11.3 Form of Performance Assurance.

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

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

(a) Each Letter of Credit shall be maintained for the benefit of Buyer. Seller shall cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit. If Seller fails to renew or cause the renewal of any outstanding Letter of Credit on a timely basis as provided in this Section 11.3.2, Buyer shall have the right to draw the entire amount of such Letter of Credit.

(b) Upon, or at any time after it has been determined that Seller has forfeited all or part of its Pre-Construction Security, then Buyer may draw on any undrawn portion of any outstanding Letter of Credit upon submission to the bank issuing such Letter of Credit of one or more certificates specifying that Seller has forfeited all or part of its Pre-Construction Security in the amount set forth in Section 2.3.1 or 2.5.2 as applicable. Cash proceeds received by Buyer from drawing upon the Letter of Credit shall be for the account of Buyer.

(c) In the event Seller incurs Daily Delay Damages pursuant to Section 2.10.1, then Buyer may draw on any undrawn portion of any outstanding Letter of Credit upon submission to the bank issuing such Letter of Credit one or more certificates specifying that such Daily Delay Damages have been incurred. Cash proceeds received by Buyer from drawing upon the Letter of Credit shall be for the account of Buyer in satisfaction of Seller's obligations hereunder.

(d) Upon, or at any time after, the occurrence and continuation of an Event of Default by Seller, then Buyer may draw on the entire undrawn portion of any outstanding Letter of Credit upon submission to the bank issuing such Letter of Credit of one or more certificates specifying that such Event of Default has occurred and is continuing. Cash proceeds received by Buyer from drawing upon the Letter of Credit shall be used to offset Buyer's damages and to the extent in excess of Buyer's damages shall be deemed Performance Assurance as security for the Seller's obligations to Buyer and Buyer shall at all times have the exclusive dominion and control of, and at no time shall Seller have any rights or powers to direct or control such cash proceeds. Notwithstanding Buyer's receipt of cash proceeds of a drawing under the Letter of Credit, Seller shall remain liable (i) for any failure to provide sufficient Performance Assurance or (ii) for any amounts owing to Buyer and remaining unpaid after the application of the amounts so drawn by Buyer.

(e) In all cases, the costs and expenses of establishing, renewing, substituting, canceling, amending and increasing the amount of a Letter of Credit shall be borne by Seller.

11.3.3 Guaranty. Performance Assurance provided in the form of a Guaranty Agreement, if offered from Seller, shall be from a Guarantor reasonably acceptable to Buyer and satisfying the following: (i) the Guarantor shall maintain a Credit Rating of at least [“BBB-”] by S&P or [“Baa3”] by Moody’s and (ii) a tangible net worth of at least \$[XX] Billion. **[NOTE to Bidders: subject to credit review.]**

11.4 First Priority Security Interest. To secure Seller’s performance of its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest (“Priority Security Interest”) in, and lien on (and right of setoff against), and assignment of, Seller’s rights in respect of the Performance Assurance, and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take such action and execute all such documents, instruments, agreements and certifications (to be effective as the same time as such Performance Assurance is required to be provided) as Buyer reasonably requires in order to perfect Buyer’s Priority Security Interest in, and lien on (and right of setoff against), such collateral, any and all amounts deposited therein, and any and all proceeds resulting therefrom or from the liquidation thereof. In addition, Seller authorizes Buyer to file such Uniform Commercial Code financing statements and to take such further action and execute such further instruments as shall reasonably be required by Buyer to confirm and continue the validity, priority, and perfection of the Priority Security Interests. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, Buyer may do any one or more of the following:

- (a) Exercise any of its rights and remedies with respect to all Performance Assurance, including any such rights and remedies under law then in effect;
- (b) Exercise its rights of setoff against any and all property of Seller in Buyer’s possession;
- (c) Draw on any outstanding Letter of Credit issued for its benefit; or
- (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 Buyer’s obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

11.5 Subordinated Security Interest and Mortgage.

11.5.1 Grant of Subordinated Security Interest. To secure Seller's performance of its obligations under this Agreement, Seller and Buyer, as the case may be, shall no later than the CP Satisfaction Date each execute, deliver, file and, record, as appropriate, and maintain in full force and effect throughout the period from the CP Satisfaction Date until the expiration of the Term and satisfaction by Seller of all of its obligations hereunder, separate agreements, documents, or instruments under which Seller will grant to Buyer, in a form reasonably acceptable to Buyer, fully perfected security interests and/or mortgage liens in the Project and in any and all real and personal property rights, contractual rights, or other rights that Seller requires in order to construct or operate the Project (collectively the "Subordinated Security Interest"). The Subordinated Security Interest shall be subordinate only to the security interests of Lenders except as set forth below. The Parties shall reasonably promptly execute when requested, a lien subordination agreement (the "Subordination Agreement") by and among each Lender, (or an agent on behalf of the Lenders), Buyer and Seller relating to the Subordinated Security Interest, in form and substance reasonably requested by the Lender and reasonably acceptable to Buyer. Among other provisions, the Subordination Agreement shall include provisions whereby

(a) until all debt and other obligations owing to the Lenders have been paid in full (i) the Subordinated Security Interest shall be fully subordinate to the security interests of the Lenders, (ii) Buyer shall not exercise any remedies in respect of the Subordinated Security Interest, (iii) Buyer shall not take any action to contest the validity or to diminish the priority position of the Lender's security interests; and

(b) the Lenders shall provide Buyer with (i) an option to purchase from the Lenders at full value the debt (at 100% of the principal balance thereof, plus all accrued interest thereon) and other obligations owing to the Lenders within a period reasonably acceptable to the Lenders (such period to be specified in the Subordination Agreement) prior to the time the Lenders commence any right or remedy to foreclose on their collateral, and (ii) the right to exercise remedies in respect of the Subordinated Security Interest if (A) Buyer shall have guaranteed the debt and other obligations owing to the Lenders in a form acceptable to the Lenders and Buyer satisfies the creditworthiness standards established by the Lenders (all on such terms and conditions to be specified in the Subordination Agreement) or (B) the Lenders shall not have commenced foreclosure under the Lenders' liens for such period or periods as are specified (along with related conditions) in the Subordination Agreement and are acceptable to the Lenders, after Buyer's notice of its intention to exercise its remedies, provided, however, that in either case (ii)(A) or (ii)(B) under this clause (b), any exercise of any remedies to enforce the Subordinated Security Interest shall be subject to the continued priority of the Lenders' liens; provided, however, that nothing contained therein shall limit Buyer's rights and remedies in respect of the Priority Security Interest or Buyer's right to receive the payment of money or other performance in accordance with this Agreement and Buyer may exercise its rights and remedies in accordance with the terms hereof (other than through the exercise of any remedy relating to any Subordinated Security Interest). The Subordinated Security Interest shall not include the pledge or assignment of any ownership interest in Seller.

11.5.2 Other Actions By Seller. All title insurance policy costs and all costs of executing, delivering, filing, and recording the Security Documents (other than state fees and taxes which shall be at Buyer's expense) in respect of the Subordinated Security Interest shall be at Seller's expense, which in any event shall not include any legal fees of Buyer. The Security

Documents in respect of the Subordinated Security Interest shall contain financial and operating covenants (“Covenants”) reasonably necessary to preserve and maintain the value of the Subordinated Security Interest and substantially similar to those in favor of Lender in Lender’s security documents (“Lender’s Security Documents”). In addition, Seller authorizes Buyer to file such Uniform Commercial Code financing statements and to take such further action and execute such further instruments as shall reasonably be required by Buyer to confirm and continue the validity, priority, and perfection of the Subordinated Security Interest. The granting of the Subordinated Security Interest shall not be to the exclusion of, nor be construed to limit the amount of any further claims, causes of action or other rights accruing to Buyer by reason of any Event of Default by Seller or Early Termination Date. The Subordinated Security Interest shall be discharged and released, and Buyer shall take any steps reasonably required by Seller to effect and record such discharge and release, upon the expiration of the Term and satisfaction by Seller of all of its obligations hereunder. Seller shall reimburse Buyer for its reasonable costs associated with the discharge and release of the Subordinated Security Interest.

11.5.3 Transfer of Required Permits. The Security Documents in respect of the Subordinated Security Interest shall provide that if Buyer acts to obtain title to the Project pursuant to the exercise of remedies thereunder, Seller shall take all steps necessary to legally transfer all authority to dispatch the operations of the Project as provided in its Required Permits to Buyer as necessary for Buyer to operate the Project, and shall diligently prosecute and cooperate in such transfers.

ARTICLE 12. COLLATERAL ASSIGNMENT

12.1 Consent to Collateral Assignment. Subject to the provisions of this Article, Seller shall have the right to assign all its rights, title and interests in the Project, Site, other real, personal and other of its properties, and this Agreement as collateral for any financing or refinancing of the Project. Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement (“Collateral Assignment Agreement”). The Collateral Assignment Agreement shall be in form and substance customary in the industry and reasonably agreed to by Buyer, Seller and Lender.

ARTICLE 13. GOVERNMENTAL AND ENVIRONMENTAL CHARGES

13.1 Governmental Charges. Seller shall pay or cause to be paid all taxes, charges or fees imposed by a Government Authority (“Governmental Charges”) on or with respect to the Product prior to the Energy Delivery Point. For the avoidance of doubt, such Governmental Charges shall include ad valorem taxes of Seller that are related to the Project, and franchise or income taxes that are related to the sale of the Product to Buyer and which arise or are imposed prior to the Energy Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to Product which arise or are imposed at and from the Energy Delivery Point. In the event Seller is required by Applicable Laws to remit or pay Governmental Charges which are Buyer’s responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by Applicable Laws to remit or pay Governmental Charges which are Seller’s responsibility hereunder, Buyer may deduct the

amount of any such Governmental Charge from the sum due to Seller under Article 10 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 the law. This Section shall not apply to CAISO charges, penalties, costs, or revenues associated with operation of the Project or transmission of the Product allocated pursuant to Section 14.3.

13.2 Compliance with Laws and Indemnification. Seller shall be responsible for obtaining and maintaining all Required Permits, and shall construct and operate the Project in compliance with all Applicable Laws and Permit Requirements for the Term of the Agreement, including without limitation any Applicable Law related to safety, and any new or revised Required Permits or Applicable Laws that become effective during the Term. Seller shall be solely responsible for any fines, penalties or other charges which result from Seller's failure to obtain or maintain such Required Permits and/or operate the Project in accordance with Applicable Laws and Permit Requirements. No such fines, penalties or charges shall be passed through to Buyer.

13.3 Environmental Costs. Seller shall be solely responsible for all Environmental Costs with respect to the Project.

ARTICLE 14. SCHEDULING COORDINATOR

14.1 Buyer Scheduling Coordinator. At least thirty (30) days prior to the beginning of testing, Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer as Seller's Scheduling Coordinator for the Project effective as of the start-up, testing and commissioning of the Project. During the Term, Seller shall not authorize or designate any other party to act as Seller's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as Seller's Scheduling Coordinator unless agreed to by Buyer. Buyer shall submit schedules to the CAISO in accordance with Tariff protocols for Day-Ahead and Hour-Ahead Schedules and Supplemental Energy and Ancillary Services bids for the Energy Storage System, and provide such other services described in this Article. Buyer will submit bids to the CAISO that are in accordance with the Operating Restrictions of the Project as specified in Appendix 1.1. Buyer may withhold all Monthly Capacity Payments that would otherwise be due to Seller until Buyer is fully authorized as the Scheduling Coordinator for the Project. Upon Buyer's reasonable determination that it is fully authorized to act as Scheduling Coordinator for each Energy Storage System, Buyer shall pay all withheld Monthly Capacity Payments on the next applicable payment date for Monthly Capacity Payments. **[NOTE to Bidders: parties to discuss SC duties during pre-commercial operation testing.]**

14.2 Notices. Buyer shall submit all notices and updates required under the Tariff regarding the Project's status to the CAISO, including, but not limited to, all Outage Management System ("OMS") Outage Requests, OMS Forced Outages, or CAISO Forced Outage Reports. In accordance with this Article and Article 18, Seller will cooperate with Buyer to provide such notices and updates.

14.3 CAISO Costs and Revenues. Except as otherwise set forth below or in this Agreement, Seller shall be responsible for all CAISO charges and penalties associated with the

operation of the Project, transmission of Delivered Energy to the Energy Delivery Point, and receiving at and transmitting Charging Energy from the Energy Delivery Point, and Buyer shall be responsible for all CAISO charges and penalties associated with receiving Delivered Energy at and transmitting Delivered Energy from the Energy Delivery Point and transmission of Charging Energy to the Energy Delivery Point. Buyer shall be responsible for CAISO costs (including penalties and other charges) and receive all CAISO revenues (including credits and other payments) incurred as a result of providing Scheduling Coordinator services, including costs and revenues associated with CAISO dispatches. Notwithstanding anything contained herein to the contrary, Seller shall be responsible for all CAISO charges or payments incurred as a consequence of the Project not being available, Seller failing to notifying Buyer of outages in a timely manner as set forth in Article 17, or deviations from Scheduled Energy that are attributable to the operation of the Project, including, but not limited to Uninstructed Imbalance Energy charges, Uninstructed Deviation Penalties and Ancillary Services No-Pay. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges are the responsibility of the Seller and for Seller's account.

14.4 CAISO Settlements. Buyer shall be responsible for all settlement functions with the CAISO related to the Project. Buyer shall render a separate invoice to Seller for all CAISO charges or payments ("CAISO Charges Invoice") for which Seller is responsible under this Agreement in accordance with the applicable billing and payment methodologies utilized for the specific CAISO charge type as set forth in the Tariff and/or related CAISO procedure. CAISO Charges Invoices shall be rendered after final settlement information becomes available from the CAISO that identifies any CAISO Charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO Charges. Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

14.5 Terminating Buyer's Designation as Scheduling Coordinator. The Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Project as of 11:59 p.m. on the date that is the earlier of the expiration of the Term or the Early Termination Date ("SC Replacement Date"), regardless of which Party designated such expiration or termination date. The necessary actions include the following, to be performed no later than 30 days prior to such date: (a) Seller shall (i) submit to the CAISO a designation of a new Scheduling Coordinator for the Project to replace Buyer effective as of the SC Replacement Date and (ii) cause its newly designated Scheduling Coordinator to submit a letter to the CAISO accepting the designation; and (b) Buyer shall submit a letter to the CAISO resigning as Scheduling Coordinator for the Project effective as of the SC Replacement Date. Seller bears sole responsibility for locating, selecting and reaching agreement about terms with any replacement Scheduling Coordinator.

14.6 CAISO Sanctions. If during the Delivery Period, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Project or to Buyer as

Scheduling Coordinator due to the actions or inactions of Seller, the cost of the sanctions or penalties shall be the Seller's responsibility.

14.7 Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for this Project. Buyer, as Scheduling Coordinator, shall not change such data without Seller's prior written consent.

ARTICLE 15. CHARGING, DISCHARGING AND OPERATING RESTRICTIONS

15.1 Availability Notice. Subject to Section 15.6, during the Delivery Period (or earlier to enable dispatches and deliveries on the Initial Delivery Date), no later than two (2) Business Days before each schedule day for the Day-Ahead Market in accordance with WECC scheduling practices, Seller shall provide Buyer with an hourly schedule of the Available Capacity that the Project is expected to have for each hour of such schedule day (the "Availability Notice"). Seller will notify Buyer immediately if the Available Capacity of the Project may change after Buyer's receipt of an Availability Notice. Seller shall accommodate Buyer's reasonable requests for changes in the time of delivery of Availability Notices. Seller shall provide Availability Notices using the form attached in Appendix 15.1 by (in order of preference) electronic mail, facsimile transmission or, telephonically to Buyer personnel designated to receive such communications.

15.2 Charging Energy Responsibilities. Except as expressly set forth in this Agreement, during the Delivery Period, Buyer shall be responsible, at Buyer's sole cost and expense, for managing, purchasing, scheduling, and delivering all of the Charging Energy to the Energy Delivery Point. Seller shall take any and all action necessary to deliver the Charging Energy from the Energy Delivery Point to the Energy Storage System, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy from the Energy Delivery Point to the Energy Storage System.

15.3 Dispatch Notices. Subject to the Availability Notices delivered by Seller hereunder, Buyer will have the right to dispatch the Energy Storage System for charging or discharging seven days per week and 24 hours per day (including holidays), by providing Dispatch Notices and Updated Dispatch Notices to Seller electronically (in the forms attached to this Agreement in Appendix 15.4) or as directed by CAISO via ADS, and subject to the requirements and limitations set forth in this Agreement and the Operating Restrictions. Subject to Section 15.5, each Dispatch Notice will be effective unless and until Buyer modifies such Dispatch Notice by providing Seller with an Updated Dispatch Notice. If an electronic submittal is not possible for reasons beyond Buyer's or Seller's control, Buyer may provide Dispatch Notices and Updated Dispatch Notices by (in order or preference) electronic mail, telephonically, or facsimile transmission to Seller's personnel designated to receive such communications, as provided by Seller in writing. In addition to any other requirements set forth or referred to in this Agreement, all Dispatch Notices and Updated Dispatch Notices will be made in accordance with Market Notice Timelines for dispatches as specified in the Tariff. In dispatching the Project, Buyer, as Scheduling

Coordinator for the Project, shall assume a Round-Trip Efficiency Rate equal to the then most-recent Tested Round-Trip Efficiency Rate.

15.4 CAISO Dispatch. Any dispatch by the CAISO for any reason, whether pursuant to an RMR Contract or in connection with any Seller's must-offer obligations or otherwise, shall be deemed to be dispatches by Buyer, and the Energy dispatched is for Buyer's benefit hereunder, and Buyer shall pay all associated costs for such CAISO dispatches (including but not limited to the required electric recharge quantities) in accordance with the terms of this Agreement as if such dispatches were directed by Buyer. Buyer shall be entitled to receive and retain for its own account any and all CAISO revenue for such dispatches, including without limitation any availability payments under an RMR Contract for the Project. Charging Energy costs shall be included in any costs recoverable from the CAISO associated with a CAISO dispatch.

15.5 Operating Restrictions. All Operating Restrictions associated with the Product are specified on Appendix 1.1, and are subject to change from time to time based on changes in Applicable Laws or Required Permits, in each case, occurring after the CP Satisfaction Date. If Buyer submits a Dispatch Notice or an Updated Dispatch Notice that does not conform with the Operating Restrictions, then Seller shall notify Buyer of the non-conformity, and Buyer will modify its Dispatch Notice or Updated Dispatch Notice to conform to the applicable Operating Restrictions. Until such time as Buyer submits a modified Dispatch Notice or Updated Dispatch Notice, Seller shall deliver the Product in accordance with the Operating Restrictions.

15.6 Daily Operating Report. Seller shall provide Buyer the Daily Operating Report, as attached in Appendix 15.6, the day immediately after each operating day, for the Project.

15.7 Writing Requirements. In documenting and confirming Dispatch Notices, conversations between the Parties' personnel and contractors may be recorded by tape or other electronic means and any such recording will satisfy any "writing" requirements under Applicable Law.

15.8 Communication Protocols. Parties shall agree to the communication protocols outlined in Appendix 15.8 to facilitate exchange of information between the parties.

ARTICLE 16. METERING, COMMUNICATIONS, AND TELEMETRY

16.1 Electric Metering, Communication, Telemetry, and Access. Seller shall install, activate and maintain metering, communication and telemetry equipment as required by the Tariff, this Agreement, and Seller's [Large/Small] Generator Interconnection Agreement, including without limitation, the installation of separate CAISO revenue meter for the Project to ensure a separate resource ID with the CAISO for the Project, separate communication equipment for the Project, and other requirements as may be necessary to permit separate dispatch and identification of costs for the Project. Communication equipment must be capable at a minimum of supporting the Communication Protocols in Appendix 15.8. Seller shall provide Buyer access to the information provided to CAISO under the Tariff.

16.1.1 Testing and Calibration. Seller shall perform or cause to be performed, at its expense, annual testing and calibration of the electric meters in accordance with Accepted Electrical Practices and the Tariff. Seller shall give Buyer reasonable advance notice of any inspection, testing or calibration of the electric meters. Buyer shall have the right to have a representative or designee present at such inspection, test or calibration of the electric meters. Buyer shall have the right to require, at Buyer's expense, except as required below, a test of any of the electric meters not more often than two (2) times every twelve (12) months.

16.1.2 Inaccurate Meters. If any of the electric meters is deemed to be inaccurate under the Meter Service Agreement, deliveries shall be measured by reference to Seller's check-meters, if any are installed and registering accurately, or the meter readings for the period of inaccuracy shall be adjusted as far as can be reasonably ascertained by Seller from the best available data, subject to review and reasonable approval by Buyer. If the period of the inaccuracy cannot be ascertained reasonably, any such adjustment shall be for a period equal to one-half of the time elapsed since the preceding test by applying the percentage of inaccuracy so found. Seller shall promptly cause such electric meters to be corrected and, where such inaccuracy under the terms of the Meter Service Agreement was determined pursuant to a test required by Buyer, Seller shall bear the expense of any such test.

16.1.3 MWh Adjustments. In the event that, due to correction for inaccurate electric meters deemed to be inaccurate under the Meter Service Agreement, the Delivered Energy or Charging Energy is increased or decreased, the revised Delivered Energy or Charging Energy (as applicable) shall be used for purposes of calculating payments. If any of such amounts for any period have already been calculated using the previous amount of Delivered Energy or Charging Energy, they shall be recalculated using the revised amount of Delivered Energy or Charging Energy (as applicable). If the recalculation changes the amount payable for the period in question, revised payments shall be made by Buyer or Seller, as applicable, in accordance with Section 10.3.

16.2 Retail Electric Meter. To the extent the Project is not designed in a manner which allows or requires it to serve Station Use, then during the Delivery Period, Seller shall have installed and maintained an electric retail meter as further described in Appendix 1.2.2 in accordance with the Project's applicable retail electric service provider's tariff rules for retail electric service.

ARTICLE 17. OUTAGES

17.1 Scheduled Outages.

17.1.1 No later than October 1 of each Contract Year during the Delivery Period, and at least sixty (60) days prior to the anticipated Initial Delivery Date, Seller shall submit to Buyer Seller's schedule of proposed Scheduled Outages ("Outage Schedule") for the following calendar year in a form reasonably agreed to by Buyer. Within twenty (20) Business Days after its receipt of an Outage Schedule, Buyer shall notify Seller in writing of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Industry Standards, accommodate Buyer's requests regarding the timing of any Scheduled Outage. Seller may propose changes to any previously scheduled outage 15 days prior to such scheduled outage. Buyer shall

review each such change and shall advise Seller within three (3) days of Buyer's receipt thereof, in Buyer's sole discretion but consistent with Industry Standards and Accepted Electrical Practices, whether such change is acceptable or Buyer may propose alternate dates for the requested scheduled maintenance. Seller shall cooperate with Buyer to arrange and coordinate all Scheduled Outages with the CAISO. Seller will communicate to Buyer all changes to a Scheduled Outage and estimated time of return of the Project as soon as practicable after the condition causing the change becomes known to Seller.

17.1.2 If reasonably required in accordance with Accepted Electrical Practices, Seller may perform maintenance at a different time than, maintenance scheduled pursuant to Section 17.1.1. Seller shall provide Notice to Buyer within the time period determined by the CAISO for the Project, as a "Resource Adequacy Resource" that is subject to the Availability Standards, to qualify for an "Approved Maintenance Outage" under the Tariff (or such shorter period as may be reasonably acceptable to Buyer based on the likelihood of dispatch by Buyer), and Seller shall limit maintenance repairs performed pursuant to this Section 17.1.2 to periods when Buyer does not reasonably believe the Project will be dispatched.

17.2 No Scheduled Outages During Summer Months. Except as scheduled by the Parties under Section 17.1.2, no outages shall be scheduled or planned from each June 1 through October 31 during each year of the Delivery Period. In the event that the Seller has a previously Scheduled Outage that becomes coincident with a CAISO-declared system emergency, Seller shall make all reasonable efforts to reschedule such Scheduled Outage.

17.3 Notice of Unscheduled Outages. Seller shall notify Buyer by telephoning Buyer's Dispatch Desk no later than ten (10) minutes following the occurrence of an Unscheduled Outage, or if Seller has knowledge that an Unscheduled Outage will occur, within twenty (20) minutes of determining that such Unscheduled Outage will occur, utilizing an outage notification form reasonably prescribed by Buyer by Notice to Seller. Seller shall relay outage information to Buyer as required by the Tariff within twenty (20) minutes of the Unscheduled Outage and to CAISO in accordance with the outage notification requirements of the CAISO Tariff. Seller will communicate to Buyer the estimated time of return of the Project as soon as practical after Seller has knowledge thereof. Seller shall be responsible for all outage coordination communications with the CAISO.

17.4 Inspection. In the event of an Unscheduled Outage, Buyer shall have the option to inspect the Project and all records relating thereto on any Business Day and at a reasonable time and Seller shall reasonably cooperate with Buyer during any such inspection. Buyer shall comply with Seller's safety and security rules and instructions during any inspection, and shall not interfere with work on or operation of the Project.

17.5 Reports of Outages. Seller shall promptly prepare and provide to Buyer, all reports of Unscheduled Outages or Scheduled Outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with CAISO requirements or any Applicable Laws. Seller shall also report all Unscheduled Outages or Scheduled Outages in the Daily Operating Report.

ARTICLE 18.
FORCE MAJEURE

18.1 No Default for Force Majeure. A Party shall not be in default in the performance of its obligations under this Agreement when and to the extent that the failure or delay of its performance is due to an event of Force Majeure. However, a failure to make payments when due shall not be excused; except to the extent such failure is caused solely by a Force Majeure event that disables physical or electronic facilities necessary to transfer funds to the payee Party.

18.2 Force Majeure Claim. If, because of a Force Majeure, either Party is unable to perform its obligations under this Agreement, such Party shall be excused from whatever performance is affected by the Force Majeure only to the extent so affected. The following procedure shall apply in the event there occurs a Force Majeure:

(a) The Claiming Party, as soon as reasonably practical, shall give the other Party written Notice describing the particulars of the occurrence;

(b) The Claiming Party, within five (5) Business Days of providing Notice of occurrence of the Force Majeure under clause (a) above, shall provide evidence reasonably sufficient to establish that the occurrence constitutes a Force Majeure as defined in this Agreement;

(c) The suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure;

(d) The Claiming Party shall use commercially reasonable efforts to remedy its inability to perform as soon as possible. This subsection shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Claiming Party, are contrary to its interest. The Parties agree and understand that the settlement of strikes, walkouts, lockouts or other labor disputes shall be at the sole discretion of the Claiming Party; and

(e) As soon as Claiming Party is able to resume performance of its obligations under this Agreement, it shall do so and shall promptly give the other Party Notice of this resumption.

18.3 Termination for Force Majeure. If any Force Majeure event shall suspend performance by a Claiming Party for more than six (6) months from the date of Notice provided by such Claiming Party in Section 18.2(a), then, unless such Force Majeure event was caused by the Event of Default of the other Party or other delay or failure of the other Party in performing a material obligation under this Agreement, such other Party may, at any time following the end of such six (6)-month period, terminate this Agreement upon thirty (30) days prior written Notice to the Claiming Party, without further obligation by the terminating Party, except as to the payment of any costs and liabilities incurred prior to the effective date of such termination. Except to the extent Buyer may be entitled to Daily Delay Damages under Section 2.10.1, if this Agreement is terminated by Buyer under this Section 21.3, then within five (5) days following such termination, Buyer shall return to Seller any and all Letters of Credit, cash deposit, or any other forms of security or credit support previously provided by Seller and held at that time by Buyer.

ARTICLE 19.
REPRESENTATIONS, WARRANTIES AND COVENANTS

19.1 Representations and Warranties of Both Parties. As of the Effective Date and/or the CP Satisfaction Date (as applicable), each Party represents and warrants to the other Party that:

19.1.1 It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

19.1.2 As of the CP Satisfaction Date, it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement, other than with respect to Seller, any of those Required Permits that satisfy all of the following: it is not required prior to the start of construction of the Project, it is not subject to the discretionary action of the applicable Governmental Authority, and it otherwise can be obtained in the ordinary course of business;

19.1.3 The execution, delivery and performance of this Agreement are within its power, 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 Applicable Laws;

19.1.4 This Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

19.1.5 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;

19.1.6 Except as may be set forth in its reports filed with the SEC, there is not pending or, to its knowledge, threatened against it or in Seller's case, Guarantor, if applicable, any legal proceedings that could materially adversely affect such party's ability to perform its obligations under this Agreement or the Guaranty Agreement, as applicable;

19.1.7 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;

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

19.1.9 It is a "forward contract merchant" within the meaning of the United States Bankruptcy Code;

19.1.10 It has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Product under this Agreement.

19.2 Additional Representations and Warranties of Seller. Seller represents, warrants and covenants to Buyer that:

19.2.1 As of the CP Satisfaction Date and subject to Permitted Liens, Seller has Site Control and will maintain Site Control for the remainder of the Term;

19.2.2 Seller will execute a PGA and MSA (with each Energy Storage System) prior to the Delivery Period, Seller will deliver to Buyer a true and complete copy of such PGA and MSA, and such PGA and MSA, as originally executed by Seller, shall remain in full force and effect throughout the entire Delivery Period, subject to such amendments or modifications as are deemed desirable or necessary by Seller and the CAISO, subject to approval of such amendments or modifications by Buyer, which approval shall not be unreasonably delayed or withheld;

19.2.3 Seller will execute all necessary grid connection, maintenance, or transmission facility services agreements prior to the commencement of the Delivery Period, Seller will deliver to Buyer a true and complete copy of such agreements, and such agreements, as originally executed by Seller, shall remain in full force and effect throughout the entire Delivery Period, subject to such amendments or modifications as are deemed desirable or necessary by Seller and the counter-party to such agreements, subject to approval of such amendments or modifications by Buyer, which approval shall not be unreasonably delayed or withheld; and

19.2.4 As of the Effective Date, Seller has not used, granted, pledged, assigned or otherwise committed to deliver during the Delivery Period any Capacity of the Project to meet the Resource Adequacy requirement of, or confer Resource Adequacy Benefits upon, any entity other than Buyer.

19.3 Additional Covenants of Both Parties. Each Party covenants that through the Delivery Period:

19.3.1 It shall continue to be duly organized, validly existing and in good standing under the Applicable Laws of the jurisdiction of its formation;

19.3.2 It shall maintain (or obtain from time to time as required, including through renewal, as applicable, prior to such performance) all Governmental Authority approvals and Required Permits necessary for it to legally perform its obligations under this Agreement;

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

19.3.4 It shall not dispute its status as a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

19.4 Seller’s Affirmative Covenants.

19.4.1 Seller shall maintain and preserve its existence as a [_____] limited liability company formed under the laws of the State of [_____] and all material rights, privileges and franchises necessary or desirable to enable it to perform its obligations under this Agreement.

19.4.2 Seller shall, from time to time as requested by Buyer, execute, acknowledge, record, register, deliver and/or file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid and enforceable under all Applicable Laws the rights, liens and priorities of Buyer with respect to its Priority Security Interest and the Subordinated Security Interest furnished pursuant to this Agreement.

19.4.3 Seller covenants throughout the Delivery Period that Seller shall maintain ownership of a fee, easement, long-term leasehold interest, or other similar asset ownership interest in the Project.

19.5 Seller's Negative Covenants.

19.5.1 Seller shall not create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable for, contingently or otherwise, any Seller's Debt, or issue any disqualified stock, in each case, other than Seller's Debt incurred, issued, assumed or guaranteed, or disqualified stock issued, in connection with the financing or refinancing of the development, design, procurement, construction, commissioning, testing, owning, operating and maintaining of the Project.

19.5.2 Except for Permitted Liens, Seller shall not create, incur, assume or suffer to be created by it or any subcontractor, employee, laborer, materialman, other supplier of goods or services or any other person any lien on Seller's interest in the Site, the Project, or any part thereof or interest therein. Seller shall promptly pay or discharge, or shall cause its contractors to promptly pay and discharge, and discharge of record, any such lien for labor, materials, supplies or other obligations upon Seller's interest in the Site, the Project, or any part thereof or interest therein, unless Seller is disputing any such lien in good faith and only for so long as it does not create an imminent risk of a sale or transfer of the Site, the Project or a material part thereof or interest therein. Seller shall promptly notify Buyer of any attachment or imposition of any lien against Seller's interest in the Site, the Project, or any part thereof or interest therein

19.5.3 Reserved.

19.5.4 Seller shall not hold any material assets, become liable for any material obligations or engage in any material business activities other than directly associated with the development, construction, ownership or operation of the Project.

19.5.5 Seller shall not own, form or acquire, or otherwise conduct any of its activities through, any direct or indirect subsidiary.

19.5.6 During any period during which a Seller is a Defaulting Party, Seller shall not (i) declare or pay any dividend, or make any other distribution or payment, on account of any equity interest in Seller or (ii) otherwise make any distribution or payment to any Affiliate of Seller (excluding payments to such Affiliates for reasonable expenses related to the operation, maintenance and management of the Project).

19.5.7 Seller will not use, grant, pledge, assign or otherwise commit to deliver during the Delivery Period any Capacity of the Project to meet the Resource Adequacy requirement of, or confer Resource Adequacy Benefits upon, any entity other than Buyer.

19.5.8 Seller shall not permit any Lenders that are Affiliates of Seller to have a security interest senior to Buyer's Subordinated Security Interest (excluding any Lender that becomes an Affiliate of Seller as a result of foreclosure or sale in lieu of foreclosure on pledged equity interests of Seller) unless consented to in writing by Buyer, such consent not to be unreasonably withheld.

19.5.9 Seller shall not charge or discharge the Energy Storage System other than (a) as dispatched by Buyer or CAISO pursuant to Article 15, or (b) pursuant to a test in accordance with Article 7.

19.6 Additional Representations, Warranties and Covenants of Buyer. Buyer represents, warrants, and covenants to Seller that:

19.6.1 Buyer shall cooperate with Seller to obtain approval(s) from any applicable Governmental Authorities with respect to governmental approvals needed by Seller.

19.6.2 Buyer shall ensure that Buyer personnel that enter the Site for any reason shall comply at all times with the safety and security procedures established by Seller and Seller's contractor(s).

19.6.3 Buyer shall not schedule, or allow the CAISO or any third party to schedule, the Project in violation of the Operating Restrictions or as otherwise permitted in this Agreement.

19.6.4 Buyer, in its role as Scheduling Coordinator and electricity recharge manager for the Project, shall not violate the Tariff or Industry Standards, or any combination of the foregoing.

ARTICLE 20. LIMITATIONS

20.1 Limitation of Remedies, Liability and Damages. THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ANY PRODUCT, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURE OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. UNLESS EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT, 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 PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY (OTHER THAN INJUNCTIVE RELIEF AS PROVIDED IN THIS AGREEMENT) ARE WAIVED. 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 TO BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER

REMEDIES OR DAMAGES AT LAW OR IN EQUITY (OTHER THAN INJUNCTIVE RELIEF AS PROVIDED IN THIS AGREEMENT) 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, WHATSOEVER UNDER ANY THEORY, INCLUDING WITHOUT LIMITATION, BY STATUTE, IN TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE, (PROVIDED THAT THE FOREGOING EXCLUSION SHALL NOT PRECLUDE RECOVERY BY A PARTY OF THE TERMINATION PAYMENT OR ANY LIQUIDATED DAMAGES EXPRESSLY HEREIN PROVIDED, NOR SHALL IT BE CONSTRUED TO LIMIT RECOVERY BY AN INDEMNITEE UNDER ANY INDEMNITY PROVISION IN RESPECT OF A THIRD PARTY CLAIM), RESULTING FROM A PARTY'S PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS UNDER OR TERMINATION OF THIS AGREEMENT. THE PARTIES INTEND 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. NOTHING IN THIS SECTION PREVENTS OR IS INTENDED TO PREVENT BUYER FROM PROCEEDING AGAINST OR EXERCISING ITS RIGHTS UNDER THE SECURITY DOCUMENTS.

20.2 No Representation by Buyer. Any review by Buyer of the Project or changes thereto, including, but not limited to, the design, construction or refurbishment, operation or maintenance of the Project, or otherwise, is solely for Buyer's information. By making such review, Buyer makes no representation as to the economic and technical feasibility, operational capability, or reliability of the Project, and Seller shall in no way represent to any third party that any such review by Buyer of the Project, including, but not limited to, any review of the design, construction or renovation, operation, or maintenance of the Project by Buyer constitutes any such representation by Buyer. Seller is solely responsible for the economic and technical feasibility, operational capability, and reliability of the Project.

ARTICLE 21. RECORDS

21.1 Performance under this Agreement. Each Party and its Representatives shall maintain records and supporting documentation relating to this Agreement, the Project, and the performance of the Parties hereunder in accordance with, and for the applicable time periods required by, all Applicable Laws, but in no event less than three (3) years after final payment is made under this Agreement.

21.2 Sarbanes-Oxley and Securities and Exchange Commission Requirements. The Parties acknowledge that accounting principles generally accepted in the United States of America

("GAAP") and SEC rules require Buyer and its independent auditor to evaluate whether Buyer must consolidate Seller's financial information (but not financial information of Seller's constituent members unless deemed to be included in the entity under GAAP). Buyer will require access to certain records, including but not limited to financial records, and personnel of Seller to determine if consolidated financial reporting is required. If Buyer and its independent auditor determine at any time that the Buyer must consolidate the Seller's financial statements to comply with GAAP and/or SEC rules regarding consolidated financial reporting, then:

(a) Buyer shall require from Seller and Seller agrees to provide to Buyer the following during the Term of this Agreement:

(i) Unaudited financial statements of the Seller prepared in accordance with GAAP as of the end of the quarterly period. The financial statements should include quarter to date and year to date information and are to be provided within fifteen (15) calendar days of the end of the applicable reporting period (or the Business Day thereafter);

(ii) Unaudited financial schedules of the Seller, as deemed necessary for Buyer to prepare its consolidated financial statements and related footnotes to the financial statements in accordance with GAAP as of the end of the quarterly period. The financial schedules should include quarter to date and year to date information underlying the financial statements and footnotes to the financial statements and are to be provided within fifteen (15) calendar days of the end of the applicable reporting period (or the Business Day thereafter);

(iii) Access to Seller's accounting and other records, and accounting and management personnel as reasonably determined by both Buyer and Seller so that (A) Buyer's independent auditor or its internal auditors may conduct financial audits (in accordance with the standards of the Public Company Accounting Oversight Board (United States)) as well as internal control audits (in accordance with Section 404 of the Sarbanes-Oxley Act of 2002) and (B) Buyer can be provided analytical information, as needed, to enable Buyer to meet its SEC filing requirements, including but not limited to those under Item 2 on Form 10-Q, and Item 7 on Form 10-K, "Management's Discussion and Analysis of Financial Condition and Results of Operations;"

(iv) Upon the request of Buyer, such certifications by a duly authorized representative(s) of Seller as may be reasonably requested by Buyer (which certifications shall presumptively be reasonable if the certifications are substantially identical to those required by Buyer or its parent of business units of Buyer or its parent); and

(v) As reasonably requested by Buyer, such information or schedules, similar to the items noted in clauses (i)-(iv) above, to enable Buyer to prepare consolidated financial statements and schedules as may be required for Buyer to obtain financing or to prepare other reports as required by regulatory bodies, such as the SEC, for periods other than as of the end of the monthly, quarterly or year to date periods then ended.

(b) If Buyer (i) in its sole discretion determines that the financial statements of the Seller would be considered material to the Buyer or its parent company's financial statements, financial condition, or internal controls over financial reporting, and (ii) reasonably determines Seller's internal controls over financial reporting are not operating effectively or have resulted in

a control deficiency, Buyer shall provide Notice to Seller. Upon receipt of such Notice, Seller will have thirty (30) days to remediate any deficiency in Seller's internal controls over financial reporting identified by the Buyer, which Buyer and Buyer's independent auditor deem to be necessary to ensure Seller's internal controls over financial reporting are adequate, during or as a result of the audits permitted under Section 21.2(a)(iii) or any other.

(c) As soon as possible, but in no event later than two (2) Business Days following any occurrence that would affect Seller in any material way, Seller shall provide to Buyer a Notice describing such occurrence in sufficient detail to permit the Buyer to file a report on SEC Form 8-K. Such occurrences include all reportable events on the then current Form 8-K that applies to Buyer and its parent company at such time, including but not limited to a material acquisition or disposition of assets, a material direct financial obligation or off-balance sheet financing arrangement, material litigation, and the execution or termination of a material contract.

(d) Any information provided to Buyer shall be treated as Confidential Information except that it may be disclosed in connection with the preparation, review, certification and publication of Buyer's financial statements.

(e) Seller shall notify Buyer at any time during the term of this Agreement of any services provided or proposed to be provided to Seller by Buyer's independent auditor. Seller, and any of Seller's Affiliates, are prohibited from engaging Buyer's independent auditor for any services or in any consulting agreement without the express written consent of partner in charge of Buyer's independent audit.

21.3 Other Regulatory and Governmental Requirements. At Buyer's request, Seller shall maintain and deliver to Buyer copies of records and supporting documentation with respect to the Project that Seller is not already required to maintain or deliver under Sections 21.1 and 21.2, in order to comply with all Applicable Laws.

21.4 Audit Rights. Either Party shall have the right, at its sole expense and during normal working hours, to audit the documents, records or data of the other Party to the extent reasonably necessary to verify the accuracy of any statement, claim, charge or calculation made pursuant to this Agreement. Each Party shall promptly comply with any reasonable request by the other Party and provide copies of such documents, records or data to the requesting Party. The rights and obligations under this Section 21.4 shall survive the termination of this Agreement for a period of 2 years.

ARTICLE 22. DISPUTES

22.1 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 22. Either Party may seek a preliminary injunction or other provisional judicial remedy if such action is necessary to prevent irreparable harm or preserve the status quo, in which case both Parties nonetheless will continue to pursue resolution of the dispute by means of the dispute resolution procedure set forth in this Article 22.

22.2 Management Negotiations.

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

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

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

22.2.4 If the matter is not resolved within forty-five (45) days of the Referral Date, or if the Party receiving the Notice to meet, pursuant to Section 22.2.1 above, refuses or does not meet within the ten (10) Business Day period specified in Section 22.2.1 above, either Party may initiate arbitration of the controversy or claim by providing Notice of a demand for binding arbitration at any time thereafter.

22.3 Arbitration. Any dispute that cannot be resolved by management negotiations as set forth in Section 22.2 above shall be resolved through binding arbitration by a retired judge or justice from the AAA panel conducted in San Diego, California, administered by and in accordance with AAA's Commercial Arbitration Rules ("Arbitration").

22.3.1 Any arbitrator shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. The Parties shall cooperate with one another in selecting the arbitrator within sixty (60) days after Notice of the demand for arbitration. If, notwithstanding their good faith efforts, the Parties are unable to agree upon a mutually-acceptable arbitrator, the arbitrator shall be appointed as provided for in AAA's Commercial Arbitration Rules.

22.3.2 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.

22.3.3 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.

22.3.4 The arbitrator shall prepare in writing and provide to the Parties an award including factual findings and the reasons on which their decision is based.

22.3.5 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.

22.3.6 Judgment on the award may be entered in any court having jurisdiction.

22.3.7 The prevailing Party in this dispute resolution process is entitled to recover its costs. Until such award is made, however, the Parties shall share equally in paying the costs of the Arbitration.

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

22.3.9 The arbitrator shall not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected on appeal to a court of competent jurisdiction for any such error.

22.3.10 The existence, content, and results of any Arbitration hereunder is Confidential Information that is subject to the provisions of Section 24.1.

22.4 WAIVER OF JURY TRIAL. THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING UNDER THIS AGREEMENT TO THE EXTENT SUCH WAIVER IS CONSISTENT WITH APPLICABLE LAW.

22.5 Attorneys' Fees. In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

ARTICLE 23. INDEMNIFICATION

23.1 Indemnities

(a) Indemnity by Seller. Seller shall release, indemnify, defend, and hold harmless Buyer, its Affiliates, and its and their directors, officers, employees, agents, and representatives against and from any and all actions, suits, losses, costs, damages, injuries, liabilities, claims, demands, penalties and interest, including reasonable costs and attorneys' fees ("Claims") resulting from, or arising out of or in any way connected with (i) any event, circumstance, act, or incident relating to the Product delivered by Seller under this Agreement up to the Energy Delivery Point or Charging Energy received by Seller under this Agreement after the Energy Delivery Point, (ii) Seller's development, permitting, construction, ownership, operation and/or maintenance of the Project, (iii) the failure by Seller or the failure of the Project to comply with Applicable Laws, including without limitation the Tariff, (iv) a breach of its covenants, representations, or warranties under this Agreement, (v) any Governmental Charges for which Seller is responsible hereunder, or (vi) any liens, security interests, encumbrances, or other adverse claims against the Product delivered hereunder made by, under, or through Seller, in all cases including, without limitation, any Claim for or on account of injury, bodily or otherwise, to or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such Claim to the extent caused by the willful misconduct or gross negligence of Buyer, its Affiliates, and its and their directors, officers, employees, agents, and representatives.

(b) Indemnity by Buyer. Buyer shall release, indemnify, defend, and hold harmless Seller, its Affiliates, and its and their directors, officers, employees, agents, and representatives against and from any and all Claims resulting from, or arising out of or in any way connected with (i) any event, circumstance, act, or incident relating to the Product received by Buyer under this Agreement after the Energy Delivery Point or Charging Energy delivered by Buyer under this Agreement up to the Energy Delivery Point, (ii) the failure by Buyer to comply with Applicable Laws, including without limitation the Tariff, (iii) a breach of its covenants, representations or warranties under this Agreement, or (iv) any Governmental Charges for which Buyer is responsible hereunder, in all cases including, without limitation, any Claim for or on account of injury, bodily or otherwise, to or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such Claim to the extent caused by the willful misconduct or gross negligence of Seller, its Affiliates, and its and their directors, officers, employees, agents, and representatives.

23.2 Insurance. The provisions of this Article 23 shall not be construed to relieve any insurer of its obligations to pay any insurance claims in accordance with the provisions of any valid insurance policy.

23.3 Survival. All indemnity rights shall survive the termination of this Agreement.

ARTICLE 24.

CONFIDENTIALITY/REGULATORY DISCLOSURE

24.1 Confidentiality.

24.1.1 General. Neither Party shall disclose the non-public terms or conditions of this Agreement or any transaction hereunder to a third party, other than (i) the Party's Affiliates and its and their officers, directors, employees, lenders, counsel, accountants or advisors who have

a need to know such information and have agreed to keep such terms confidential, (ii) for disclosure to the Buyer's Procurement Review Group, as defined in CPUC Decision (D) 02-08-071, subject to a confidentiality agreement, (iii) to the CPUC under seal for purposes of review, (iv) disclosure of terms specified in and pursuant to Section 24.1.2 of this Agreement; (v) in order to comply with any Applicable Law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in clause (vii); (vi) to a Qualified Assignee subject to an appropriate non-disclosure agreement; or (vii) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the Federal Energy Regulatory Commission. In connection with requests made pursuant to clause (v) of this Section 24.1.1 ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts to prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be (i) prohibited from complying with a Disclosure Order or (ii) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

24.1.2 Specific Terms. Notwithstanding Section 24.1.1 of this Agreement, at any time on or after the date on which the Buyer makes its filing seeking CPUC Approval of this Agreement, either Party shall be permitted to disclose the following terms with respect to this Agreement: Party names, resource type, Delivery Period, Project location, Contract Capacity, Guaranteed Initial Delivery Date and Energy Delivery Point.

24.1.3 Publicity. Except as otherwise agreed to in this Section 24.1 above, no announcement, publicity, advertising, press release, promotional or marketing materials regarding the arrangement contemplated under this Agreement, including the existence hereof, shall be made by either Party without the prior written approval of the other Party which approval shall not be unreasonably withheld or delayed.

24.2 Ownership of Information. All Confidential Information shall be and remain the property of the Party providing it. Nothing in this Agreement shall be construed as granting any rights in or to Confidential Information to the Party or Representatives receiving it, except the right of use in accordance with the terms of this Agreement.

24.3 Enforcement. The Parties agree that irreparable damage would occur if the confidentiality obligations under this Agreement were not performed in accordance with its terms or were otherwise breached. Accordingly, a Party will be entitled to seek an injunction or injunctions to prevent breaches of this Article 24 and to enforce specifically its provisions in any court of competent jurisdiction, in addition to any other remedy to which the Party may be entitled by law or equity.

ARTICLE 25. MISCELLANEOUS

25.1 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. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. All references to time shall be in PPT unless stated otherwise. The headings used herein are for convenience and reference purposes only. This Agreement shall be binding on each Party’s successors and permitted assigns. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect its obligations under the Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.

25.2 Notices. Unless otherwise provided in this Agreement, any Notice shall be in writing to the address provided below and delivered by hand delivery, United States mail, overnight courier service, facsimile, or electronic messaging (e-mail). Notice by facsimile, electronic messaging (e-mail), or hand delivery shall be effective at the close of business on the day received, if the entire document was received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day after it was sent for “next-day delivery” or its equivalent by a nationally-recognized overnight courier or personally delivered. Notice by overnight courier service shall be effective on the next Business Day after it was sent. Notice by United States mail shall be effective on the day it was received. A Party may change its address by providing Notice of same to the other Party in accordance with this Section 25.2.

To Buyer:
San Diego Gas & Electric Company
8315 Century Park Court, CP21D
San Diego, California 92123
Attention: Director of Procurement and Portfolio Design
Telephone: 858-650-6156
Facsimile: 858-650-6191

To Seller:

Attention: _____
Telephone: _____
Facsimile: _____

25.3 Governing Law; Venue. This Agreement shall be construed under the laws of the State of California without giving effect to choice of law provisions that might apply the laws of a different jurisdiction. The Parties hereby consent to conduct all dispute resolution, judicial actions or proceedings arising directly, indirectly or otherwise in conjunction with, out of, related to or arising from this Agreement in the City of San Diego, California.

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

25.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld. For purposes hereof, the transfer of at least fifty percent (50%) of the equity ownership or voting interest of Seller (or any parent entity holding directly or indirectly at least fifty percent (50%) of the equity ownership or voting interest of Seller if such interest constitutes more than twenty percent (20%) of the value of such parent entity) to a person that is not an Affiliate of Seller shall also constitute an assignment of this Agreement requiring Buyer's prior written consent. . Notwithstanding the foregoing, Buyer may, without the consent of the Seller (and therefor relieving itself from liability hereunder), assign this Agreement to a Qualified Assignee. Qualified Assignee shall mean: any community choice aggregation entity or joint powers authority formed in the State of California or any legal entity that is established by statute or by the CPUC to serve load as a central procurement entity. Any assignment in violation of this Section 25.5 shall be null and void.

25.7 Further Assurances. If either Party determines in its reasonable discretion that any further instruments, assurances or other things are necessary or desirable to carry out the terms of this Agreement, the other Party shall execute and deliver all such instruments and assurances and do all things reasonably necessary or desirable to carry out the terms of this Agreement.

25.8 Waiver. None of the provisions of this Agreement shall be considered waived by either Party unless the Party against whom such waiver is claimed gives the waiver in writing. The failure of either Party to insist in any one instance upon strict performance of any the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishments of such rights for the future, but the same shall continue and remain in full force and effect. Waiver by either Party of any default of the other Party shall not be deemed a waiver of any other default.

25.9 Obligations Surviving Termination. Except as may be provided or limited by this Agreement, the obligations which by their nature are intended to survive termination of this Agreement, including, without limitation, representations, warranties, covenants and rights and obligations with respect to audits, indemnification, payment and settlement, confidentiality, shall so survive.

25.10 No Third Party Beneficiaries. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound by this Agreement).

25.11 Entire Agreement. Except for the Security Documents, the electric retail service agreement (if any) and electrical interconnection agreements between the Parties, [insert any others] this Agreement, when fully executed, constitutes the entire agreement by and between the Parties as to the subject matter hereof, and supersedes all prior understandings, agreements or representations by or between the Parties, written or oral to the extent they have related in any way to the subject matter hereof. Each Party represents that, in entering into this Agreement, it has not relied upon any promise, inducement, representation, warranty, agreement or other statement that is not set forth in this Agreement.

25.12 Severability. If any term, section, provision or other part of this Agreement, or the application of any term, section, provision or other part of this Agreement, is held to be invalid, illegal or void by a court or regulatory agency of proper jurisdiction, all other terms, sections, provisions or other parts of this Agreement shall not be affected thereby but shall remain in force and effect unless a court or regulatory agency holds that the provisions are not separable from all other provisions of this Agreement. In the event any such provision of this Agreement is so held invalid, illegal or void, the Parties shall promptly renegotiate in good faith new provisions to restore this Agreement as near as possible to its original intent and effect.

25.13 Forward Contract. The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code.

25.14 Mobile Sierra. Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party in seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior 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” application of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 US 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 US 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. dist., No. 1 of Snohomish* 554 US 527 (2008).

25.15 Independent Contractors. The Parties are independent contractors. Nothing contained herein shall be deemed to create an association, joint venture, partnership or principal/agent relationship between the Parties hereto or to impose any partnership obligation or liability on either Party. Neither Party shall have any right, power or authority to enter into any agreement or commitment, act on behalf of, or otherwise bind the other Party in any way.

25.16 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any of the signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

25.17 Interpretation. The term “month” shall mean a calendar month unless otherwise indicated, and a “day” shall be a 24-hour period beginning at 12:00:01 a.m. Pacific Prevailing Time and ending at 12:00:00 midnight Pacific Prevailing Time; provided that a “day” may be 23 or 25 hours on those days on which daylight savings time begins and ends. 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. Capitalized terms used in this Agreement, including the appendices hereto, shall have the meaning set forth in Appendix A, unless otherwise specified. Unless otherwise specified herein, references in the singular shall 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 shall

include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal personality). Other grammatical forms of defined words or phrases have corresponding meanings. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. References to a particular article, section, subsection, paragraph, subparagraph, appendix or attachment shall, unless specified otherwise, be a reference to that article, section, subsection, paragraph, subparagraph, appendix or attachment in or to this Agreement. Any reference in this Agreement to any natural person, Governmental Authority, corporation, partnership or other legal entity includes its permitted successors and assigns or to any natural person, Governmental Authority, corporation, partnership or other legal entity succeeding to its functions. All references to dollars are to U.S. dollars.

(Signature page follows)

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

[INSERT SELLER NAME]

By: _____

Name: _____

Title: _____

SAN DIEGO GAS & ELECTRIC COMPANY

By: _____

Name: _____

Title: _____

APPENDIX A DEFINITIONS

“AAA” means the American Arbitration Association.

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

“ADS” means CAISO’s Automatic Dispatching System.

“Affiliate” means, with respect to a Party, any entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such Party. For this purpose, “control” means the direct or indirect ownership of fifty percent (50 percent) or more of the outstanding capital stock or other equity interests having ordinary voting power.

“Agreement” means this Energy Storage Power Purchase Agreement between Buyer and Seller, and any and all amendments as may be executed between Buyer and Seller from time to time.

“Ancillary Services” means spinning, non-spinning, regulation up, regulation down, black start, voltage support, and any other ancillary services that the Project is capable of providing from time to time during the Delivery Period, consistent with the Operating Restrictions set forth in Appendix 1.1, as each is defined in the Tariff. **[NOTE to Bidders: please tailor to reflect ancillary services bid.]**

“Ancillary Services Capacity” or “A/S Capacity” means Capacity associated with Ancillary Services available to Buyer within the scope of operations allowed Buyer under Section 1.1.3 of this Agreement.

“Applicable Laws” means all applicable statutes, laws, court decisions, ordinances, rules, order, writ, subpoena or regulations of any Governmental Authority, or the rules or regulations of any exchange or control grid operator.

“Arbitration” has the meaning set forth in Section 22.3.

“Associated Ancillary Services Energy” means the Energy expressed in megawatt-hours (“MWh”) expressly associated with the Ancillary Services Capacity made available from the Energy Storage System at the instruction of the CAISO.

“Associated Energy” means the Energy expressed in megawatt-hours (“MWh”) or kilowatt-hours (“KWh”), expressly associated with Capacity dispatched under this Agreement.

“Availability Incentive Payments” shall mean Availability Incentive Payments as defined in the Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the Tariff.

“Availability Notice” means an hourly schedule of the amounts of Available Capacity that the Energy Storage System is expected to be available during each hour of the day to which the Availability Notice pertains, pursuant to Section 15.1.

“Availability Standards” shall mean Availability Standards as defined in the Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the Tariff.

“Available Capacity” means the amount of Charging Capacity and Discharging Capacity that is available to Buyer under this Agreement from the Project on average during an hour.

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

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

“Buyer Cost Test” has the meaning set forth in Section 7.1.

“CAISO” means the California Independent System Operator, a state chartered, nonprofit, public benefit corporation that controls certain transmission facilities of all Participating Transmission Owners and dispatches certain electric generation units and loads, or any successor entity performing the same functions.

“CAISO Charges Invoice” has the meaning set forth in Section 14.4.

“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.

“California Energy Commission” or “CEC” means the State Energy Resources Conservation and Development Commission as defined and used in Section 25104 in the California Public Resources Code, Division 15, Energy Conservation and Development (Sections 25000, et seq).

“Capacity” means both the Charging Capacity and the Discharging Capacity of the Project.

“Charging Capacity” means the maximum dependable operating capability of the Project, measured in MW_{AC}, to charge electric energy into a partially or fully discharged storage device from the CAISO Grid.

“Charging Energy” means, in respect of the Energy Storage System, for a given period of time, the amount of Energy (in kWh_{AC}) used to charge (or recharge) the Energy Storage System from the CAISO Grid during the period at the Energy Delivery Point as measured by the Energy Metering Equipment.

“Charging Energy Capacity” means the maximum amount of energy, in MWh_{DC}, that the Energy Storage System is capable of being charged.

“Claiming Party” means the Party claiming a Force Majeure under Article 18.

“Claims” has the meaning set forth in Section 23.1.

“Collateral Assignment Agreement” has the meaning set forth in Section 12.1.

“Commercial Operation” means that (a) the construction and installation of the Project has been completed in accordance with the Agreement and is ready for commercial operation in compliance with all Applicable Laws, Required Permits, and Accepted Electrical Practices, and (b) the Project shall have successfully passed all Commercial Operation Tests at a level that demonstrates Contract Capacity of at least the Expected Contract Capacity and a Tested Round-Trip Efficiency Rate of at least the Guaranteed Round-Trip Efficiency Rate, and complete test reports have been submitted to Buyer, as set forth in a written Notice from Seller to Buyer specifying the date on which the requirements described in clauses (a) and (b) were satisfied, as confirmed in each case by Buyer and/or Buyer’s engineer; provided, however, that such confirmation must be made within twenty-one (21) days after receipt of complete test reports from Seller required pursuant to clause (b) and, if not made within such twenty-one (21) day period shall be deemed to have been given unless Buyer or Buyer’s engineer shall have provided the reasons for why such requirements have not been satisfied within such twenty-one (21) day period; provided, further, that upon such confirmation, Commercial Operation shall be deemed to have been achieved as of the date set forth in such Notice from Seller to Buyer that the requirements described in clauses (a) and (b) were satisfied.

“Commercial Operation Test” has the meaning set forth in Section 7.2.

“Conditions Precedent” has the meaning set forth in Section 2.4.

“Confidential Information” means any and all non-public proprietary written information, data, analyses, documents, and materials furnished or made available by a Party or its Representatives to the other Party or its Representatives in connection with this Agreement, and any and all analyses, compilations, studies, documents, or other material prepared by the receiving Party or its Representatives to the extent containing or based upon such information, data, analyses, documents, and materials, but does not include information, data, analyses, documents, or materials that (i) are when furnished or thereafter become available to the public other than as a result of a disclosure by the receiving Party or its Representatives in violation of this Agreement, or (ii) are already in the possession of or become available to the receiving Party or its

Representatives on a nonconfidential basis from a source other than the disclosing Party or its Representatives, provided that, to the best knowledge of the receiving Party or its Representatives, as the case may be, such source is not and was not bound by an obligation of confidentiality to the disclosing Party or its Representatives, or (iii) the receiving Party or its Representatives can demonstrate has been independently developed without a violation of this Agreement.

“Construction Period Security” has the meaning set forth in Section 11.2.2.

1.1.1. “Contract Capacity” means the Capacity of the Project determined pursuant to Section

“Contract Capacity Tests” has the meaning as set forth in Section 7.3 and further described in Appendix 7.

“Contract Conditions” means the following ambient (outdoor) temperature ranges: (a) for operation of the Energy Storage System, between [REDACTED]°C and [REDACTED]°C during charging, and between [REDACTED]°C and [REDACTED]°C during a discharging, and (b) during the storage of Energy, between [REDACTED]°C and [REDACTED]°C..

“Contract Year” means the months within each calendar year during the Delivery Period. The initial Contract Year would be from the Initial Delivery Date until December 31st of such year. Contract Year #2 would be from January 1st through December 31st of the calendar year immediately following the initial Contract Year. The final Contract Year will be January 1st through the last day of the Delivery Period.

“Costs” means with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by the Non-Defaulting Party either in terminating any arrangement pursuant to which it has hedged its obligations under the Agreement or entering into new arrangements which replace the Product, including any costs or penalties imposed upon the Non-Defaulting Party for the loss of Resource Adequacy Benefits or for replacing those Resource Adequacy Benefits.

“CP Satisfaction Date” means the date on which all of the Conditions Precedent have been satisfied (or waived in writing by the applicable Party(ies) described in Section 2.5.1).

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

“CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which approves this Agreement in its entirety, including payments to be made by the Buyer and all other relief as may be requested by Buyer in its submittal to the CPUC for approval, subject to CPUC review of the Buyer’s administration of the Agreement.

“Credit Rating” means, with respect to any entity, on the relevant date of determination, the respective ratings then assigned to such entity’s unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P or Moody’s. If a party has outstanding multiple debt or deposit obligations meeting such criteria and differing ratings have been assigned by a single rating agency to such multiple obligations, the lowest of such ratings

shall apply. If no rating is assigned to such entity's unsecured, senior long-term debt or deposit obligations by either S&P or Moody's, then "Credit Rating" shall mean the general corporate credit rating or long-term issuer rating assigned by S&P or Moody's, as the case may be.

"Cure Period" has the meaning set forth in Section 2.10.1.

"Daily Delay Damages" means liquidated damages paid by Seller to Buyer in the amount of \$[XX,XXX] per day for each day of delay. **[NOTE to Bidders: this is the total Construction Period Security divided by the number of days in the Cure Period]**

"Day-Ahead" has the meaning set forth in the Tariff.

"Day-Ahead Market" has the meaning set forth in the Tariff.

"Day-Ahead Schedule" has the meaning set forth in the Tariff.

"Default Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the bank prime lending rate as may from time to time be published by the Federal Reserve in their H.15 Statistical Release, Selected Interest Rates (daily) or any successor publication as published by the Board of Governors of the Federal Reserve System, on such date (or if not published on such day on the most recent preceding day on which published), plus two percent (2 percent), and (b) the maximum rate permitted by Applicable Law. The Federal Reserve H.15 Statistical Release, Selected Interest Rates (daily) may be found at the following address: www.federalreserve.gov/releases/H15/update.

"Defaulting Party" has the meaning set forth in Section 3.1.

"Delivered Energy" means, in respect of the Project, for a given period of time, the amount of Energy delivered by the Project for Buyer's account during the period at the Energy Delivery Point for the Project as measured by the Energy Metering Equipment, expressed in kWh_{AC}.

"Delivery Excuse" means (i) any Event of Default of Buyer under this Agreement; (ii) the delay or failure by Buyer in performing a material obligation under this Agreement; (iii) the delay or failure of Buyer to deliver Charging Energy or to accept Product as required under this Agreement for whatever reason which failure does not arise in each case as a result of Seller's non-performance under this Agreement; (iv) the delay or failure by the Participating Transmission Owner in performing a material obligation under any interconnection agreement to which it is a party with Seller, provided Seller assigns to Buyer any claim it may have against the Participating Transmission Owner related to such delay or failure; (v) the delay or failure by the electricity retail service provider in performing a material obligation under any interconnection agreement to which it is a party with Seller, provided Seller assigns to Buyer any claim it may have against the Participating Transmission Owner related to such delay or failure; (vi) any curtailment ordered directly or indirectly from the CAISO (but not including any reduction of deliverable capacity of the Project in accordance with Section 40.4.6.1 or 40.4.2 of the Tariff); and (vii) reductions in Capacity that are consistent with Accepted Electrical Practices that are the result of ambient conditions differing from Contract Conditions.

"Delivery Period" has the meaning set forth in Section 2.8.

“Delivery Period Security” has the meaning set forth in Section 11.2.3.

“Discharging Capacity” means the maximum dependable operating capability of the Project, measured in MW_{AC} , to discharge energy from a partially or fully-charged storage device to the CAISO Grid.

“Discharging Energy Capacity” means the maximum amount of energy, in MWh_{DC} , that is capable of being discharged from the Energy Storage System (assuming the Energy Storage System is Fully Charged).

“Dispatch Notice” means the operating instruction, and any subsequent updates (an “Updated Dispatch Notice”), given by Buyer to Seller, directing the Project to either receive Charging Energy or deliver Delivered Energy at a specified megawatt output at the Energy Delivery Point, in accordance with the procedures set forth in Section 15.3.

“Early Termination Date” has the meaning set forth in Section 3.3.

“Effective Date” is as set forth in the introductory paragraph of this Agreement.

“Efficiency Rate Test” has the meaning as set forth in Section 7.4 and further described in Appendix 7.

“Electric Retail Delivery Point” has the meaning set forth in Section 1.3.2.

“Energy” means all electrical energy used to charge the Energy Storage System, that is stored in the Energy Storage System, or that is delivered by the Energy Storage System, measured in kilowatt-hours or multiple units thereof. Energy shall include without limitation, Unit Contingent Energy, Associated Energy, Associated Ancillary Services Energy, Supplemental Energy, reactive power, and any other electrical energy products that may be developed or evolve from time to time during the Term.

“Energy Delivery Point” means the point specified in Section 1.3.1.

“Energy Metering Equipment” means, for the Energy Storage System, the meters and measuring equipment recognized by the CAISO at the Energy Delivery Point for such Energy Storage System, and which measures the Charging Energy received at, and the Delivered Energy delivered to, the Energy Delivery Point.

“Energy Storage System” means the energy storage system and related electrical, control and monitoring facilities specified in Recital B and more specifically described Section 1.2.2 and Appendix 1.2.2.

“Environmental Costs” means costs incurred in connection with the acquiring and maintaining all environmental permits and licenses for the Project, and the Project’s compliance with all applicable environmental laws, rules and regulations, , including without limitation capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the 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 costs

associated with the disposal and clean-up of hazardous substances introduced to the site where the Project is located, and the decontamination or remediation, on or off the site, necessitated by the introduction of such hazardous substances on the site.

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

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

“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.

“Equivalent Availability Factor” has the meaning set forth in Appendix 9.2.

“Executive(s)” has the meaning set forth in Section 22.2.1.

“Expected Contract Capacity” means the expected Capacity of the Project, as measured in megawatts (MW_{AC}) at the location of the Energy Delivery Point, as shown in Appendix 1.1.1.

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

“Force Majeure” means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under this Agreement but only to the extent (1) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (2) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party’s ability to perform its obligations under this Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (3) such event is not the direct or indirect result of the fault or negligence of the Party seeking to have its performance obligations excused thereby.

(a) Subject to the foregoing, events that could qualify as Force Majeure include, but are not limited to the following:

(i) acts of God, flooding, lightning, landslide, earthquake, fire, drought, explosion, epidemic, quarantine, storm, hurricane, tornado, volcano, other natural disaster or unusual or extreme adverse weather-related events;

(ii) war (declared or undeclared), riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockade, insurrection, revolution, expropriation or confiscation; or

(iii) except as set forth in subpart (b)(vi) below, strikes, work stoppage or other labor disputes (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable).

(b) Force Majeure shall not be based on:

(i) Buyer's inability economically to use or resell the Product purchased hereunder;

(ii) Seller's ability to sell the Product at a price greater than the price set forth in this Agreement;

(iii) Seller's inability to obtain governmental approvals or other approvals of any type for the construction, operation, or maintenance of the Project;

(iv) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Project, except to the extent Seller's inability to obtain sufficient labor, equipment, materials, or other resources is caused by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iii) above;

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

(vi) a strike, work stoppage or labor dispute that is directed specifically at Seller, Seller's Affiliates, or the Project; or

(vii) any equipment failure except to the extent such equipment failure is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iii) above.

"Forced Outage" has the meaning set forth in the Tariff.

"Fully Charged" means the state at which the Stored Energy of the Energy Storage System is equal to the Charging Energy Capacity.

"GAAP" has the meaning set forth in Section 21.2.

"Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to such Party, if any (exclusive of Costs), resulting from the termination and liquidation of the Agreement, determined in a commercially reasonable manner.

"Generation Management System" or "GMS" means the automated system employed by Buyer's real-time operations to remotely monitor and dispatch the Energy Storage System.

"Generation Operations Center" or "GOC" means the location of Buyer's real time operations personnel.

"Governmental Authority" means any federal, state, local, municipal, or other governmental, executive, administrative, judicial or regulatory entity, and the CAISO or any other transmission authority, having or asserting jurisdiction over a Party, the Project or this Agreement.

“Governmental Charges” has the meaning set forth in Section 13.1.

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

“Guaranteed Initial Delivery Date” is the date set forth in Section 2.7 for the Project.

“Guaranteed Round-Trip Efficiency Rate” means the guaranteed Round-Trip Efficiency Rate for the Project as set forth in Appendix 1.1.1.

“Guarantor” the entity identified as provided in Section 11.3.3.

“Guaranty Agreement” means, if a Guarantor has been identified as provided in Section 11.3.3, the guaranty agreement from the Guarantor in a form reasonably acceptable to Buyer.

“Hour-Ahead” has the meaning set forth in the Tariff.

“Hour-Ahead Schedule” has the meaning set forth in the Tariff.

“Industry Standards” has the meaning set forth in Section 8.1.1.

“Initial Negotiation End Date” has the meaning set forth in Section 25.2.1.

“Initial Delivery Date” has the meaning set forth in Section 2.8.

“Interconnection Facilities” means all apparatus installed to interconnect the Project to the Participating Transmission Owner’s or other utility owned or managed electric system or to the CAISO Grid to make available to Buyer the Contract Capacity, Associated Energy, and Resource Adequacy Benefits, including, without limitation, connection, transformation, switching, metering, communications, control, and safety equipment, such as equipment required to protect (a) the Participating Transmission Owner’s electric system (or other system to which the Participating Transmission Owner’s electric system is connection, including the CAISO Grid) and Buyer’s customers from faults occurring at the Project, and (b) the Project from faults occurring on the Participating Transmission Owner’s electric system or on the systems of others to which the Participating Transmission Owner’s electric system is directly or indirectly connected. Interconnection Facilities also include any necessary additions and reinforcements to the Participating Transmission Owner’s electric system or CAISO Grid required as a result of the interconnection of the Project to the Buyer electric system, the CAISO Grid or electric systems of others to which the Buyer electric system is directly or indirectly connected.

“Interest Rate” means for any date the rate per annum equal to the Commercial Paper (prime, 3 months) rate as published the prior month in the Federal Reserve Statistical Release, H.15. Should publication of the interest rate on Commercial Paper (prime, 3 months) be discontinued, then the interest rate on commercial paper, which most closely approximates the discontinued rate, published the prior month in the Federal Reserve Statistical Release, H.15, or its successor publication.

“Lender” means any bank, financial institution or other entity (or any agent thereof) that provides development, bridge, construction, permanent debt, tax equity or other financing or refinancing for the Project to Seller consistent with Section 19.4.3 (subject to the Subordination Agreement and the Collateral Assignment Agreement).

“Letter of Credit” means an irrevocable standby letter of credit issued by a U.S. commercial bank or a U.S. branch of a foreign bank with such bank having a Credit Rating of at least “A-” from S&P and “A3” from Moody’s, substantially in the form of Appendix 11.3 and reasonably acceptable to Buyer.

“Losses” means with respect to either Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination and liquidation of the Agreement, determined in a commercially reasonable manner.

“Manager” has the meaning set forth in Section 22.2.1.

“Maximum Annual Delivered Energy Amount” has the meaning set forth in Appendix 1.1.

“Maximum Energy Capacity” means, any given time, the lesser of the Energy Storage System’s Charging Energy Capacity or Discharging Energy Capacity.

“Maximum Force Majeure Delay” has the meaning set forth in Section 2.10.2.

“Maximum RA Capacity” means the maximum amount of Resource Adequacy capacity available from the Project operating within its Operating Restrictions and specifications as set forth in Appendix 1.1 and Appendix 1.2.2. **[As of the Effective Date, such Maximum RA Capacity is the maximum capacity that the Project can achieve in a four (4)-hour period based on its Contract Capacity.]** If the CAISO changes its methodology for determining the maximum amount of capacity available from a storage resource to provide a Resource Adequacy capacity, a new Maximum RA Capacity shall be determined for the Project based on the new CAISO methodology and the Operating Restrictions and such specifications of the Project.

“Meter Service Agreement” or “MSA” has the meaning set forth in the Tariff.

“Milestone Schedule” means the schedule in the form of Appendix 6.1(a), setting forth Seller’s development, design, procurement, construction, commissioning and testing milestones, as set forth in Section 6.1.

“Minimum Operating Level” means the minimum operating level of the Energy Storage System.

“Monthly Capacity Payment” has the meaning set forth in Section 9.2.

“Monthly Progress Report” means a monthly progress report, sent by Seller to Buyer no later than the tenth day of each month while the Project has not yet met its Initial Delivery Date, and within five (5) days of Buyer’s request, substantially in the form set forth in Appendix 6.1(b) and describing Seller’s compliance with the Milestone Schedule, including projected time to complete any milestones, for the Project, as set forth in Section 6.1.

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

“MW” means mega-watt or mega-watts.

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

“NERC Holidays” means “Additional Off-peak Days” as defined by NERC on the NERC website at <http://www.nerc.com>.

“Non-Availability Charges” shall mean Non-Availability Charges as defined in the Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the Tariff.

“Non-Defaulting Party” has the meaning set forth in Section 3.3.

“Notice” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile, or electronic messaging (e-mail) in accordance with this Agreement.

“Operating Restrictions” means limitations on Buyer’s ability to schedule and use Capacity, Ancillary Services, and Energy that are identified in Appendix 1.1 to this Agreement.

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

“Participating Generator Agreement” or “PGA” has the meaning set forth in the Tariff.

“Participating Transmission Owner” means the transmission owner that has released to the CAISO operational control of its transmission facilities to which the Project is interconnected. As of the Effective Date, the Participating Transmission Owner is [San Diego Gas & Electric Company.] **[NOTE to Bidders: to be modified if project is not connected directly to SDG&E’s service territory.]**

“Performance Assurance” means collateral in the form of cash, Letter of Credit, Guaranty Agreement or other security acceptable to Buyer in its sole discretion required to be provided to Buyer under Section 11.2.

“Permit Requirements” means any requirement or limitation imposed as a condition of a permit or other authorization relating to construction or operation of the Project or related facilities (including but not limited to, limitations on any pollutant emissions levels, limitations on operational levels or operational time, and limitations on any specified operating constraint) or any other operational restriction or specification related to compliance with any laws or regulations applicable to the Project.

“Permitted Liens” means liens and encumbrances (a) imposed by the Priority Security Interest and the Subordinated Security Interest (including pursuant to any Security Document) or (b) imposed by any Lender.

“Person” means any individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

“PMAX” means the applicable CAISO-certified maximum operating level (in MW) of the Energy Storage System.

“PMIN” means the applicable CAISO-certified minimum operating level (in MW) of the Energy Storage System.

“Pnode” means the Pricing Node as set forth in the CAISO Tariff.

“Pre-Construction Security” has the meaning set forth in Section 11.2.1.

“Priority Security Interest” has the meaning set forth in Section 11.4.

“Product” means the Capacity, Energy, Ancillary Services, and Resource Adequacy Benefits of the Project and all other ancillary products, services or attributes similar to the foregoing which are or can be produced by or associated with the Project in accordance with the terms hereof.

“Project” has the meaning set forth in the Recitals.

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

“Qualified Assignee” has the meaning set forth in Section 25.5.

“Qualified Flexible RA Capacity” means, with respect to any month of the Delivery Period, the number of MWs of Contract Capacity that are eligible, certified (if required), and counted to satisfy flexible capacity requirements established for load-serving entities or other persons by the CPUC, the CAISO, or by any other Governmental Authority having jurisdiction.

“Qualified RA Capacity” means, with respect to any month of the Delivery Period, the number of MWs of Contract Capacity that are eligible, certified (if required), and counted to satisfy Resource Adequacy capacity requirements established for load-serving entities or other persons by the CPUC, the CAISO, or by any other Governmental Authority having jurisdiction.

“Ramp Rate” means the ability of the Project to change between power output levels, expressed in MW_{AC}/min.

“Reference Market-Maker” means a leading dealer in the relevant market that is not an Affiliate of either Party and that is selected by a Party in good faith among dealers of the highest credit standing which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit. Such dealer may be represented by a broker.

“Referral Date” has the meaning set forth in Section 22.2.1.

“Reliability Must-Run Contract” or “RMR Contract” means a Must-Run Service Agreement between the owner of an RMR Unit (or the output therefrom) and the CAISO.

“Representatives” means the officers, directors, members, employees, legal counsel, accountants, lenders, advisors, or ratings agencies and other agents or representatives of a Party or of its Affiliates and in the case of Buyer, includes any Independent Evaluator (as such term is used in CPUC Decision 04-12-048) used by Buyer in connection with the Request for Offers from which this Agreement arose.

“Required Permits” has the meaning set forth in Section 5.1(b).

“Resource Adequacy Benefits” means the rights and privileges attached to any generating resource that satisfy any entity’s resource adequacy obligations (including without limitation those related to flexible resource adequacy), as those obligations are set forth in any Resource Adequacy Rulings.

“Resource Adequacy Rulings” means CPUC Decisions D.04-10-035, D.05-10-042 and D.06-06-0064 and CPUC Resource Adequacy Rulemakings (R.)04-04-003 and (R.)05-12-013 and any subsequent CPUC ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority (including without limitation those related to flexible resource adequacy), as such Decisions, rulings, laws, rules or regulations may be amended or modified from time to time during the Term.

“Retail Electricity Provider” means the provider of retail electricity to the Project at the Electric Retail Delivery Point. On the Effective Date, the Retail Electricity Provider is [San Diego Gas & Electric Company]. **[NOTE to Bidders: to be modified if project receives retail electricity from another provider.]**

“Round-Trip Efficiency Rate” means the efficiency of the Project in recovering Charging Energy from the Energy Storage System, as measured at the Energy Delivery Point (i.e. AC-to-AC efficiency), and expressed as a percentage, rounded to two decimal places (e.g. 85.45%).

“Round-Trip Efficiency Rate Factor” has the meaning set forth in Appendix 9.2.

“S&P” means Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

“Scheduled Energy” means the Energy from the CAISO Grid expected to be delivered to the Energy Delivery Point for charging the Energy Storage System, or Energy discharged from the Energy Storage System expected to be delivered to the Energy Delivery Point, in each case pursuant to (a) the latest Dispatch Notice, or (b) any CAISO instructions, including without limitation pursuant to (i) Supplemental Energy bids, (ii) a Reliability Must-Run Contract (as defined in the Tariff) between the CAISO and the Seller, (iii) any Waiver Denial Periods, or (iv) Ancillary Services exercised.

“Scheduled Outage” means a period during which the Energy Storage System is either in whole or in part not capable of charging, storing Energy or discharging Energy due to planned maintenance or repair that has been scheduled in advance in accordance with Section 17.1.

“Scheduling Coordinator” or “SC” means an entity certified by the CAISO for the purposes of undertaking the functions specified in Article 14.

“SEC” means the Securities and Exchange Commission.

“Security Documents” means those agreements, documents, instruments, or certifications in a form reasonably acceptable to Buyer that grant and perfect Buyer’s Priority Security Interest and/or Subordinated Security Interest.

“Seller’s Debt” means, without duplication, each of the following: (i) all indebtedness of Seller for borrowed money; (ii) all obligations of Seller for the deferred purchase price of property or service, which purchase price is due more than six (6) months after the date of placing such property in service or taking delivery or title thereto or the completion of such services (other than trade payables not overdue by more than ninety (90) days incurred in the ordinary course of Seller’s business); (iii) all obligations of Seller evidenced by notes, bonds, debentures, disqualified stock or other similar instruments; (iv) all obligations of Seller created or arising under any conditional sale or other title retention agreement with respect to property acquired by Seller (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property); (v) all monetary obligations of Seller under (a) a lease of any property (whether real, personal, or mixed) by Seller as lessee that, in conformity with GAAP, is accounted for as a capital lease on the balance sheet of Seller, (b) a so-called synthetic, off-balance sheet or tax retention lease, or (c) an agreement for the use or possession of property creating obligations which do not appear on the balance sheet of Seller but which, upon the insolvency or bankruptcy of Seller, would be characterized as indebtedness of Seller (without regard to accounting treatment); (vi) all obligations, contingent or otherwise, of Seller under acceptance, letter of guaranty, letter of credit or similar facilities; (vii) all obligations of Seller with respect to any redeemable equity interests in Seller, including in the case of preferred stock, at the greater of the voluntary or involuntary liquidation preference plus accrued and unpaid dividends; (viii) all Swap Obligations of Seller; (ix) all indebtedness of others referred to in clauses (i) through (viii) above guaranteed by Seller, or in effect guaranteed by Seller through an agreement (a) to pay or purchase such indebtedness or to advance or supply funds for the payment or purchase of such indebtedness, (b) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such indebtedness or to assure the holder of such indebtedness against loss; (c) to supply funds to or invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered), or (d) otherwise to assure a creditor against loss; and (x) without duplication of the foregoing, all indebtedness referred to in clauses (i) through (ix) above secured by any lien on property (including amounts and contract rights) owned by Seller. The outstanding amount of indebtedness as described above at any date shall be the outstanding balance at such date of all unconditional obligations as described above and, with respect to contingent obligations as described above, the maximum liability upon the occurrence of the contingency giving rise to the obligation. Notwithstanding the foregoing, the term “Seller’s Debt” as used herein shall not include Seller’s obligations under this Agreement or the lease of the Site (provided, such Site lease does not constitute an obligation of Seller described in clause (v) of the first sentence of this definition).

“Seller Cost Test” has the meaning set forth in Section 7.1.

“Seller Initiated Test” has the meaning set forth in Section 7.5.

“Settlement Amount” means, with respect to the Non-Defaulting Party, the amount of Losses and Costs, net of Gains, expressed in U.S. Dollars, incurred by the Non-Defaulting Party as a result of the liquidation of the Agreement pursuant to Section 3.4.

“Site Control” means that Seller owns the Site and the Project or has demonstrable contractual rights to, or is the managing general partner of any partnership (or comparable manager of any other person) who owns or has demonstrable contractual rights to, with explicit authority to act in all matters relating to, the control and operation of, the Site and the Project in order to perform its obligations under this Agreement.

“State of Energy” means the amount of Stored Energy in the Energy Storage System in real time, expressed as a percent of Maximum Energy Capacity (e.g., 95% SOE).

“Station Use” means Stored Energy that is used to operate the Project’s auxiliary equipment. The auxiliary equipment includes, but is not limited, to air conditioning or other cooling units, forced and induced draft fans, cooling towers, boiler feed pumps, lubricating oil systems, plant lighting, control systems and sump pumps.

“Stored Energy” means the amount of Energy stored in the Energy Storage System at any given time, in kWh_{DC}, as indicated by Seller’s Stored Energy Measuring Device.

“Stored Energy Measuring Device” means, for the Energy Storage System, the measuring equipment for the Energy Storage System which provides the Stored Energy amount, Maximum Energy Capacity and State of Energy of the Energy Storage System in real-time, as specified in Appendix 1.2.2.

“Subordinated Security Interest” has the meaning set forth in Section 11.5.1.

“Subordination Agreement” has the meaning set forth in Section 11.5.1.

“Supplemental Energy” is the Energy from the Project which has uncommitted capacity following finalization of the Hour-Ahead Schedules and which Energy shall be available to CAISO during the Real Time Market.

“Swap Obligations” means obligations in respect of any swaps, caps or collar agreements or similar arrangements to hedge against fluctuations in interest rates or currency exchange rates or the exchange of nominal interest obligations, either generally or under specific contingencies, in each case, valued at the aggregate net mark-to-market value.

“System Response Time” means the amount of time for the Project to change from an off-line state to the maximum discharge rate for the Project and the amount of time for the Project to change from an off-line state to discharging at the maximum discharge rate.

“Tariff” means the tariff and protocol provisions, as amended or supplemented from time to time, of the CAISO.

“Term” has the meaning set forth in Section 2.1.

“Termination Payment” has the meaning set forth in Section 3.4.

“Tested Round-Trip Efficiency Rate” means the Round-Trip Efficiency Rate of the Project determined as of the Initial Delivery Date by the Commercial Operation Test as set forth in Section 7.2 and Appendix 7 and thereafter pursuant to the Efficiency Rate Tests as set forth in Section 7.4 and Appendix 7.

“Transmission Owners Tariff” means the tariff setting out a Participating Transmission Owner’s rates and charges for transmission access to the CAISO Grid, filed with the CPUC, as it may be amended or superseded and accepted by the CPUC from time to time, or any successor tariff.

“Uninstructed Deviation Penalty” has the meaning set forth in the Tariff.

“Uninstructed Imbalance Energy” has the meaning set forth in the Tariff.

“Unit Contingent Energy” means Energy delivered by the Energy Storage System that is dependent upon the availability and operation of that Energy Storage System.

“Unscheduled Outage” means a period during which the Energy Storage System is not capable of providing service due to the need to maintain or repair a component thereof, which period has not been scheduled in advance in accordance with Section 20.1.

“Variable O&M Charge” means a variable operations and maintenance charge calculated in accordance with Appendix 9.3.

“Waiver Denial Periods” has the meaning set forth in the Tariff.

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

APPENDIX 1.1
OPERATING RESTRICTIONS

Maximum Annual Delivered Energy Amount.

Buyer shall not dispatch the Project to discharge in excess of [_____] kWh_{AC} in Delivered Energy per calendar year of the Delivery Period (which amount shall be prorated for partial calendar years) (the “Maximum Annual Delivered Energy Amount”); provided that the Parties acknowledge that CAISO may dispatch the Project even after such Maximum Annual Delivered Energy amount has been reached.

**APPENDIX 1.1.1
CONTRACT CAPACITY**

Expected Contract Capacity: _____ MW_{AC}

Guaranteed Round-Trip Efficiency Rate = _____ .00%

**APPENDIX 1.2.2
PROJECT DESCRIPTION**

Project Physical Address: _____

Project Latitude and Longitude: _____

Project Site: See map below

Technology Type: _____

Description of Energy Storage System: [Description of building block and components, battery management system, e.g.]

Description of Stored Energy Measuring Device: [Description of how the Stored Energy amount will be measured, including which methodology (e.g. voltage or other) used to calculate Stored Energy]

Description of Generation Tie-Lines/Interconnection Facilities: _____

Shared Facilities: _____

Ramp Rate Guarantee: > ____ MW/min

System Response Time Guarantee: < ____ seconds

Map:

APPENDIX 1.3.1
ENERGY DELIVERY POINT

Single-line diagram depicting Energy Delivery Point

APPENDIX 1.3.2
ELECTRIC RETAIL DELIVERY POINT

To be inserted by the Parties pursuant to Section 1.3.2, if applicable.

**APPENDIX 6.1(a)
MILESTONE SCHEDULE**

Milestone	Milestone Date
File application(s) for Required Permit(s)	
Receipt of Required Permit(s)	
Execution of [Large/Small] Generator Interconnection Agreement	
Site readiness for construction (including receipt of all zoning approvals, easements, rights of way, utility access)	
Commencement of Construction Activities	
Synchronization of the Energy Storage System to CAISO Grid	
Submittal of all operational documentation including successful acceptance testing and approved test report	
Completion of system commissioning and pre-operational testing	
Achievement of Initial Delivery Date	

APPENDIX 6.1(b)
MONTHLY PROGRESS REPORT

Monthly Progress Report
of
[INSERT SELLER'S NAME]
provided to
San Diego Gas & Electric Company

[Date]

Instructions.

All capitalized terms used in this report shall have the meanings set forth below and any capitalized terms used in this report which are not defined below shall have the meanings ascribed thereto in the Energy Storage Power Purchase Agreement by and between [insert Seller's name] (Seller) and San Diego Gas & Electric Company (Buyer) dated [_____, 200_] (the "Agreement").

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

(i) Any material matter or issue arising in connection with a Permit Requirement, or compliance therewith, with respect to which there is a dispute over the interpretation of a law or regulation, any organized public opposition to the granting of a necessary Permit Requirement, or any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, in each case which in Seller's reasonable opinion could reasonably be expected to materially threaten or prevent achieving Commercial Operation of the Energy Storage System by the Initial Delivery Date;

(ii) A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller's ability to achieve Commercial Operation of the Energy Storage System by the Initial Delivery Date;

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

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

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

Please provide a brief summary of the Major¹ activities to be performed for each of the following aspects of the Project during the current calendar month:

¹ For Purposes of this Report, "Major" shall mean any activity, event, or occurrence which may have a material adverse impact on the construction of the Project or completion of the Project on a timely basis if such activity, event, or occurrence occurs or if such activity, event, or occurrence fails to occur as anticipated or scheduled, which material adverse impact includes, but is not limited to, Seller's inability to achieve a Milestone Date.

Design

Engineering

Major Equipment procurement

Construction

Milestone report

Permitting

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

Please provide a brief summary of the Major activities which were scheduled to be performed in the previous calendar month and their status, including those activities that were not completed as scheduled:

Design

Engineering

Major Equipment procurement

Construction

Milestone report

Permitting

Overall assessment of the Project status.

Please provide a brief summary of your assessment of the status and progress of each of the following aspects of the Project:

Design

Engineering

Major Equipment procurement

Construction

Milestone report

Permitting

Exhibit 1: Progress Curve.

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

Exhibit 2: Photos.

The photos included with this Exhibit 2 indicate construction progress to-date at the Project site.

Safety and Health Reports

Any work stoppage from the previous calendar month:

Work stoppage impact on construction of the Project:

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

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX 7 TESTING PROTOCOLS

COMMERCIAL OPERATION, CONTRACT CAPACITY TESTS, and EFFICIENCY RATE TESTS

This Appendix 7 sets forth the protocols for (i) the Commercial Operation Test that the Project must successfully complete in order to achieve Commercial Operation and which sets the level of Contract Capacity and Tested Round-Trip Efficiency Rate for the Project at the start of the Delivery Period, (ii) the Contract Capacity Test, and (iii) the Efficiency Rate Test. The Commercial Operation Test, the Contract Capacity Test and the Efficiency Rate Tests are sometimes referred to in this Appendix individually as a “Test” and together as the “Tests.”

PART I. GENERAL.

- A. Test Performance. Each Test will be conducted consistent with Accepted Electrical Practices, Contract Conditions, Applicable Law, manufacturer recommendations, and the provisions of published test procedures developed by the Electric Power Research Institute (EPRI) Energy Storage Integration Council (ESIC) (or equivalent test procedures accepted as an Industry Standard for lithium ion battery energy storage systems) . At all times during a Test, the Project shall not be operated with abnormal operating conditions such as unstable load conditions. If conditions occur during a Test that are contrary to any of the foregoing, Buyer may postpone or reschedule all or part of such Test in its reasonable discretion, in which case such Test shall be deemed an Incomplete Test.
- B. Final Test Plan. All Tests shall be conducted in accordance with the Final Test Plan for such Test, provided that such Final Test Plan is consistent with the requirements of Part I.A above.
- C. Test Records. Seller shall provide all records associated with a Test (including the conditions, inputs, assumptions, data and results) no later than four (4) Business Days following completion of a Test.
- D. Incomplete Test. If any Test is not completed in accordance herewith, such Test shall be deemed an “Incomplete Test”, and Buyer may in its sole discretion: (i) accept the Test results up to the time the Test stopped (other than in the case such Test is the Commercial Operation Test); (ii) require that the portion of the Test not completed, be completed within a reasonable specified time period; or (iii) require that the Test be entirely repeated. Unless the reason a Test is an Incomplete Test, any repeat or re-starting of a Test that is a Buyer Cost Test shall cause such Test to be a Seller Cost Test instead.

E. Final Report. Within fifteen (15) Business Days after the completion of a Test (including a retest of a Test), Seller shall prepare and submit to Buyer a written report of the Test (or retest). At a minimum, the report shall include:

- (1) a description of the Final Test Plan for the Test;
- (2) a record of the personnel present during all or any part of the Test, whether serving in an operating, testing, monitoring or other such participatory role;
- (3) a record of Test conditions and assumptions, including any unusual or abnormal conditions or events that occurred during the Test and any actions taken in response thereto;
- (4) the measured applicable Test data; and
- (5) Seller's statement of either Seller's acceptance of the Test or Seller's rejection of the Test results and reason(s) therefore.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the Test results or Buyer's rejection of the Test and reason(s) therefore. If Buyer reasonably rejects the results of any Test, such Test shall be repeated (and if such Test is a Buyer Cost Test, then such retest shall be a Seller Cost Test).

F. Buyer Representative. Buyer shall be entitled to have its representatives and any independent third party witness present to witness each Test and shall be allowed unrestricted access to the area from where the Project is being controlled (e.g., Project control room), and unrestricted access to inspect the instrumentation necessary for Test data acquisition prior to commencement of any Test. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to the representative and the third party, if any.

PART II. COMMERCIAL OPERATION TEST.

A. Test Elements. The Commercial Operation Test required pursuant to Section 7.2 shall consist of the following tests:

1. Contract Capacity Test;
2. Efficiency Rate Test; and
3. Other tests required to confirm compliance with the Project's specifications in Appendix 1.2.2 ("Initial Compliance Tests").

B. Test Plan. No less than sixty (60) days prior to the Initial Delivery Date, Seller shall prepare and submit to Buyer a proposed procedure and schedule in order to complete the Commercial Operation Test ("Seller's Proposed Test Plan"). Such

Seller's Proposed Test Plan must describe, with supporting detail, the actions, processes, protocols, and schedules to comply with all of the requirements of each individual test as set forth in this Appendix. Within ten (10) Business Days after Buyer's receipt of Seller's Proposed Test Plan, Buyer shall notify Seller that (i) the Seller's Proposed Test Plan is accepted, and is now considered the Final Test Plan, or (ii) the Seller's Proposed Test Plan is not accepted. If Buyer does not accept Seller's Proposed Test Plan, then Buyer and Seller shall immediately commence work in good faith to finalize such Test procedures and schedules ("Final Test Plan"). If, after thirty (30) days from Buyer's receipt of Seller's Proposed Test Plan, Seller and Buyer have not agreed on a Final Test Plan, Buyer shall provide Seller with the Final Test Plan within seven (7) Business Days after the expiration of the thirty (30) day period. Failure by Buyer to provide Seller with written acceptance of any Seller's Proposed Test Plan shall not constitute acceptance of such Seller's Proposed Test Plan.

- C. Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the Commercial Operation Test. Instrumentation shall include all instruments permanently installed at the Project and the temporary instruments suggested by Seller or deemed necessary by Buyer in its sole judgement. Within thirty (30) days of Buyer's receipt of Seller's Proposed Test Plan, Buyer shall provide Seller with written notice of the temporary calibrated instrumentation deemed necessary by Buyer that will be used during the Commercial Operation Test. Wherever possible, the instrumentation, metering and data collection equipment that will be used after the Project achieves the Initial Delivery Date for monitoring and controlling the operation of the Project shall be used for the Commercial Operation Test. Seller shall calibrate or cause to be calibrated all such instrumentation, metering and data collection equipment no more than three (3) months prior to the date of the Commercial Operation Test. All electrical metering equipment shall utilize the Project's installed CAISO metering equipment calibrated to CAISO standards. Copies of all calibration sheets shall be provided to Buyer at least five (5) Business Days prior to the Commercial Operation Test.

PART III. INITIAL COMPLIANCE TEST.

- A. Test Plan. The Final Test Plan from the Commercial Operation Test for the Initial Compliance Test shall be used for the Initial Compliance Test, unless the Parties agree otherwise in writing.
- B. Test Elements. The Initial Compliance Tests shall include the following test elements (unless Buyer otherwise agrees in writing in its sole discretion):
1. Measurement of Ramp Rates at six (6) different starting and ending points; and

2. Measurement of System Response Times from an off-line state to the maximum charging rate of the Project and from an off-line state to the maximum discharging rate of the Project.
- C. Test Showing. For satisfactory completion of the Initial Compliance Tests, Seller must demonstrate to Buyer's reasonable satisfaction, that the Project has met the guaranteed Ramp Rate and System Response Times set forth in Appendix 1.2.2.

PART IV. CONTRACT CAPACITY TEST

- A. Test Plan. The Final Test Plan from the Commercial Operation Test for the Contract Capacity Test shall be used for the Contract Capacity Test, unless the Parties agree otherwise in writing.
- B. Test Measurements. The Contract Capacity Tests shall include the following test measurements (unless Buyer otherwise agrees in writing in its sole discretion):
 1. Measurement of the Project's maximum Charging Capacity over four (4) continuous hours of charging from 0% State of Energy to 100% State of Energy.
 2. Measurement of the Project's maximum Discharging Capacity over four (4) continuous hours of discharging from 100% State of Energy to 0% State of Energy.
- C. Capacity Calculation. The Contract Capacity of the Project shall be the lesser of the Project's Charging Capacity or Discharging Capacity measured pursuant to Part IV.B. above.

PART V. EFFICIENCY RATE TESTS

- A. Test Plan. The Final Test Plan from the Commercial Operation Test shall be used for the Efficiency Rate Test, unless the Parties agree otherwise in writing.
- B. Test Elements. The Efficiency Rate Tests shall be conducted as follows (unless Buyer otherwise agrees in writing in its sole discretion):
 1. At the start of the Efficiency Rate Test, the Stored Energy of the Energy Storage System shall be reduced to an amount equal or less than [REDACTED] State of Energy, which Stored Energy amount ("Stored Energy_{test,0}") shall be recorded.
 2. The Project shall be charged with Charging Energy to bring the Stored Energy of the Energy Storage System to at least [REDACTED] State of Energy, at the then-applicable Contract Capacity, which Charging Energy amount ("Charging Energy_{test}") and Stored Energy amount at the end of such charging ("Stored Energy_{test,1}") shall be recorded.

3. Following the expiration of up to 24 hours after the end of such charging, the Scheduling Coordinator for the Project shall schedule the Project for discharging, at the Contract Capacity in an amount equal to the product of Charging Energy_{test} multiplied by the Guaranteed Round-Trip Efficiency Rate. The Delivered Amount at the end of such discharging (“Delivered Energy_{test}”) and the Stored Energy amount at the end of such discharging (“Stored Energy_{test,2}”) shall be recorded.
4. The Tested Round-Trip Efficiency Rate (TRTER) shall be calculated as follows:

$$\text{TRTER} = \left(\frac{\text{Stored Energy}_{test,1} - \text{Stored Energy}_{test,0}}{\text{Charging Energy}_{test}} \right) \times \left(\frac{\text{Delivered Energy}_{test}}{\text{Stored Energy}_{test,1} - \text{Stored Energy}_{test,2}} \right) \times 100\%$$

**APPENDIX 9.2
MONTHLY CAPACITY PAYMENT**

The Monthly Capacity Payment for each month of the Delivery Period shall be determined as follows:

$$MCP_m = CC_m \times CR \times SF_m \times EAF_m \times RTERF_m$$

Where:

MCP_m is the Monthly Capacity Payment expressed in Dollars for month m of the Delivery Period. If month m is less than a full calendar month, then the Monthly Capacity Payment for such month shall be prorated based on the number of days of the Delivery Period during such month.

CC_m is the Contract Capacity in effect during month m , expressed in kW_{AC}, rounded to the nearest 100 kW_{AC}. If the Contract Capacity changes during such month, then the Monthly Capacity Payment for such month shall be prorated based on the applicable Contract Capacity before such change and the applicable Contract Capacity from and after such change.

CR is the Capacity Rate expressed in Dollars per kW_{AC}-year,

$$CR = \$[XXX]/kW_{AC}\text{-year}$$

SF_m is the Monthly Shaping Factor for the applicable month m , as set forth in the following table:

Month	Monthly Shaping Factor (%)
January	6.7
February	5.0
March	5.0
April	5.8
May	6.3
June	8.3
July	15.8
August	17.5
September	11.7
October	5.8
November	5.8
December	6.3

Notwithstanding the foregoing, Buyer may modify the Monthly Shaping Factors by providing Notice to Seller of its modifications no later than ninety (90) days

prior to the start of the next Contract Year; provided, however, the sum of the twelve (12) Monthly Shaping Factors in any Contract Year must equal one hundred percent (100%); provided further Buyer's right to modify the Monthly Shaping Factor shall not apply to the final Contract Year.

EAF_m or the "Equivalent Availability Factor" for month m is the equivalent availability factor computed as follows:

$$EAF_m = \sum_i^p \frac{Availability_i}{p}$$

Where:

p is the number of hours in month m .

i is the hour in month m .

$Availability_i$ is the lesser of the following, for hour i :

- (a) the quotient (i) the sum of (A) the lesser of the Charging Capacity (unless the Energy Storage System is Fully Charged during such hour) or Discharging Capacity (unless the Energy Storage System is Fully Discharged during such hour) of the Project applicable for such hour, plus (B) the amount that such lesser amount determined in clause (A) is unavailable as a result of Delivery Excuse, divided by (ii) the Contract Capacity applicable for such hour; or
- (b) if the Project has been assigned a Qualified RA Capacity or Qualified Flexible RA Capacity, the quotient of (i) the sum of (A) the lesser of the Qualified RA Capacity (if available) or the Qualified Flexible RA Capacity (if available) of the Energy Storage System applicable for such Settlement Interval, plus (B) the amount that such lesser amount determined in clause (A) is unavailable as a result of Delivery Excuse, divided by (ii) the Maximum RA Capacity associated with the Contract Capacity for the month;

provided, however, that (a) if either the Charging Capacity or Discharging Capacity used in clause (A) above used for hour i exceeds the Contract Capacity applicable for such hour, then such Charging Capacity or Discharging Capacity, as applicable, shall equal the Contract Capacity for such hour, and (b) Availability shall in no event exceed 1.00 for any hour.

$RTERF_m$ or the “Round-Trip Efficiency Rate Factor” for month m shall be computed as follows:

- (a) If the Tested Round-Trip Efficiency Rate in effect during month m is less than [____].00%, then:

$$RTERF_m = \frac{\text{Tested Round-Trip Efficiency Rate}_m}{\text{Guaranteed Round-Trip Efficiency Rate}}$$

Where:

Tested Round-Trip Efficiency Rate_m is the Tested Round-Trip Efficiency Rate for the Project in effect during month m ;

Provided that if the Round-Trip Efficiency Rate Factor for month m exceeds 1.00 under this clause (a), then the Round-Trip Efficiency Rate Factor for month m shall be deemed to be 1.00 for purposes of this clause (a).

- (b) If the Tested Round-Trip Efficiency Rate in effect during month m is equal or greater than [____].00%, then:

$$RTERF_m = \text{Tested Round-Trip Efficiency Rate}_m \text{ divided by } 0.[\text{____}];$$

Provided that if the Round-Trip Efficiency Rate Factor for month m exceeds 1.[____] under this clause (b), then the Round-Trip Efficiency Rate Factor for month m shall be deemed to be 1.[____] for purposes of this clause (b).

- (c) If the Round-Trip Efficiency Rate for the Project changes during such month, then the Monthly Capacity Payment for such month shall be prorated based on the applicable Tested Round-Trip Efficiency Rate (and resulting Round-Trip Efficiency Rate Factor) before such change and the applicable Tested Round-Trip Efficiency Rate (and resulting Round-Trip Efficiency Rate Factor) from and after such change.

APPENDIX 9.3
VARIABLE O&M CHARGE

The Variable O&M Charge for each month of the Delivery Period pursuant to a Dispatch Notice shall be calculated as follows:

$$\text{VOMP} = \text{RATE} \times \text{Delivered Energy (in kWh}_{\text{AC}}) \div 1,000$$

Where:

$$\text{RATE} = \text{\$[XX]/MWh}_{\text{AC}}$$

**APPENDIX 11.3
LETTER OF CREDIT FORM**

**IRREVOCABLE STANDBY
LETTER OF CREDIT**

Reference Number: _____

Transaction Date:

BENEFICIARY:

San Diego Gas & Electric Company

Ladies and Gentlemen:

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

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

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

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

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at _____ or such other number as specified from time to time by the Bank. 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.

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

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

Banking charges shall be the sole responsibility of the Applicant.

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

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

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

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

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

AUTHORIZED SIGNATURE for Bank

By:

Title: _____

ATTACHMENT A TO APPENDIX 11.3
DRAWING CERTIFICATE
TO [ISSUING BANK NAME]
IRREVOCABLE STANDBY LETTER OF CREDIT

Reference Number. _____
(Sample Text)

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Standby Letter of Credit

Reference Number: _____

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

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

[]A. An Event of Default, as defined in the Energy Storage Power Purchase Agreement between Beneficiary and Applicant (the "Agreement"), with respect to the Applicant has occurred and is continuing.

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

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

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

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

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

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

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

Beneficiary: SAN DIEGO GAS & ELECTRIC COMPANY

By:
Name:
Title:

**APPENDIX 15.1
AVAILABILITY NOTICE**

Availability Notice

Trading Day: _____

Station: _____

Issued By: _____

Unit: _____

Issued At: _____

Unit 100% Available No Restrictions: _____

Hour Ending	Available Charging Capacity	Available Discharging Capacity	Minimum Output	Comments
	(MW)	(MW)	(MW)	
1:00				
2:00				
3:00				
4:00				
5:00				
6:00				
7:00				
8:00				
9:00				
10 00				
11 00				
12 00				
13 00				
14 00				
15 00				
16 00				
17 00				
18 00				
19 00				
20 00				
21 00				
22 00				
23 00				
0:00				

Comments: _____

**APPENDIX 15.3
DISPATCH AND UPDATED DISPATCH NOTICES**

Dispatch Notice

Trading Day: _____

Station: _____

Issued By: _____

Unit: _____

Issued At: _____

Hour Ending	Scheduled Energy for Charging	Scheduled Energy for Discharging	Spinning Reserve	Non-Spinning Reserve	Comments
	(MW)	(MW)	(MW)	(MW)	
1:00					
2:00					
3:00					
4:00					
5:00					
6:00					
7:00					
8:00					
9:00					
10:00					
11:00					
12:00					
13:00					
14:00					
15:00					
16:00					
17:00					
18:00					
19:00					
20:00					
21:00					
22:00					
23:00					
0:00					

Comments: _____

Updated Dispatch Notice

Trading Day: _____

Station: _____

Issued By: _____

Unit: _____

Issued At: _____

Changes from Scheduled Delivery are highlighted.

Comments: _____

Hour Ending	Scheduled Energy for Charging	Scheduled Energy for Discharging	Spinning Reserve	Non-Spinning Reserves	Comments
	(MW)	(MW)	(MW)	(MW)	
1:00					
2:00					
3:00					
4:00					
5:00					
6:00					
7:00					
8:00					
9:00					
10:00					
11:00					
12:00					
13:00					
14:00					
15:00					
16:00					
17:00					
18:00					
19:00					
20:00					
21:00					
22:00					
23:00					
0:00					

APPENDIX 15.6
DAILY OPERATING REPORT

Buyer shall create a template for use as a Daily Operating Report which contains all the information required by Buyer regarding the Project's daily operations (including the Project's hourly Availability, Capacity, Charging Energy, Delivered Energy, Stored Energy, Maximum Energy Capacity and State of Energy), with Seller's approval (which approval shall not be unreasonably withheld). Until such template is created and approved by the Parties as provided above, Seller shall not be required to provide such Daily Operating Report as set forth in Section 15.6 of the Agreement.

APPENDIX 15.8 COMMUNICATIONS PROTOCOLS

Communication Protocols

Dated as of _____

These Communication Protocols have been drafted to assist in the operation of the Energy Storage Power Purchase Agreement between Seller and Buyer dated _____ (the “Agreement”). If there is any inconsistency between the Communication Protocols and the Agreement, the Agreement shall prevail. These Communication Protocols shall become effective as of the date first set forth above. The Parties acknowledge and agree that these Communication Protocols are subject to change and shall be modified as evolving market conditions and rules may require. Unless otherwise defined in these Communication Protocols, defined terms herein shall have the meanings ascribed in the Agreement.

1. Contacts and Authorized Representatives

The “Contact Information” tables sets forth those contact functions, phone/fax numbers and e-mail information by which each Party elects to be contacted by the other. References in these Communication Protocols to notices by telephone, fax, or e-mail shall be deemed to refer to the applicable number set forth in the Contact Information Table.

2. Communication Protocols - General

2.1 Intra-day Communication: All communications and notices between the Parties that occur intra-day for the applicable trading day including those regarding emergencies, Dispatch Notices, Updated Dispatch Notices, Availability Notices, and notices to avoid imbalance penalties, uninstructed deviation charges/credits or any other CAISO charge types specified in the Agreement, shall be provided telephonically to the applicable Party.

If to Seller, such notices and communications shall be provided to the following contact, in order of priority, (1) Dispatch Desk, (2) Plant Manager. If to Buyer, such notices and communications shall be provided to the following contact, in order of priority, Real Time. Each Party shall confirm all Intra-day Communication either electronically or via fax as soon as practicable.

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

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

During Transmission System Emergencies, Seller’s operations staff shall communicate with Buyer’s Grid Operations Department via established communications devices. Buyer’s Grid Operations Department will periodically test the communications devices to be utilized during system emergencies.

2.4 Verbal Communication: Each Party shall provide confirmation (either electronically or via facsimile) of any telephonic operating notice or communication provided to the other Party as soon as practicable. All telephonic communication shall be subject to recording.

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

2.6 Staffing: Parties will have available 24 hours a day, seven days a week, personnel available to communicate regarding the implementation of these Communication Protocols.

Contact Information Table

Contacts and Authorized Representatives for Buyer

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

Contact	Primary Phone	Secondary Phone	Fax	Email
Real Time	858-650-6160	619-517-5661	858-650-6191	tsched@semprautilities.com
Day-Ahead Scheduling	858-650-6178	858-650-6160	858-650-6191	presched@semprautilities.com
Day-Ahead Trading	858-650-6137	858-650-6160	858-650-6191	rmiller3@semprautilities.com jpasquito@semprautilities.com
Settlements – Power	TBD before IDD	TBD before IDD	TBD before IDD	TBD before IDD
Contract Administration	TBD before IDD	TBD before IDD	TBD before IDD	TBD before IDD
Outage Scheduling	TBD before IDD	TBD before IDD	TBD before IDD	TBD before IDD
Transmission System Emergencies	TBD before IDD	TBD before IDD	TBD before IDD	TBD before IDD

Contacts and Authorized Representatives for Seller

Outlined below is the contact and communication information for the relevant Seller employees. This list may be amended by Seller with timely Notice to Buyer.

Contact:	Primary Phone	Secondary Phone	Fax	Email
Dispatch Desk (Day Ahead)				
Dispatch Desk (Real Time)				
Outage Desk				
Plant Manager				
Contract Administration				
Settlements				
Operations Manager				
Operations Supervisor				

2021-2023 IRP Procurement Track RFO Model Agreement

ENERGY EFFICIENCY RESOURCE PURCHASE AGREEMENT

between

[NAME OF SELLER]

and

San Diego Gas & Electric Company

**ENERGY EFFICIENCY RESOURCE PURCHASE AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY**

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**ENERGY EFFICIENCY RESOURCE PURCHASE AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY**

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**ENERGY EFFICIENCY RESOURCE PURCHASE AGREEMENT
 BETWEEN
 [SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY**

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 BETWEEN
 [SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY**

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**ENERGY EFFICIENCY RESOURCE PURCHASE AGREEMENT
BY AND BETWEEN
[SELLER]
AND
SAN DIEGO GAS & ELECTRIC COMPANY**

This Energy Efficiency Resource Purchase Agreement, together with its exhibits (the “Agreement”) is entered into by and between San Diego Gas & Electric Company, a California corporation (“SDG&E”), and [Seller], a [Seller’s business registration] (“Seller”), as of [Date] (“Execution Date”). SDG&E and Seller are referred to herein individually as a “Party” and collectively as “Parties.”

Whereas, the Seller has agreed to deliver a Project (as defined below) by installing Measures at one or more End-Use Customer Sites over the Term (as defined herein) that will result in improved energy efficiency and energy and capacity reductions at each such Site.

Whereas, SDG&E has agreed to pay Seller for completing, installing, and operating the Project and ensuring that it remains in place.

NOW, THEREFORE, in consideration of these recitals and the agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows.

ARTICLE 1. DEFINITIONS

1.1 General

As used in this Agreement, the following terms shall have the meanings set forth below:

“Acceptable Annual Inspection Report” means an Annual Inspection Report received by SDG&E of which SDG&E has provided Notice to Seller that it has accepted (or of which SDG&E is deemed to have accepted) pursuant to Section 2.5(c)(iii).

“Acceptable Pre-Delivery Period Inspection Report” means a Pre-Delivery Period Inspection Report received by SDG&E of which SDG&E has provided Notice to Seller that it has accepted (or of which SDG&E is deemed to have accepted) pursuant to Section 2.5(b)(iii).

“Affiliate” means, with respect to a Party, any entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with that Party. For this purpose, “control” of any entity or person means ownership of a majority of the voting power of the entity or person.

“Affordable Care Act” has the meaning set forth in Section 6.3(a).

“Annual Inspection” has the meaning set forth in Section 2.5(c)(i).

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

“Annual Inspection Report Deadline” has the meaning set forth in Section 2.5(c)(ii).

“Annual Energy Savings” means, in respect of a Contract Year, the annual reduction in energy of the Project during such Contract Year, as measured and calculated in accordance with Exhibit B.

“Annual Peak Capacity Savings” means, for each installed Measure, the expected annual reduction in peak electrical load capacity for such measure on the Inspection Date of the applicable Inspection Report, as measured and calculated in accordance with Exhibit B.

“Annual True-Up Payment” has the meaning set forth in Section 2.6.

“Arbitration” has the meaning set forth in Section 14.3.

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

“Billing Contract Year” means the subject Contract Year to which a Monthly Contract Price Payment refers.

“Billing Month” has the meaning set forth in Section 2.4(a).

“Business Day” means a day that is not a Saturday, Sunday, a Federal Reserve Bank holiday, or the Friday immediately following the U.S. Thanksgiving holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

“CAISO” means the California Independent System Operator, or any successor entity.

“Capacity Weighted Factor” has the meaning set forth in Section 2.4(a).

“Cash” means U.S. Dollars held by or on behalf of a Party as Performance Assurance hereunder.

“CEC” means the California Energy Commission, or any successor thereto.

“Claiming Party” has the meaning set forth in Article 12.

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

“Commission” or “CPUC” means the California Public Utilities Commission, and all divisions thereof, or any successor thereto.

“Contract Year” means each twelve (12)-month period starting with the Initial Delivery Date.

“Contracted Annual Energy Savings” has the meaning set forth in Section 2.1.

“Contracted Annual Peak Capacity Savings” has the meaning set forth in Section 2.1.

“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions, legal expenses and other similar third party transaction costs and expenses reasonably incurred by that Party in entering into any new arrangement which replaces this Agreement.

“CPUC Approval” means a decision of the CPUC that (i) is final and no longer subject to appeal, which approves (a) the relief requested in SDG&E’s approval filing and (b) the Agreement in full and in the form presented on terms and conditions acceptable to SDG&E in its sole discretion, including without limitation terms and conditions related to cost recovery and cost allocation of amounts paid to Seller under the Agreement; (ii) does not contain conditions or modifications unacceptable to either Party, in either Party’s sole discretion; and (iii) finds that any procurement pursuant to this Agreement satisfies the requirement to procure preferred resources under Commission Decision 14-13-004.

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by the Ratings Agencies.

“Defaulting Party” has the meaning set forth in Section 8.1(a).

“Default Rate” means for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable Law.

“Deficiency Event” has the meaning set forth in Section 2.6.

“Delivery Period” has the meaning set forth in Section 2.3.

“Documentation” means all books, records, photographs, slides, materials, data, calculations, estimates, documents, communications, notes, proposals, reports, scopes of work or related responses, whether in written, electronic or any other tangible form, related to the Project or any Measure.

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“Double Incentive” means Incentives from or paid for by any other energy efficiency program (whether an SDG&E energy efficiency program, an energy efficiency program of another utility, or otherwise) for the same Measure or Project installed at the End-User Customer’s Site, including the attribution of energy and demand savings or reductions for a single Measure or activity at multiple market intervention points (e.g., energy savings or reductions claimed upstream, midstream, and at the End-Use Customer) where such Measure was installed or such activity occurred.

“Early Termination Date” has the meaning set forth in Section 8.2(a).

“End-Use Customer” means a person or entity that is an SDG&E service customer and has an SDG&E customer service account number.

“Energy Savings Factor” has the meaning set forth in Section 2.4(a).

“Energy Weighted Factor” has the meaning set forth in Section 2.4(a).

“Evaluator” means an independent third-party who is not an Affiliate of the Party engaging such Evaluator and who has been engaged under this Agreement to perform an Inspection consistent with the M&V Plan, and issue a Pre-Delivery Period Inspection Report and/or Annual Inspection Report, as applicable. The Evaluator must (i) have demonstrated and significant experience performing evaluation, measurement and verification studies of energy efficiency projects of a size and type similar to the Project with demonstrated and significant experience using the guidelines and publications identified in Exhibit B, (ii) have sufficient depth and breadth in the skills required to perform the tasks identified in the M&V Plan, including study design, statistics, sample design, energy engineering, and econometric modeling, and (iii) adhere to ethical evaluation practices established by the American Evaluation Association.

“Event of Default” has the meaning set forth in Section 8.1(a).

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

“Executive(s)” has the meaning set forth in Section 14.2(a).

“Expected Initial Delivery Date” has the meaning set forth in Section 2.1.

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

“Force Majeure” means an event or circumstance (such as (a) acts of God, flooding, landslide, earthquake, fire, drought, explosion, epidemic, quarantine, hurricane, tornado, volcano, or other natural disaster or unusual or extreme adverse weather-related events, (b) war (declared or undeclared), riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockade, insurrection, revolution, expropriation, or confiscation, and (c) except as set forth in clause (vi) below, strikes, work stoppage or other labor disputes) which prevents one Party from performing its obligations under this

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Agreement, which event or circumstance was not anticipated as of the Execution Date, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided). Force Majeure shall not be based on (i) the loss of SDG&E's markets; (ii) the loss or failure of Seller's supply; (iii) a failure of performance of any other entity, except to the extent that such failure was caused by a Force Majeure event specifically described in clauses (a) through (c) above; (iv) breakage or malfunction of equipment, except to the extent that such failure was caused by a Force Majeure event specifically described in clauses (a) through (c) above; (v) strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, End-Use Customer, contractors or subcontractors thereof or any other third party employed by Seller or an End-Use Customer to work on the Project; (vi) Seller's failure to obtain financing or other funds, including funds authorized by a state or the federal government or agencies thereof; or (viii) Seller's inability to obtain any Permits or other approvals of any type for the installation of any Measure, completion of the Project or performance under this Agreement.

“Forecasted Annual Energy Savings” has the meaning set forth in Section 2.4(a).

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement, determined in a commercially reasonable manner.

Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., Intercontinental Exchange), all of which are calculated based on realized and future Annual Energy Savings and Annual Peak Capacity Savings. For purposes of determining Gain, SDG&E may also take into consideration that the Agreement satisfies the requirement to procure preferred resources from under Commission Decision 14-13-004 from Projects to meet the Local Capacity Requirements (LCR) within SDG&E's Service Territory.

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

“Governmental Body” means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

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“Incentive” means financial support or benefits, including Rebates, discounts and low-interest loans, to install Measures.

“Indemnified Party” has the meaning set forth in Section 6.3(a).

“Initial Delivery Date” has the meaning set forth in Section 2.2.

“Initial Delivery Deadline” has the meaning set forth in Section 2.1.

“Initial Negotiation End Date” has the meaning set forth in Section 14.2(a).

“Inspections” means, collectively, the Pre-Delivery Period Inspection and the Annual Inspections.

“Inspection Report” means the Pre-Delivery Period Inspection Report or an Annual Inspection Report, as applicable.

“Inspection Date” means, with respect to an Inspection Report, the date upon which the Evaluator certifies that the statements and calculations made within such Inspection Report are true and accurate.

“Interest Amount” means with respect to a Party and an Interest Period, the sum of the daily interest amounts for all days in such Interest Period; each daily interest amount to be determined by such Party as follows: (i) the amount of Cash held by such Party on that day; multiplied by (ii) the Interest Rate for that day, divided by (iii) 360.

“Interest Period” means the period from (and including) the last Business Day on which an Interest Amount was Transferred by a Party (or if no Interest Amount has yet been Transferred by such Party, the Business Day on which Cash was Transferred to such Party) to (but excluding) the Business Day on which the current Interest Amount is to be Transferred.

“Interest Rate” means for any date the rate per annum equal to the Commercial Paper (non-financial, 3 months) rate as published the prior month in the Federal Reserve Statistical Release, H.15. Should publication of the interest on Commercial Paper (non-financial, 3 months) be discontinued, then the interest rate on commercial paper, which most closely approximates the discontinued rate, published the prior month in the Federal Reserve Statistical Release, H.15., or its successor publication.

“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 Body of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which become effective prior to the end of the Delivery Period; or any binding interpretation of the foregoing by a Governmental Body.

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“Letter of Credit” means an irrevocable, nontransferable standby letter of credit, substantially in the form of Exhibit A and acceptable to SDG&E, provided by Seller from an issuer acceptable to SDG&E that is either a U.S. financial institution or a U.S. commercial bank or a U.S. branch of a foreign bank with such financial institution or the bank (i) having a Credit Rating of at least (a) Credit Ratings of at least "A-" by S&P, "A-" by Fitch and "A3" by Moody's, if such entity is rated by the Ratings Agencies; (b) if such entity is rated by only two of the three Ratings Agencies, a Credit Rating from two of the three Ratings Agencies of at least "A-" by S&P, if such entity is rated by S&P, "A-" by Fitch, if such entity is rated by Fitch, and "A3" by Moody's, if such entity is rated by Moody's; or (c) a Credit Rating of at least "A-" by S&P or "A3" by Moody's, or "A-" by Fitch if such entity is rated by only one Ratings Agency; and (ii) having shareholder equity (determined in accordance with generally accepted accounting principles) of at least \$1,000,000,000.00 (ONE BILLION AND 00/100 DOLLARS). Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

“Letter of Credit Default” means with respect to a Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit shall fail to maintain a Credit Rating of at least (a) "A-" by S&P, "A-" by Fitch, and "A3" by Moody's, if such issuer is rated by the Ratings Agencies, (b) "A-" by S&P, "A-" by Fitch or "A3" by Moody's if such issuer is rated by only two of the Ratings Agencies, or (c) "A-" by S&P, "A-" by Fitch, or "A3" by Moody's, if such issuer is rated by only one Ratings Agency; (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect at any time during the Term of the Agreement, in any such case without replacement; or (v) the issuer of such Letter of Credit shall become Bankrupt; provided, however, that no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Agreement.

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement, determined in a commercially reasonable manner.

Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., Intercontinental Exchange), all of which are calculated based on realized and future Annual Energy Savings and Annual Peak Capacity Savings. For purposes of determining Losses, SDG&E may also take into consideration that the Agreement satisfies the requirement to procure preferred resources from under

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Commission Decision 14-13-004 from Projects to meet the LCR within SDG&E's Service Territory.

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

“Manager” has the meaning set forth in Section 14.2(a).

“M&V Plan” means the detailed plan to measure and verify the Annual Energy Savings and Annual Peak Capacity Savings for the Project, as further described in Exhibit B.

“Measure” a service or product (or aggregated group of services or products) described in Exhibit B whose installation and operation at an End-Use Customer's premises is expected to result in a reduction in the End-Use Customer's on-site energy and capacity use, compared to what would have happened without the service or product installation and for which Seller has delivered a Measure Installation Certificate.

“Minimum Annual Energy Savings” means, for each Contract Year, an amount equal to eighty percent (80%) of the Contracted Energy Savings for such Contract Year.

“Minimum Annual Peak Capacity Savings” means, for each Contract Year, an amount equal to eighty percent (80%) of the Contracted Annual Peak Capacity Savings for such Contract Year.

“Monthly Contract Price” has the meaning set forth in Section 2.1.

“Monthly Contract Price Payment” has the meaning set forth in Section 2.4(a).

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

“Non-Defaulting Party” has the meaning set forth in Section 8.2.

“Notice” means notices, requests, statements or payments provided in accordance with Article 7.

“Peak Capacity Savings Factor” has the meaning set forth in Section 2.4(a).

“Performance Assurance” has the meaning set forth in Section 5.1(a).

“Permits” means all applications, approvals, authorizations, consents, filings, licenses, orders, permits or similar requirements imposed by any Governmental Body in order to develop, construct, maintain, improve, and/or refurbish the Project or any Measure.

“Pre-Delivery Period Inspection” has the meaning set forth in Section 2.5(b)(i).

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“Pre-Delivery Period Inspection Report” means the report prepared by an Evaluator in accordance with the requirements of Section 2.5(b)(ii), setting forth the Evaluator’s findings from the Pre-Delivery Period Inspection.

“Project” means the aggregate of the Measures installed (or to be installed) at multiple End-Use Customer(s) Sites during the Term, as more fully described in Section 2.1 and Exhibit B.

“Project Requirements” means, on the Inspection Date of the applicable Inspection Report, all of the following: (a) all of the Measures comprising the Project on such date have been installed in accordance with the requirements of this Agreement, including Section 6.2(a) and Exhibit B, and (b) the Seller has installed Measures that has (i) an aggregate Annual Peak Capacity Savings amount for the Project that is no less than the Minimum Annual Peak Capacity Savings amount for the relevant Contract Year, and (ii) a forecasted aggregate Annual Energy Savings amount for the Project for the relevant Contract Year that is no less than the Minimum Annual Energy Savings amount for such Contract Year.

“Proprietary Rights” has the meaning set forth in Section 2.12.

“Qualified Assignee” has the meaning set forth in Section 15.3.

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

“Rebate” means an identified and pre-specified amount of money to be paid to an End-Use Customer for the installation of one or more identified Measure at the End-Use Customer’s facility.

“Referral Date” has the meaning set forth in Section 14.2(a).

“Reported Annual Peak Capacity Savings” has the meaning set forth in Section 2.4(a).

“Reported Annual Savings True-Up” has the meaning set forth in Section 2.4(b).

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

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

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

“Settlement Amount” means:

- (a) where Seller is the Defaulting Party and the applicable Early Termination Date is effective before the Initial Delivery Date has occurred, the full amount of the Performance Assurance required to be posted by Seller at such Early Termination Date; or

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- (b) in all cases other than as set forth in clause (a) above, the Non-Defaulting Party's Costs and Losses, on the one hand, netted against its Gains, on the other, such that if the Non-Defaulting Party's Costs and Losses exceed its Gains (i.e. a positive Settlement Amount), then the Settlement Amount shall be an amount owing to the Non-Defaulting Party; provided, however, if the Non-Defaulting Party's Gains exceed its Costs and Losses (i.e. a negative Settlement Amount), then the Settlement Amount shall be Zero dollars (\$0). Under no circumstance under this clause (b) shall the Settlement Amount include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“Site” means the physical location(s) of the Measures comprising the Project and the End-Use Customer(s)' account as more fully described in Exhibit B.

“Term” has the meaning set forth in Section 2.3.

“Termination Payment” means the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement, less any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date. For clarity, the Settlement Amount is part of and included in the Termination Payment.

“Total Savings Factor” has the meaning set forth in Section 2.4(a).

“Transfer” means, with respect to any Performance Assurance or Interest Amount, and in accordance with the instructions of the Party entitled thereto: (i) in the case of Cash, payment or transfer by wire transfer into one or more bank accounts specified by the recipient; (ii) in the case of Letters of Credit, delivery of the Letter of Credit or an amendment thereto to the recipient.

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

1.2 Interpretation

The following rules of interpretation shall apply:

- (a) 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.
- (b) 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.

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- (c) Capitalized terms used in this Agreement, including the appendices hereto, shall have the meaning set forth in Article 1, unless otherwise specified.
- (d) Unless otherwise specified herein, references in the singular shall 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 shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal personality). Other grammatical forms of defined words or phrases have corresponding meanings.
- (e) The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation.
- (f) References to a particular article, section, subsection, paragraph, subparagraph, appendix or attachment shall, unless specified otherwise, be a reference to that article, section, subsection, paragraph, subparagraph, appendix or attachment in or to this Agreement.
- (g) Any reference in this Agreement to any natural person, Governmental Body, corporation, partnership or other legal entity includes its permitted successors and assigns or to any natural person, Governmental Body, corporation, partnership or other legal entity succeeding to its functions.
- (h) Any reference in this Agreement to any statute shall include all regulations promulgated thereunder, and any reference in this Agreement to statutes or regulations shall be construed as including all statutory and regulatory provisions consolidating, amending or replacing such statutes or regulations.
- (i) All references to dollars are to U.S. dollars.
- (j) The headings used herein are for convenience and reference purposes only.
- (k) Each Party agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.
- (l) Words having well-known technical or industry meanings have these meanings unless otherwise specifically defined in this Agreement.
- (m) Nothing in this Agreement relieves either Party from, or modifies, any obligation or requirement that exists in any Law.

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ARTICLE 2. TRANSACTION

2.1 Project

Seller shall design, construct and install the Project, and SDG&E shall pay Seller a Monthly Contract Price Payment for the installation of the Project in accordance with the terms and conditions of this Agreement. Seller shall be responsible for all costs, expenses, taxes, fees, labor, materials, equipment, tools, construction equipment and machinery, transportation and other facilities and services necessary to install and complete the Project.

Monthly Contract Price	<i>[Insert Monthly Payment Amount]</i>
Contracted Annual Energy Savings (MWh)	See <u>Exhibit C</u>
Contracted Annual Peak Capacity Savings (MW)	See <u>Exhibit D</u>
Expected Initial Delivery Date	<i>[Expected first day of the Delivery Period to be inserted]</i>
Initial Delivery Deadline	[TBD, Based on Seller's Bid]

2.2 Initial Delivery Date; Initial Delivery Deadline

Notwithstanding any other provision in this Agreement, Seller shall cause the Initial Delivery Date to occur no later than the Initial Delivery Deadline. The Initial Delivery Deadline shall be extended on a day for day basis, for up to six (6) months in the aggregate, *[NOTE: bids with Initial Delivery Dates in 2021 shall have only three (3) months extension]* to the extent Seller is actually and demonstrably delayed in achieving the Initial Delivery Date as a result of Force Majeure.

The "Initial Delivery Date" shall be the later of (a) the first day of the calendar month following the date that Seller provides SDG&E with an Acceptable Pre-Delivery Period Inspection Report (which report has an Inspection Date no earlier than three (3) months prior to the Initial Delivery Date) that finds that the Project Requirements for the first (1st) Contract Year have been met, or (b) the Expected Initial Delivery Date. *[NOTE: may be modified for bids with starting dates in 2021]*

2.3 Delivery Period; Term

The "Delivery Period" of this Agreement shall commence upon the Initial Delivery Date and shall continue until the end of the *[Insert Length of Delivery Period]* Contract Year after the Initial Delivery Date or the earlier termination of this Agreement.

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The “Term” of this Agreement shall commence upon the Execution Date and shall continue until the expiration of the Delivery Period or the earlier termination of this Agreement.

2.4 Monthly Contract Price Payment

- (a) Generally. Subject to Section 2.4(b) and Section 2.4(c) below, for each calendar month (“Billing Month”) of a Contract Year (i.e., the Billing Contract Year) during the Delivery Period, SDG&E shall pay Seller an amount (“Monthly Contract Price Payment”) calculated as follows:

$$\text{MCCP} = \text{MCP} \times \text{TSF}$$

Where:

MCCP = The Monthly Contract Price Payment for each Billing Month of such Billing Contract Year;

MCP = The Monthly Contract Price for such Billing Contract Year; and

TSF = The Total Savings Factor (as defined below) for such Billing Contract Year.

The “Total Savings Factor” for a Billing Contract Year shall be calculated as follows:

$$\text{TSF} = (\text{CWF} \times \text{PCSF}) + (\text{EWF} \times \text{ESF})$$

Where:

TSF = The Total Savings Factor for such Billing Contract Year;

CWF = The Capacity Weighted Factor, which shall be 0.30; *[Note to Sellers: SDG&E assumes a typical 70%/30% weighted allocation of the contract’s value to SDG&E between energy and capacity. The allocation may be subject to revision if the bid Project’s value materially differs from this allocation.]*

PCSF = The Peak Capacity Savings Factor, which is equal to the Reported Annual Peak Capacity Savings amount (as defined below) for such Billing Contract Year divided by the Contracted Annual Peak Capacity Savings for such Billing Contract Year, provided that if the calculation of the Peak Capacity Savings Factor for a Billing Contract Year results in a number greater than one (1), then such Peak Capacity Savings Factor for such Billing Contract Year shall be one (1);

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EWf = The Energy Weighted Factor, which shall be 0.70; and

ESF = The Energy Savings Factor, which is equal to the Forecasted Annual Energy Savings amount (as defined below) for such Billing Contract Year divided by the Contracted Annual Energy Savings for such Billing Contract Year, provided that if the calculation of the Energy Savings Factor for a Billing Contract Year results in a number greater than one (1), then such Energy Savings Factor for such Billing Contract Year shall be one (1).

The “Reported Annual Peak Capacity Savings” amount for a Billing Contract Year shall be the aggregate Annual Peak Capacity Savings amount for all Measures comprising the Project as set forth in the Acceptable Annual Inspection Report delivered in respect of the Contract Year immediately before the Billing Contract Year (unless such Billing Contract Year is the first (1st) Contract Year, in which case, the Reported Annual Peak Capacity Savings amount for such Billing Contract Year shall be the aggregate Annual Peak Capacity Savings amount reported in the Acceptable Pre-Delivery Period Inspection Report).

The “Forecasted Annual Energy Savings” amount for a Billing Contract Year shall be the forecasted aggregate Annual Energy Savings amount for such Billing Contract Year for all Measures comprising the Project as set forth in the Acceptable Annual Inspection Report delivered in respect of the Contract Year immediately before the Billing Contract Year (unless such Billing Contract Year is the first (1st) Contract Year, in which case, the Forecasted Annual Energy Savings amount for such Billing Contract Year shall be the forecasted aggregate Annual Energy Savings amount reported in the Acceptable Pre-Delivery Period Inspection Report).

For the avoidance of doubt and notwithstanding anything contained in this Agreement to the contrary, in the calculation of a Monthly Contract Price Payment, under no circumstance shall Seller be credited or otherwise receive any benefit for Annual Energy Savings or Annual Peak Capacity Savings that were not procured or reported due to a Force Majeure event.

- (b) Temporary Withholding. Starting with the Billing Contract Year that is the second (2nd) Contract Year, if an Acceptable Annual Inspection Report for the Contract Year immediately before the Billing Contract Year has not been provided to SDG&E before the beginning of such Billing Contract Year, then until such Acceptable Annual Inspection Report has been delivered to SDG&E, SDG&E shall be entitled to withhold the payment of any Monthly Contract Price Payments in respect of such Billing Contract Year until such Acceptable Annual Inspection has been delivered to SDG&E; provided that if such Acceptable Annual Inspection has not been provided to SDG&E by the end of such Billing Contract Year, then SDG&E shall be entitled to retain all such withheld amounts without any further obligation to release such

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withheld amounts. Following the receipt of such Acceptable Annual Inspection Report before the end of such Billing Contract Year, SDG&E shall release all such withheld Monthly Contract Price Payments in respect of such Billing Contract Year (but only to the extent based on the Reported Annual Peak Capacity Savings amount and Forecasted Annual Energy Savings amount set forth in such Acceptable Annual Inspection Report) in accordance with the invoicing and payment provisions of Article 4. If, following the expiration or earlier termination of this Agreement, SDG&E continues to retain any withheld amounts of Monthly Contract Price Payments for which SDG&E was required to release under this Section 2.4(b), then such amount shall be released by SDG&E within sixty (60) days following the receipt by SDG&E of an invoice for such amount from Seller.

- (c) No Waiver of Remedies. Nothing in this Section 2.4 shall be deemed to limit or waive either Party's rights and remedies under Article 8 as a result of an Event of Default of the other Party, and each Party's rights under this Section 2.4 shall be subject to such other Party's rights and remedies under Article 8.

2.5 Inspections

- (a) Generally.
- (i) Seller shall, and shall cause all End-Use Customer(s) of the Project to, provide all Evaluators access to the Sites and Project to examine, test, measure, and inspect the Project and to perform all Inspections. Seller shall also provide all Evaluators access to, and the ability to review, any records or documents needed to examine, test, measure, or inspect the Project, and properly perform all Inspections. Access shall be granted for the number of days needed to complete any such Inspections. The obligation to provide access described in this paragraph shall apply regardless of whether the End-Use Customer associated with the Project, a Site, or Measure changes during the Term of the Agreement.
 - (ii) With respect to an Evaluator engaged by Seller, Seller shall make the Evaluator available to SDG&E to discuss any Inspection and any of the information contained in an Inspection Report upon SDG&E's request. SDG&E shall also have the right to review all records and Documentation related to an Inspection or Inspection Report. SDG&E may, in its sole discretion, request access to any Site and the Project to examine, test, measure, and inspect the Project. Seller shall, and shall cause all End-Use Customer(s) of the Project to, provide access to the Site and Project to SDG&E and/or an Evaluator engaged by SDG&E pursuant to this Agreement.
 - (iii) All Inspection Reports provided by Seller's Evaluator shall be issued for the benefit of SDG&E and shall expressly allow SDG&E to rely on such reports.

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- (b) Pre-Delivery Period Inspection.
- (i) Prior to the occurrence of the Initial Delivery Date, Seller, at Seller's expense, shall have caused an Evaluator to conduct an on-site inspection ("Pre-Delivery Period Inspection") that is consistent with the M&V Plan and to issue a Pre-Delivery Period Inspection Report in accordance with this Section 2.5(b) that demonstrates that Seller has met the Project Requirements for the first (1st) Contract Year. The selection of any Evaluator under this subsection (i) shall be subject to SDG&E's consent, which shall not be unreasonably withheld or delayed.
 - (ii) Seller shall cause the Evaluator to issue a Pre-Delivery Period Inspection Report within thirty (30) days after the completion of the Pre-Delivery Period Inspection. The Pre-Delivery Period Inspection Report shall include the following information:
 - (A) The Inspection Date of the Pre-Delivery Period Inspection Report;
 - (B) A description of each Measure installed on such Inspection Date, which description shall include the type of Measure, the Site of the Measure, and the End-Use Customer at whose Site such Measure was installed;
 - (C) The Annual Peak Capacity Savings for each Measure and the Project in aggregate on such Inspection Date, calculated in accordance with Exhibit B;
 - (D) The forecasted Annual Energy Savings during the first (1st) Contract Year for each Measure and the Project in aggregate as of such Inspection Date, calculated in accordance with Exhibit B;
 - (E) A certification from the Evaluator that the statements and calculations made in such Pre-Delivery Period Inspection Report is true and accurate as of such Inspection Date; and
 - (F) Any other information reasonably requested by SDG&E to determine (i) the Project's compliance with the Project Requirements for the first (1st) Contract Year, (ii) the Annual Peak Capacity Savings for each Measure and the Project in the aggregate on such Inspection Date, and (iii) the forecasted Annual Energy Savings during the first (1st) Contract Year for each measure and the Project in the aggregate as of such Inspection Date.
 - (iii) Within thirty (30) days after receipt of the Pre-Delivery Period Inspection Report, SDG&E shall either (A) provide Notice to Seller that it has accepted the Pre-Delivery Period Inspection Report, or (B) provide Notice to Seller

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that it is not accepting the Pre-Delivery Period Inspection Report to its reasonable satisfaction, which reasons may include, but is not limited to: the Annual Inspection Report being materially inaccurate or incomplete; not properly determining or providing enough information in support of finding whether the Project meets the Project Requirements for the first (1st) Contract Year, the amount of Annual Peak Capacity Savings, or the amount of forecasted Annual Energy Savings; indicating that the Annual Inspection was not conducted consistent with the M&V Plan; or being materially deficient in any manner whatsoever. If SDG&E provides the Notice under subsection (B), then Seller shall cause the Evaluator (or another Evaluator) to re-submit a Pre-Delivery Period Inspection Report that is not deficient for the reasons cited by SDG&E (in which case the procedure set forth in this clause (iii) shall re-apply). If SDG&E fails to provide Notice under subsection (A) or (B) above within the prescribed thirty (30)-day period, then SDG&E shall be deemed to have accepted Seller's Pre-Delivery Period Inspection Report.

(c) Annual Inspections.

- (i) No later than the last day of each Contract Year, Seller, at Seller's expense, shall cause an Evaluator to conduct an on-site inspection ("Annual Inspection") that is consistent with the M&V Plan and to issue an Annual Inspection Report for such Contract Year in accordance with this Section 2.5(c). The selection of any Evaluator under this subsection (i) shall be subject to SDG&E's consent, which shall not be unreasonably withheld or delayed. An Annual Inspection Report shall have an Inspection Date that is both no earlier than the date that is thirty (30) days prior to the last day of such Contract Year and no later than the last day of such Contract Year.
- (ii) Seller shall cause the Evaluator to issue an Annual Inspection Report no later than thirty (30) days following the end of each Contract Year (the "Annual Inspection Report Deadline"). The Annual Inspection Report shall include the following information:
 - (A) The Inspection Date of the Annual Inspection Report;
 - (B) A description of each Measure installed on such Inspection Date, which description shall include the type of Measure, the Site of the Measure, and the End-Use Customer at whose Site such Measure was installed;
 - (C) The Annual Peak Capacity Savings for each Measure and the Project in the aggregate on such Inspection Date, calculated in accordance with Exhibit B;
 - (D) The actual aggregate Annual Energy Savings for the Project during such Contract Year, calculated in accordance with Exhibit B;

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- (E) The forecasted Annual Energy Savings during the following Contract Year for each Measure and the Project in the aggregate as of such Inspection Date, calculated in accordance with Exhibit B;
 - (F) A certification from the Evaluator that the statements and calculations made in such Annual Inspection Report is true and accurate as of such Inspection Date; and
 - (G) Any other information reasonably requested by SDG&E to determine (i) the Project's compliance with the Project Requirements for the following Contract Year, (ii) the Annual Peak Capacity Savings and for each Measure and the Project in the aggregate on the Inspection Date, (iii) the actual aggregate Annual Energy Savings for the Project during such Contract Year, (iii) the actual aggregate Annual Energy Savings for the Project during such Contract Year, and (iv) the forecasted Annual Energy Savings during the following Contract Year for each measure and the Project in the aggregate as of such Inspection Date.
- (iii) Within thirty (30) days of receipt of an Annual Inspection Report, SDG&E shall either (A) provide Notice to Seller that it has accepted the Annual Inspection Report, or (B) provide Notice to Seller that it is not accepting the Annual Inspection Report to its reasonable satisfaction, which reasons may include, but is not limited to: the Annual Inspection Report being materially inaccurate or incomplete; not properly determining or providing enough information in support of finding whether the Project meets the Project Requirements for the following Contract Year, the amount of Annual Peak Capacity Savings, or the amount of actual or forecasted Annual Energy Savings; indicating that the Annual Inspection was not conducted consistent with the M&V Plan; or being materially deficient in any manner whatsoever. If SDG&E provides the Notice under subsection (B), then Seller cause the Evaluator (or another Evaluator) to re-submit an Annual Inspection Report that is not deficient for the reasons cited by SDG&E (in which case the procedure set forth in this clause (iii) shall re-apply). If SDG&E fails to provide Notice under subsection (A) or (B) above within the prescribed thirty (30)-day period, then SDG&E shall be deemed to have accepted Seller's Annual Inspection Report.
- (iv) For the avoidance of doubt, even if an Acceptable Annual Inspection Report for a Contract Year is delivered after the end of a Contract Year, such Acceptable Annual Inspection Report shall be deemed an Acceptable Inspection Report in respect of the such Contract Year for purposes of this Agreement.

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2.6 Annual True-Up

If the results of an Acceptable Annual Inspection Report delivered by Seller in respect of a Contract Year demonstrates the occurrence of a Deficiency Event (as defined below), then Seller shall pay SDG&E an Annual True-Up Payment in respect of such Contract Year calculated in accordance with this Section 2.6. A “Deficiency Event” shall have occurred if such Acceptable Annual Inspection Report for such Contract Year shows either (a) that the aggregate Annual Peak Capacity Savings amount set forth in such Acceptable Inspection Report is less than the Reported Annual Peak Capacity Savings amount used to calculate the Monthly Contract Price Payments during such Contract Year, and/or (b) that the actual aggregate Annual Energy Savings for such Contract Year set forth in such Acceptable Inspection Report is less than the Forecasted Annual Energy Savings amount used to calculate the Monthly Contract Price Payments during such Contract Year.

Such “Annual True-Up Payment” amount for a Contract Year shall be calculated as follows:

$$ATP = \{ [CWF \times 6 \text{ months} \times (RAPCS - APCS) / CAPCS] + [EWF \times 12 \text{ months} \times (FAES - AAES) / CAES] \} \times MCCP$$

Where:

ATP = The Annual True-Up Payment for such Contract Year;

CWF = The Capacity Weighted Factor;

RAPCS = The Reported Annual Peak Capacity Savings amount used to calculate the Monthly Contract Price Payments during such Contract Year;

APCS = The aggregate Annual Peak Capacity Savings amount for such Contract Year set forth in such Acceptable Annual Inspection Report;

CAPCS = The Contracted Annual Peak Capacity Savings amount for such Contract Year;

EWF = The Energy Weighted Factor;

FAES = The Forecasted Annual Energy Savings amount used to calculate the Monthly Contract Price Payments during such Contract Year;

AAES = The actual aggregate Annual Energy Savings for such Contract Year set forth in such Acceptable Annual Inspection Report;

CAES = The Contracted Annual Energy Savings amount for such Contract Year; and

MCCP = The Monthly Contract Price Payment for such Contract Year;

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provided, however, for clarity, if the value of (RAPCS – APCS) or the value of (FAES – AAES) results in an amount less than zero (0), then such value shall be zero (0). For the avoidance of doubt and notwithstanding anything contained in this Agreement to the contrary, in the calculation of an Annual True-Up Payment, under no circumstance shall Seller be credited or otherwise receive any benefit for Annual Energy Savings or Annual Peak Capacity Savings that were not procured or reported due to a Force Majeure event.

Annual True-Up Payment amounts shall be credited against the next successive Monthly Contract Price Payments, provided that if any Annual True-Up Payment amounts remains unpaid following the expiration or earlier termination of this Agreement, then such amount shall be paid by Seller within thirty (30) days following the receipt by Seller of an invoice for such amount from SDG&E, which payment shall be made by check or wire transfer as set forth in such invoice.

The Parties acknowledge that an Acceptable Annual Inspection Report in respect of a Contract Year might not be available until after the start of the next Contract Year (or if such Contract Year is the last Contract Year of the Delivery Period, after the expiration or earlier termination of the Agreement) and that such delay shall not in any way abrogate or diminish each Party's obligations under this Section 2.6.

The Parties acknowledge and agree that the actual damages that SDG&E would incur due to a Deficiency Event would be difficult or impossible to predict with certainty, and that the Annual True-Up Payment is a reasonable and appropriate approximation of such damages, and is SDG&E's exclusive remedy for such Deficiency Event (but shall not otherwise act to limit any of SDG&E's rights or remedies arising from any other Event of Default by Seller).

2.7 Permits and Licenses

Seller, at its own expense, shall obtain and maintain, or shall cause the End-Use Customer to obtain and maintain, as applicable, any and all Permits needed to install the Project and to maintain and operate the Project at the Site(s).

2.8 Advertising and Marketing

- (a) **No Use of Marks.** Seller shall not use SDG&E's or any of its Affiliates' corporate names, trademarks, service marks, trade names, logos, identities or any affiliations for any reason, without SDG&E's prior written consent.
- (b) **No Endorsement.** Seller shall not state or represent to third parties, End-Use Customers (prospective or otherwise) or Project participants that SDG&E has endorsed or approved Seller or its contractors or subcontractors of their work.
- (c) **Funding Source Disclosure.** Seller shall disclose its source of funding for the Project by stating prominently on all advertising, promotion or marketing materials that the Project is "funded, in whole or in part, by California ratepayers under the auspices of the California Public Utilities Commission."

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- (d) No Obligation to Purchase. As appropriate and directed by SDG&E, Seller shall prominently disclose to prospective End-Use Customers, in writing, that customers are not obligated to purchase any service or product offered by Seller.

2.9 Records

- (a) Information Production. Upon request from SDG&E, Seller shall, within ten (10) Business Days of such request, produce any and all documents, information, or records related to the Project or a Measure that is part of the Project, including any documents, information, or records needed to measure the energy or capacity reductions of the Project or Measure. For purposes of this Section 2.9(a), Seller shall be obligated to provide any documents, information, or records of an Evaluator engaged by Seller related to the subject matter of this Section 2.9(a).
- (b) WMDVBE Reporting. During the Term, no later than twenty (20) days after each semi-annual period ending on June 30th or December 31st, or more frequently if requested by SDG&E, a report listing all WMDVBEs that supplied goods or services to Seller during such period, including any certifications or other Documentation of such WMDVBEs' status as such and the aggregate amount paid to WMDVBEs during such period.
- (i) SDG&E has the right to disclose to the CPUC all such information provided by Seller pursuant to this Section 2.9(b).
- (ii) Seller shall make reasonable efforts to accommodate requests by the CPUC (or by SDG&E in response to a request by the CPUC) to audit Seller in order to verify data provided by Seller pursuant to this Section 2.9(b).

2.10 Subcontractors

Seller shall obtain SDG&E's written consent prior to retaining contractors or subcontractors to perform any portion of the work related to the Project, provided that any such consent may be revoked by SDG&E with no less than thirty (30) days prior written notice for just and reasonable cause. Seller shall at all times be responsible for the acts and omissions of such contractors and subcontractors, and any persons performing such work on their behalf, employed directly or indirectly by Seller and shall contractually require each such contractor and subcontractor to be bound by the same terms and conditions as binding Seller under this Agreement. Seller shall be responsible for performance of all work related to the Project as set forth in this Agreement, whether performed by Seller or any contractor or subcontractor of Seller or any other person performing such work on their behalf. This Agreement shall not give rise to any contractual relationship between SDG&E and any contractor or subcontractor of Seller. SDG&E does not undertake any obligation to pay or to be responsible for the payment of any sums to any contractor or subcontractor or agent of Seller. Upon request of SDG&E, Seller shall furnish to SDG&E copies of any executed contracts or subcontracts entered into between Seller and any such contractor or subcontractor.

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2.11 Customer Complaint and Dispute Resolution Procedures

Seller shall be responsible, to the complete satisfaction of SDG&E, for developing and implementing a process for the management of customer complaints. Seller shall undertake activities to resolve customer complaints in an expedited manner including, but not limited to, (a) ensuring adequate levels of professional customer service staff, (b) direct access of customer complaints to supervisory and/or management personnel, and (c) ensuring sufficient levels of delivery personnel expected during times of high volume. Seller shall implement a Customer Comment Tracking System for recording customer inquiries, complaints, and positive feedback for SDG&E. The Customer Comment Tracking System shall include, but is not limited to, dates of customer complaints, information on the number, characterization, and resolution of customer complaints, date of each complaint resolution and tracking of the total number of telephone calls, duration of calls, number of calls placed on hold, duration of time calls are on hold, and number of cancelled calls (hang-ups). Seller shall provide SDG&E with a monthly status report on such customer comments and status of customer complaints (on a cumulative basis).

2.12 Documentation

Title to all Documentation, including any and all inspection reports, including copyright ownership in the Documentation, shall pass to SDG&E when prepared (whether prepared by Seller, its contractor or subcontractor or its Evaluator). To the extent any invention, discovery, trade secret, patent, copyright, or other intellectual property (collectively, "Proprietary Rights") conceived, developed or reduced to practice by Seller is used in and have become integral with the Documentation, or are necessary for SDG&E to have complete enjoyment of the Documentation, Seller shall grant to SDG&E a non-exclusive, irrevocable, royalty-free license, as may be required by SDG&E for complete enjoyment of the Documentation, including the right to reproduce, correct, repair, replace, maintain, translate, publish, use, modify, copy or dispose of any or all of the Documentation and grant sublicenses to others with respect to such Documentation. If the Documentation includes the Proprietary Rights of others, Seller shall procure, at no additional cost to SDG&E, all necessary licenses regarding such Proprietary Rights of others so as to allow SDG&E the complete enjoyment of the Documentation, including the right to reproduce, correct, repair, replace, maintain, translate, publish, use, modify, copy or dispose of any or all of the Documentation and grant sublicenses to others with respect to such Documentation.

ARTICLE 3. CPUC APPROVAL

Unless otherwise specified herein, notwithstanding SDG&E's execution and delivery of this Agreement, SDG&E's obligations under this Agreement (including, without limitation, the obligation to pay the Monthly Contract Price Payment) shall only become effective upon CPUC Approval. Seller shall use commercially reasonable efforts to support SDG&E in obtaining CPUC Approval. SDG&E has no obligation to seek rehearing or to appeal a Commission decision which fails to approve this Agreement or which contains findings required for CPUC Approval with conditions or modifications unacceptable to either Party.

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Either Party has the right to terminate this Agreement on Notice, which will be effective on the date such Notice is given, if CPUC Approval has not been obtained or waived by SDG&E in its sole discretion within 365 days after SDG&E files its request for CPUC Approval and such Notice of termination is given on or before the 395th day after SDG&E files the request for CPUC Approval.

Failure to obtain CPUC Approval in accordance with this Article 3 will not be deemed to be a failure of Seller to install the Project or a failure of SDG&E to make payment for such installation, and will not be or cause an Event of Default by either Party. No Settlement Amount with respect to this Agreement will be due or owing by either Party upon termination of this Agreement due solely to failure to obtain CPUC Approval.

ARTICLE 4. PAYMENT AND BILLING

4.1 Invoicing and Payment

- (a) **Invoicing.** For any Billing Month in which payment from Buyer to Seller is due, Seller shall send an invoice to SDG&E for such Billing Month's Monthly Contract Price Payment no later than the tenth (10th) day of such Billing Month. Invoices shall be submitted to:

[SDG&E to provide]

As a condition to SDG&E's payment of an invoice, all invoices submitted must reference the Agreement number and the invoice contact and have complete support documentation of all charges incurred.

- (b) **Payment.** So long as no Event of Default with respect to the Seller has occurred and is continuing, and without limiting the provisions of Section 2.6(b) above and subject to Sections 4.2 and 4.3 below, SDG&E shall pay such Monthly Contract Price Payment no later than sixty (60) days after receipt of an invoice. Payment may be made through check, credit card or wire transfer protocol to the following address:

[Seller to provide]

If either the invoice deadline or payment deadline is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Any undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Default Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

4.2 Disputes and Adjustments of Invoices

A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or

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computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. 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. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Default Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 4.2 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not Affiliated with the Party claiming the error and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

4.3 Netting

SDG&E may offset any payments that are due and owing by any amount(s) that were previously overpaid through netting, such that only the excess amount remaining due shall be paid by SDG&E.

ARTICLE 5. PERFORMANCE ASSURANCE

5.1 Performance Assurance Amount.

Seller shall post and thereafter maintain security (“Performance Assurance”) equal to *[To be Inserted]* Dollars (\$), in accordance with the following terms and conditions:

- (a) Seller shall post *[Insert]* (\$) of Performance Assurance on or before the Execution Date and the remaining amount of *[To be Inserted]* Dollars (\$) within ten (10) Business Days after CPUC Approval;
- (b) Performance Assurance shall be held by SDG&E as security for Seller’s obligations under the Agreement;
- (c) The Performance Assurance must be in the form of either Cash or a Letter of Credit;
- (d) If Seller posts any Performance Assurance in Cash, Seller will receive Interest Amounts in accordance with the procedure specified in Section 5.4(a)(ii); and

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- (e) If Seller establishes the Performance Assurance by means of a Letter of Credit, such Letter of Credit must be provided substantially in the form of Exhibit A.

5.2 Return of Performance Assurance

So long as no Event of Default or Potential Event of Default with respect to the Seller has occurred and is continuing, and no Early Termination Date has occurred or been designated as the result of an Event of Default with respect to the Seller, SDG&E shall return all unused Performance Assurance to Seller within fifteen (15) Business Days after the date that all of Seller's obligations have been indefeasibly paid in full after the end of the Term of the Agreement.

5.3 Grant of Security Interest/Remedies

To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to SDG&E a present and continuing security interest in, and lien on (and right of setoff against), and collateral assignment of, the Performance Assurance and all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such SDG&E, and each Party agrees to take such action as the other Party reasonably requires in order to perfect SDG&E's first-priority security interest in, and lien on (and right of setoff against), such Performance Assurance and collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, SDG&E, if it is the Non-Defaulting Party, may do any one or more of the following: (i) exercise any of the rights and remedies of SDG&E with respect to the Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Seller in the possession of SDG&E or its agent; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of SDG&E free from any claim or right of any nature whatsoever of the Seller, including any equity or right of purchase or redemption by the Seller. In such an event SDG&E shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Seller's obligations under the Agreement (the Seller remaining liable for any amounts owing to SDG&E after such application), subject to SDG&E's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

5.4 Administration of Performance Assurance

- (a) Cash. Performance Assurance provided in the form of Cash to SDG&E shall be subject to the following provisions:
- (i) Notwithstanding the provisions of applicable Law, if no Event of Default has occurred and is continuing with respect to SDG&E and no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to SDG&E for which there exist any unsatisfied payment obligations,

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then SDG&E shall have the right to sell, pledge, re-hypothecate, assign, invest, use, commingle or otherwise use in its business any Cash that it holds as Performance Assurance hereunder, free from any claim or right of any nature whatsoever of the Seller, including any equity or right of redemption by the Seller.

- (ii) So long as no Event of Default or Potential Event of Default with respect to the Seller has occurred and is continuing, and no Early Termination Date for which any unsatisfied payment obligations of the Seller exist has occurred or been designated as the result of an Event of Default with respect to the Seller, and to the extent that an obligation to Transfer Performance Assurance would not be created or increased by the Transfer, in the event that SDG&E is holding Cash, SDG&E will Transfer (or caused to be Transferred) to the Seller, in lieu of any interest or other amounts paid or deemed to have been paid with respect to such Cash (all of which may be retained by SDG&E), the Interest Amount. The Seller shall invoice SDG&E annually setting forth the calculation of the Interest Amount due, and SDG&E shall make payment thereof by the later of (A) the tenth (10th) Business Day of the first month after the last month to which such invoice relates or (B) the tenth (10th) Business Day after the day on which such invoice is received. On or after the occurrence of a Potential Event of Default or an Event of Default with respect to the Seller or an Early Termination Date as a result of an Event of Default with respect to the Seller, SDG&E shall retain any such Interest Amount as additional Performance Assurance hereunder until the obligations of the Seller under the Agreement have been satisfied in the case of an Early Termination Date or for so long as such Event of Default is continuing in the case of an Event of Default.
- (b) Letters of Credit. Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions.
 - (i) Each Letter of Credit shall be maintained for the benefit of SDG&E. The Seller shall (A) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (B) if the bank or financial institution that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide either a substitute Letter of Credit or Cash, in each case at least sixty (60) Calendar Days prior to the expiration of the outstanding Letter of Credit, and (C) if a bank or financial institution issuing a Letter of Credit shall fail to honor SDG&E's properly documented request to draw on an outstanding Letter of Credit, provide for the benefit of SDG&E either a substitute Letter of Credit that is issued by a bank or financial institution acceptable to SDG&E or Cash, in each case within one (1) Business Day after such refusal.

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- (ii) As one method of providing Performance Assurance, the Seller may increase the amount of an outstanding Letter of Credit or establish one or more additional Letters of Credit.
 - (iii) Upon the occurrence of a Letter of Credit Default, the Seller agrees to Transfer to SDG&E either a substitute Letter of Credit or Cash, in each case on or before the first (1st) Business Day after the occurrence thereof (or the fifth (5th) Business Day after the occurrence thereof if only clause (i) under the definition of Letter of Credit Default applies).
 - (iv) Upon or at any time after the occurrence and continuation of an Event of Default or Letter of Credit Default with respect to the Seller, or if an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Seller for which there exist any unsatisfied payment obligations, then SDG&E may draw on the entire, undrawn portion of any outstanding Letter of Credit upon submission to the bank or financial institution issuing such Letter of Credit of one or more certificates specifying that such Event of Default, Letter of Credit Default or Early Termination Date has occurred and is continuing. Cash proceeds received from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for the Seller's obligations to SDG&E, and SDG&E shall have the rights and remedies set forth in Section 5.5 with respect to such Cash proceeds. Notwithstanding SDG&E's receipt of Cash proceeds of a drawing under the Letter of Credit, the Seller shall remain liable (A) for any failure to Transfer sufficient Performance Assurance and (B) for any amounts owing to SDG&E and remaining unpaid after the application of the amounts so drawn by SDG&E.
 - (v) In all cases, the costs and expenses of establishing, renewing, substituting, canceling, and increasing the amount of a Letter of Credit shall be borne by the Seller.
- (c) Care of Performance Assurance. Except as otherwise provided in Section 5.4(a)(i) and in the exercise of reasonable care in the custody thereof, SDG&E shall have no duty as to any Performance Assurance in its possession or control or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto. SDG&E shall be deemed to have exercised reasonable care in the custody and preservation of the Performance Assurance in its possession if the Performance Assurance is accorded treatment substantially equal to that which it accords its own property, and shall not be liable or responsible for any loss or damage to any of the Performance Assurance, or for any diminution in the value thereof, except to the extent such loss or damage is the result of SDG&E's willful misconduct or gross negligence. SDG&E shall at all times retain possession or control of any Performance Assurance Transferred to it.

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5.5 Exercise of Rights Against Performance Assurance

- (a) In the event that an Event of Default with respect to the Seller has occurred and is continuing or an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Seller, SDG&E may exercise any one or more of the rights and remedies provided under this Agreement, or as otherwise available under applicable Law. Without limiting the foregoing, if at any time an Event of Default with respect to the Seller has occurred and is continuing, or an Early Termination Date occurs or is deemed to occur as a result of an Event of Default with respect to the Seller, then SDG&E may, in its sole discretion, exercise any one or more of the following rights and remedies:
- (i) all rights and remedies available to SDG&E under the Uniform Commercial Code and any other applicable jurisdiction and other applicable Laws with respect to the Performance Assurance held by or for the benefit of SDG&E;
 - (ii) the right to set off any Performance Assurance held by or for the benefit of SDG&E against and in satisfaction of any amount payable by the Seller in respect of any of its obligations; and
 - (iii) the right to draw on any outstanding Letter of Credit issued for its benefit.
- (b) SDG&E shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available hereunder. The Seller shall in all events remain liable to SDG&E for any amount payable by the Seller in respect of any of its obligations remaining unpaid after any such liquidation, application and set off.
- (c) Subject to Section 5.2 above, in the event that SDG&E draws or otherwise sets off any portion of the Performance Assurance, Seller shall replenish such drawn or set off amount so as to maintain the full amount of the Performance Assurance as required under Section 5.1 above.

5.6 Financial Information

If requested by a Party, the other Party shall deliver (a) within one hundred and twenty (120) days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year setting forth in each case in comparative form the figures for the previous year for the Party, and (b) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of a quarterly report containing unaudited consolidated financial statements for such fiscal quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year, and if the Party files reports with the Securities and Exchange Commission, certified in accordance with all applicable laws and regulations, including without limitation all applicable Securities and

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Exchange Commission rules and regulations. If the Party does not file reports with the Securities and Exchange Commission, the reports must be certified by a Chief Financial Officer, Treasurer or any Assistant Treasurer as being fairly stated in all material respects (subject to normal year-end audit adjustments); provided however, for the purposes of this subsection (a) and (b), if a Party's financial statements are publicly available electronically on the Securities and Exchange Commission's website, then this requirement shall be deemed satisfied. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements. Without limiting anything contained in this Section 5.6, Seller shall promptly provide any and all financial information as may be requested by the CPUC from time to time.

5.7 Uniform Commercial Code Waiver

This Agreement sets forth the entirety of the agreement of the Parties regarding credit, collateral, financial assurances and adequate assurances. Except as expressly set forth in this Agreement, including, but not limited to, those provisions set forth in Article 5 and Article 8, neither Party:

- (a) has or will have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, or
- (b) will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of Article 5 and Article 8 of this Agreement; and all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived.

ARTICLE 6. REPRESENTATIONS, WARRANTIES AND COVENANTS

6.1 Representations and Warranties of Both Parties

On the Execution Date, each Party represents and warrants to the other Party that:

- (a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) Except for CPUC Approval in the case of SDG&E, it has or will timely acquire all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

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- (c) 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) This Agreement constitutes its legally valid and binding obligation, enforceable against it in accordance with its terms;
- (e) It is not Bankrupt and there are not proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or become Bankrupt;
- (f) Except for proceedings related to obtaining CPUC Approval in the case of SDG&E, there is not pending or, to its knowledge, threatened against it, any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement; and
- (g) It (i) is acting for its own account, (ii) 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, (iii) is not relying upon the advice or recommendations of the other Party in so doing, and (iv) is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions, and risks of this Agreement.

6.2 Additional Seller Representations, Warranties and Covenants

- (a) Eligibility. Seller hereby represents, warrants and covenants to SDG&E throughout the Term that:
 - (i) The Project, and every Measure in the Project, is within SDG&E's Service Territory;
 - (ii) Seller will not use, submit, claim, or receive a Double Incentive for the Project, or any Measure in the Project;
 - (iii) Seller will not knowingly provide an Incentive to an End-Use Customer for any Measure in the Project who would receive a Double Incentive as a result of receiving such Incentive; and
 - (iv) Prior to providing an Incentive to an End-Use Customer, Seller shall obtain a signed form from such End-Use Customer whereby such End-Use Customer certifies that (A) such End-Use Customer has not received any rebate, incentive or discount for the same service or measure from any other SDG&E program or from another utility, state or local program, and (B) such End-Use Customer will not apply for any rebate, incentive or discount for the

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same service or measure from any other SDG&E program or from another utility, state or local program. Seller shall keep such End-Use Customer-signed forms for at least four (4) years after the end of the Term of this Agreement.

- (b) Measures. Seller hereby represents and warrants that, to the best of Seller's knowledge, at all times during the Term, all of the Measures comprising the Project have been installed in accordance with this Agreement, including Exhibit B.
- (c) Performance Assurance. On each day on which Performance Assurance is held by SDG&E under this Agreement, the Seller hereby represents and warrants that:
 - (i) the Seller has good title to and is the sole owner of such Performance Assurance, and the execution, delivery and performance of the covenants and agreements of this Agreement, do not result in the creation or imposition of any lien or security interest upon any of its assets or properties, including, without limitation, the Performance Assurance, other than the security interests and liens created under this Agreement;
 - (ii) upon the Transfer of Performance Assurance by the Seller to SDG&E, SDG&E shall have a valid and perfected first priority continuing security interest therein, free of any liens, claims or encumbrances, except those liens, security interests, claims or encumbrances arising by operation of law that are given priority over a perfected security interest; and
 - (iii) it is not and will not become a party to or otherwise be bound by any agreement, other than this Agreement, which restricts in any manner the rights of any present or future holder of any of the Performance Assurance with respect hereto.

6.3 Taxes

- (a) Seller Liability. Seller assumes exclusive liability for and shall pay before delinquency, all federal, state, regional, municipal or local sales, use, excise and other taxes, charges or contributions imposed on, or with respect to, or measured by (i) the equipment, materials, supplies or labor furnished hereunder, (ii) the wages, salaries or other remunerations paid to individuals employed in connection with the performance of the work under this Agreement, or (iii) any failure to comply with the Patient Protection and Affordable Care Act of 2010, as amended (the "Affordable Care Act") with respect to individuals performing the work under this Agreement. Seller shall assume sole risk, responsibility and liability for, and shall indemnify, reimburse, defend, and hold harmless SDG&E and SDG&E's directors, officers, employees, agents, assigns, and successors in interest (each, an "Indemnified Party") for, from and against, any and all loss, liability, damage, claim, cost, charge, demand, penalty, fine or expense of any kind or nature (including any direct, damage, claim, cost, charge, demand, or expense, and attorneys' fees

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(including cost of in-house counsel) and other costs of litigation, arbitration or mediation, and in the case of third-party claims only, indirect or consequential loss or damage of such third-party) arising from, caused by, or in connection with, Seller's failure to pay such taxes, charges or contributions.

- (b) Tax Minimization. Each Party shall make commercially reasonable efforts to cooperate with each other to minimize the tax liability of both Parties to the extent legally permissible (and with no duty to increase either parties tax liability), including separately stating taxable charges on Seller's invoices and supplying resale and exemption certificates, if applicable, and any other information as reasonably requested.

ARTICLE 7. NOTICES

7.1 Notice

All Notices, requests, statements or payments from one Party to the other Party shall be made to the addresses and persons specified in Section 7.2. All Notices, requests, statements or payments from one Party to the other Party shall be made in writing except where this Agreement expressly provides otherwise. Notices required to be in writing shall be delivered by hand delivery, overnight delivery, or facsimile. Notice from one Party to the other Party by facsimile (where confirmation of successful transmission is received) shall be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it shall be deemed received on the next Business Day). Notice from one Party to the other Party by hand delivery or overnight delivery shall be deemed to have been received when delivered. A Party may change its contact information by providing Notice of the same in accordance herewith.

7.2 Contact Information

For SDG&E:

Billing Representative

[Name]

Phone:

Facsimile:

Contract Representative

[Name]

Phone:

Facsimile:

Settlements

[Name]

Phone:

Facsimile:

Accounts Payable :

Attn:

[address]

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Phone:
Facsimile:

Invoice Payment Department:

Attn:
[address]
Phone:
Facsimile:

Credit and Collections

Attn: Manager of Credit for SDG&E
555 W. 5th St. ML18A3
Los Angeles, CA 90013
Phone: (866) 313-6622 Facsimile: (213) 244-8316

Notices of Event of Default or Potential Event of Default to:

SDG&E Law Department, General Counsel
Phone:
Facsimile:

For Seller:

Billing Representative

[Name]
Phone:
Facsimile:

Contract Representative

[Name]
Phone:
Facsimile:

Settlements

[Name]
Phone:
Facsimile:

Other Seller Contact Information:

[Name, if any]

Credit and Collections

Attn:
Phone:
Facsimile:

Notices of Event of Default or Potential Event of Default to:

[Name]
Phone:
Facsimile:

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The Parties acknowledge and agree that those persons set forth in this Section 7.2 are designated by each Party as their respective authorized representatives to act on their behalf for the purposes described therein.

ARTICLE 8. EVENTS OF DEFAULT; TERMINATION

8.1 Events of Default

- (a) Generally. An “Event of Default” shall mean, with respect to a Party (“Defaulting Party”), the occurrence of any of the following:
- (i) the failure to make, when due, any payment required to be made to the other Party pursuant to this Agreement, if such failure is not remedied within three (3) Business Days after written Notice of such failure is given by the Non-Defaulting Party;
 - (ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature;
 - (iii) the failure to perform any material covenant, obligation, term or condition of this Agreement (except to the extent constituting a separate Event of Default), where such breach is not remedied within five (5) Business Days of Notice of such breach by the Non-Defaulting Party;
 - (iv) such Party becomes Bankrupt;
 - (v) such Party disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of this Agreement; or
 - (vi) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 15.3.
- (b) Seller Events of Default. In addition to the Events of Default set forth in Section 8.1(a) above, the following shall be an Event of Default of Seller:
- (i) the failure of Seller to satisfy the collateral requirements set forth in Article 5, including failure to post and maintain Performance Assurance;
 - (ii) the failure of Seller to achieve the Initial Delivery Date by the Initial Delivery Deadline (as such Initial Delivery Deadline shall have been extended pursuant to Section 2.2);
 - (iii) Seller abandons the Project;
 - (iv) the failure to maintain the necessary Permits under Section 2.7;

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- (v) a breach by Seller of any representation, warranty, covenant or obligations under Section 6.2;
- (vi) For two (2) consecutive Contract Years, the Acceptable Annual Inspection Report for each such Contract Year shows that the Project does not meet the Project Requirements for the following Contract Year. ***[NOTE: SDG&E has a minimum capacity requirement of 70% of the bid capacity over any consecutive 12-month period.]***

8.2 Remedies

If an Event of Default shall have occurred with respect to a Defaulting Party, the other Party (the “Non-Defaulting Party”) has the right:

- (a) To designate by Notice, which will be effective five (5) Business Days after the Notice is given, a day, no later than twenty (20) calendar days after the Notice is effective, for the early termination of this Agreement (an “Early Termination Date”) and the concurrent payment of the Termination Payment determined in accordance with Section 8.3 below;
- (b) Suspend performance of this Agreement (including making payments due to the Defaulting Party under this Agreement), but excluding the obligation to post and maintain Performance Assurance in accordance with Article 5; and
- (c) To pursue all other remedies available at law or in equity against the Defaulting Party (including monetary damages), except to the extent that such remedies are limited by the terms of this Agreement.

8.3 Termination Payment

As soon as practicable after an Early Termination Date is declared, the Non-Defaulting Party shall provide Notice to the Defaulting Party of the Termination Payment.

The Notice must include a written statement setting forth, in reasonable detail, the calculation of such Termination Payment including the Settlement Amount, together with appropriate supporting Documentation.

If the Termination Payment is positive, the Defaulting Party shall pay such amount to the Non-Defaulting Party within two (2) Business Days after the Notice is provided. If the Termination Payment is negative (i.e., the Non-Defaulting Party owes the Defaulting Party more than the Defaulting Party owes the Non-Defaulting Party), then the Non-Defaulting Party shall pay such amount to the Defaulting Party within thirty (30) days after the Notice is provided.

Each Party acknowledges and agrees that (a) the actual damages that the Non-Defaulting Party would incur in connection with a termination of this Agreement by the Non-

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Defaulting Party as a result of an Event of Default of the Defaulting Party would be difficult or impossible to predict with certainty, (b) the Termination Payment described in this Section 8.3 is a reasonable and appropriate approximation of such damages, and (c) the Termination Payment is the exclusive remedy of the Non-Defaulting Party in connection with such termination but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect such termination as its remedy for an Event of Default by the Defaulting Party.

ARTICLE 9. INDEMNIFICATION

9.1 Seller's Indemnification Obligations

(a) General Indemnity. In addition to any other indemnification obligations Seller may have elsewhere in this Agreement, which are hereby incorporated in this Section 9.1, Seller releases, and shall indemnify, defend and hold harmless SDG&E and each other Indemnified Party, from and against any and all loss, liability, damage, claim, cost, charge, demand, penalty, fine or expense of any kind or nature (including any direct, damage, claim, cost, charge, demand, or expense, and attorneys' fees (including cost of in-house counsel) and other costs of litigation, arbitration or mediation, and in the case of third-party claims only, indirect or consequential loss or damage of such third-party) incurred by such Indemnified Party, arising out of or in connection with:

- (i) The performance of work under this Agreement (whether such performance is by Seller, Seller's contractor or subcontractor, any other person performing on behalf of Seller or Seller's contractor or subcontractor or otherwise);
- (ii) any violation of a Law arising out of or in connection with Seller's performance of, or failure to perform, this Agreement, including any strict liability imposed by any Law; or
- (iii) Any violation by Seller or any of Seller's contractors or subcontractors of any third party license to use intellectual property in connection with work performed under this Agreement;

except to the extent any of the foregoing is caused by such Indemnified Party's negligence or willful misconduct.

(b) Hazardous Materials. Seller acknowledges that any claims, demands, losses, damages, costs, expenses, and legal liability that arise out of, result from, or are in any way connected with the release or spill of any legally designated hazardous material or waste as a result of the work performed under or in connection with this Agreement are expressly within the scope of this indemnity, and that the costs, expenses, and legal liability for environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remedial work, penalties, and fines arising from strict liability, or violation of any Law, attorney's

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fees, disbursements, and other response costs incurred as a result of such releases or spills are expressly within the scope of the indemnity set forth in this Section 9.1.

- (c) Intellectual Property Infringement. Seller shall indemnify, defend and hold harmless SDG&E and each Indemnified Party from and against any actual or alleged infringement or misappropriation by Seller or any of Seller's contractors or subcontractors of any patent, copyright, trade secret, trademark, service mark, trade name, or other intellectual property right in connection with work performed under this Agreement.
- (d) Liens. Seller shall indemnify, defend and hold harmless SDG&E and each Indemnified Party from and against any mechanics lien or stop notice claim against such Indemnified Party by Seller or any of its contractors, subcontractors, employees, suppliers or agents pertaining the work under this Agreement. If Seller fails to remove or discharge by bond, payment or otherwise any lien or claim within five (5) Business Days after an Indemnified Party's written demand to do so, SDG&E may offset the compensation otherwise payable to SDG&E under this Agreement in order to pay such lienors directly.

9.2 Indemnification Claims.

All claims for indemnification by an Indemnified Party under this Agreement will be asserted and resolved as follows:

- (a) If a claim or demand for which SDG&E may claim indemnity is asserted against or sought to be collected from Seller by a third party, SDG&E shall as promptly as practicable give Notice to the Seller; provided, failure to provide this Notice will relieve Seller only to the extent that the failure actually prejudices Seller;
- (b) Seller will have the right to control the defense and settlement of any claims in a manner not adverse to SDG&E but cannot admit any liability or enter into any settlement without SDG&E's approval; and
- (c) SDG&E may employ counsel at its own expense with respect to any claims or demands asserted or sought to be collected against it; provided, if counsel is employed due to a conflict of interest or because Seller does not assume control of the defense, Seller will bear the expense of this counsel.

ARTICLE 10. LIMITATION OF REMEDIES, LIABILITY, AND DAMAGES

EXCEPT AS SET FORTH HEREIN, THERE ARE NO WARRANTIES BY EITHER PARTY UNDER THIS AGREEMENT, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT

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THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY WILL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY WILL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

UNLESS EXPRESSLY PROVIDED IN THIS AGREEMENT, INCLUDING WITHOUT LIMITATION THE PROVISIONS OF ARTICLE NINE (INDEMNITY), NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

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.

NOTHING IN THIS ARTICLE PREVENTS, OR IS INTENDED TO PREVENT SDG&E FROM PROCEEDING AGAINST OR EXERCISING ITS RIGHTS WITH RESPECT TO ANY PERFORMANCE ASSURANCE.

SDG&E'S AND/OR ITS CONSULTANTS' REVIEW OF THE DESIGN, CONSTRUCTION, OPERATION OR MAINTENANCE OF THE PROJECT SHALL NOT CONSTITUTE ANY REPRESENTATION AS TO THE ECONOMIC OR TECHNICAL FEASIBILITY, OPERATIONAL CAPABILITY, OR RELIABILITY OF THE PROJECT

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OR OF THE PROJECT'S ABILITY TO PROVIDE ANY ENERGY OR CAPACITY SAVINGS, REDUCTIONS OR EFFICIENCY. SELLER SHALL IN NO WAY REPRESENT TO ANY THIRD PARTY THAT SDG&E'S REVIEW OF THE PROJECT, INCLUDING, BUT NOT LIMITED TO, SDG&E'S AND/OR ITS CONSULTANTS' REVIEW OR ANALYSIS OF THE DESIGN, CONSTRUCTION, OPERATION OR MAINTENANCE OF THE PROJECT, IS A REPRESENTATION BY SDG&E AS TO THE ECONOMIC OR TECHNICAL FEASIBILITY, OPERATIONAL CAPABILITY, AND RELIABILITY OF SUCH PROJECT OR AS TO THE PROJECT'S ABILITY TO PROVIDE ANY ENERGY OR CAPACITY SAVINGS, REDUCTIONS OR EFFICIENCY. SELLER IS SOLELY RESPONSIBLE FOR THE ECONOMIC AND TECHNICAL FEASIBILITY, OPERATIONAL CAPABILITY AND RELIABILITY OF SELLER'S PROJECT AND THE ENERGY AND CAPACITY SAVINGS OR REDUCTIONS ASSOCIATED THEREWITH.

ARTICLE 11. CONFIDENTIALITY

11.1 Agreement Terms.

Neither Party shall disclose the non-public terms or conditions of this Agreement or any transaction hereunder to a third party, other than (a) the Party's Affiliates and its and their officers, directors, employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential, (b) for disclosure to the Buyer's Procurement Review Group, as defined in CPUC Decision (D) 02-08-071, subject to a confidentiality agreement, (c) to the CPUC under seal for purposes of review, (d) in order to comply with any applicable Law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the Party seeking to disclose such non-public terms or conditions or transaction hereunder ("Disclosing Party"), other than to those entities set forth in subsection (f); or (e) to a Qualified Assignee; or (f) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the Federal Energy Regulatory Commission. In connection with requests made pursuant to clause (iv) of this Section 11.1 ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts to prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (i) prohibited from complying with a Disclosure Order or (ii) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

11.2 Publicity.

No announcement, publicity, advertising, press release, promotional or marketing materials regarding the arrangement contemplated under this Agreement, including the existence hereof, shall be made by either Party without the prior written approval of the other Party which approval shall not be unreasonably withheld or delayed.

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11.3 End-Use Customer Information.

Notwithstanding anything contained in this Agreement to the contrary (including without limitation the terms of Sections 11.1 and 11.2), Seller shall keep confidential and shall not disclose to any third party (other than to its contractors and subcontractors for the sole purpose of performing the work under this Agreement and only if such contractors and subcontractors have agreed in writing to confidentiality obligations at least as stringent as set forth in this Section 11.3 as if they were the “Seller” hereunder) any information related an End-Use Customer, including but not limited to names, addresses, billing information and energy usage data, except in the event, and only to the extent, that Seller is required to do so by the disclosure of requirements of any Law applicable to Seller, provided that Seller has provided SDG&E with prompt written notice of any such requirement prior to making or permitting any such disclosure so that SDG&E (with Seller’s assistance if requested by SDG&E) may have a reasonable opportunity to seek a protective order or other appropriate remedy. Seller shall cause its contractors and subcontractors to comply with the requirements of this Section 11.3 as if they were the “Seller” hereunder.

ARTICLE 12. FORCE MAJEURE

If, because of a Force Majeure, either Party is unable to perform an obligation under this Agreement, such Party (the “Claiming Party”) shall not be in default under this Agreement as a result of such failure of performance is affected or would have been required by or but for the Force Majeure only to the extent and for the duration so affected, provided:

- (a) the Claiming Party promptly, but no more than one (1) Business Day after the initial occurrence of the claimed Force Majeure, gives the other Party Notice describing the particulars of the occurrence;
- (b) the Claiming Party, within five (5) Business Days of providing Notice of occurrence of the Force Majeure, provides evidence reasonably sufficient to establish that the occurrence constitutes a Force Majeure as defined in this Agreement;
- (c) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure; and
- (d) as soon as Claiming Party is able to resume performance of its obligations under this Agreement, it shall do so and shall promptly give the other Party Notice of this resumption.

Notwithstanding anything contained in this Article 12 to the contrary, a Force Majeure shall not excuse:

- (i) the Claiming Party’s obligation to make payments then due or becoming due with respect to performance prior to such Force Majeure;

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- (ii) the Claiming Party's indemnification, hold harmless or defense obligations under this Agreement;
- (iii) an Event of Default by Seller under Section 8.1(b)(ii) (with the understanding that the Initial Delivery Deadline may be extended as a result of a Force Majeure pursuant to Section 2.2);
- (iv) an Event of Default by Seller under Section 8.1(b)(v); or
- (v) an Event of Default by Seller under Section 8.1(b)(vi).

This Agreement may be terminated upon Notice by the non-Claiming Party with no further obligation to the Claiming Party if the total number of Force Majeure extension days claimed by such Claiming Party (which may be from one or more Force Majeure events) during the Term of the Agreement exceeds 365 days.

ARTICLE 13. INSURANCE

13.1 Insurance

Throughout the Term and for such additional periods as may be specified below, Seller shall, at its own expense, provide and maintain in effect the insurance policies and minimum limits of coverage specified below, and such additional coverage as may be required by applicable law, with insurance companies which are authorized to do business in the state in which the services are to be performed and which have an A.M. Best's Insurance Rating of not less than A-;VII. The minimum insurance requirements specified herein do not in any way limit or relieve Seller of any obligation assumed elsewhere in this Agreement, including, but not limited to, Seller's defense and indemnity obligations.

- (a) Workers' Compensation Insurance with the statutory limits required by the state having jurisdiction over Seller's employees;
- (b) Employer's Liability Insurance with limits of not less than:
 - (i) Bodily injury by accident – One Million dollars (\$1,000,000) each accident
 - (ii) Bodily injury by disease – One Million dollars (\$1,000,000) policy limit
 - (iii) Bodily injury by disease – One Million dollars (\$1,000,000) each employee
- (c) Commercial General Liability Insurance (which, except with the prior written consent of SDG&E and subject to subsections 13.1(c)(i) and 13.1(c)(ii)

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below, shall be written on an “occurrence,” not a “claims-made” basis), covering all operations by or on behalf of Seller arising out of or connected with this Agreement, including coverage for bodily injury, broad form property damage, personal and advertising injury, products/completed operations, and contractual liability. Such insurance shall bear a combined single limit per occurrence and annual aggregate of not less than *[TBD (or) \$3,000,000 per occurrence and \$6,000,000 general aggregate]*, exclusive of defense costs, for all coverages. Such insurance shall contain standard cross-liability and severability of interest provisions and no explosion, collapse, or underground exclusions.

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

- (i) The retroactive date of the policy must be prior to the Execution Date; and
 - (ii) Either the coverage must be maintained for a period of not less than three (3) years after the Agreement terminates, or the policy must provide for a supplemental extended reporting period of not less than three (3) years after the Agreement terminates.
- (d) Commercial Automobile Liability Insurance covering bodily injury and property damage with a combined single limit of not less than One Million dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller’s use of all owned (if any), non-owned and hired automobiles in the performance of the Agreement.
- (e) Pollution Liability Insurance, (which, except with the prior written consent of SDG&E and subject to subsections 13.1(e)(i) and 13.1(e)(ii) below, shall be written on an “occurrence,” not a “claims-made” basis) with limits of not less than *[TBD (or) \$5,000,000 per occurrence or each claim and in the annual aggregate]*, covering losses involving hazardous material(s) and caused by pollution incidents or conditions that arise from the Project, including but not limited to, coverage for bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death, property damage including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically damaged or destroyed, and defense costs.

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

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- (i) The retroactive date of the policy must be prior to the Execution Date; and
 - (ii) Either the coverage must be maintained for a period of not less than three (3) years after the Agreement terminates, or the policy must provide for a supplemental extended reporting period of not less than three (3) years after the Agreement terminates.
- (f) Umbrella/Excess Liability Insurance, written on an “occurrence,” not a “claims-made” basis, providing coverage excess of the underlying Employer’s Liability, Commercial General Liability, and Commercial Automobile Liability insurance, on terms at least as broad as the underlying coverage, with limits of not less than *[TBD (or) \$10,000,000 per occurrence and in the annual aggregate]* per occurrence and in the aggregate. The insurance requirements of this Article 13 can be provided by any combination of Seller’s primary and excess liability policies.

13.2 SDG&E as Insured

The insurance required in Section 13.1 shall apply as primary insurance to, without a right of contribution from, any other insurance maintained by or afforded to SDG&E, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, and employees, regardless of any conflicting provision in Seller's policies to the contrary. To the extent permitted by law, Seller and its insurers shall be required to waive all rights of recovery from or subrogation against SDG&E, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, employees and insurers. The Commercial General Liability, Pollution Liability and Umbrella/Excess Liability insurance required above shall name SDG&E, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents and employees, as additional insureds for liability arising out of Seller’s obligations under this Agreement.

13.3 Certificates of Insurance

At the time this Agreement is executed, or within a reasonable time thereafter, and within a reasonable time after coverage is renewed or replaced, Seller shall furnish to SDG&E certificates of insurance evidencing the coverage required above, written on forms and with deductibles reasonably acceptable to SDG&E. All deductibles, co-insurance and self-insured retentions applicable to the insurance above shall be paid by Seller. All certificates of insurance shall note that the insurers issuing coverage shall endeavor to provide SDG&E with at least thirty (30) days’ prior written notice in the event of cancellation of coverage. SDG&E’s receipt of certificates that do not comply with the requirements stated herein, or Seller’s failure to provide certificates, shall not limit or relieve Seller of the duties and responsibility of maintaining insurance in compliance with the requirements in this Article 13 and shall not constitute a waiver of any of the requirements in this Article 13.

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13.4 Failure to Comply

If Seller fails to comply with any of the provisions of this Article 13, Seller, among other things and without restricting SDG&E's remedies under the law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required Commercial General Liability, Pollution Liability, Umbrella/Excess Liability and Commercial Automobile Liability insurance, Seller shall provide a current, full and complete defense to SDG&E, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above.

ARTICLE 14. DISPUTE RESOLUTION

14.1 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 14. Either Party may seek a preliminary injunction or other provisional judicial remedy if such action is necessary to prevent irreparable harm or preserve the status quo, in which case both Parties nonetheless will continue to pursue resolution of the dispute by means of the dispute resolution procedure set forth in this Article 14.

14.2 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 designated in writing as a representative of the Party (each a "Manager"). Either Manager may, by Notice to the other Party, request a meeting to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place (either in person or telephonically). If the matter is not resolved within fifteen (15) Business Days of their first meeting ("Initial Negotiation End Date"), the Managers shall refer the matter to the designated senior officers of their respective companies that have authority to settle the dispute ("Executive(s)"). Within five (5) Business Days of the Initial Negotiation End Date ("Referral Date"), each Party shall provide one another Notice confirming the referral and identifying the name and title of the Executive who will represent the Party.
- (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) 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.

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- (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) days of the Referral Date, or if the Party receiving the Notice to meet, pursuant to Section 14.2(a) above, refuses or does not meet within the ten (10) Business Day period specified in Section 14.2(a) above, either Party may initiate arbitration of the controversy or claim by providing Notice of a demand for binding arbitration at any time thereafter.

14.3 Arbitration

Any dispute that cannot be resolved by management negotiations as set forth in Section 14.2 above shall be resolved through binding arbitration by a retired judge or justice from the JAMS panel conducted in San Diego, California, administered by and in accordance with JAMS Comprehensive Arbitration Rules and Procedures (“Arbitration”).

- (a) Any arbitrator shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. The Parties shall cooperate with one another in selecting the arbitrator within sixty (60) days after Notice of the demand for arbitration. If, notwithstanding their good faith efforts, the Parties are unable to agree upon a mutually-acceptable arbitrator, the arbitrator shall be appointed as provided for in JAMS Comprehensive Arbitration Rules and Procedures.
- (b) 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.
- (c) 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.
- (d) The arbitrator shall prepare in writing and provide to the Parties an award including factual findings and the reasons on which their decision is based.

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- (e) 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.
- (f) Judgment on the award may be entered in any court having jurisdiction.
- (g) Each Party shall bear its own costs, expenses and attorneys' fees associated with the dispute resolution process, and the arbitrator shall not have authority to allocate the costs or expenses of the Arbitration, including the arbitrator's fees, to either Party.
- (h) The arbitrator shall have the authority to grant dispositive motions prior to the commencement of or following the completion of discovery if the arbitrator concludes that there is no material issue of fact pending before the arbitrator.
- (i) The existence, content, and results of any Arbitration hereunder is confidential information that is subject to the provisions of Article 11.

ARTICLE 15. MISCELLANEOUS

15.1 Governing Law and Venue

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 LAWS. ANY ACTION OR LITIGATION BROUGHT TO ENFORCE OR INTERPRET THIS AGREEMENT SHALL BE BROUGHT IN A SUPERIOR COURT OF CALIFORNIA LOCATED IN SAN DIEGO COUNTY, CALIFORNIA (OR, IF THE FEDERAL COURTS HAVE EXCLUSIVE JURISDICTION OVER THE SUBJECT MATTER OF THE DISPUTE, IN THE U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA), AND THE PARTIES HEREBY SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURT.

15.2 Amendment

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

15.3 Assignment

Neither Party shall assign this Agreement or its rights hereunder, as the case may be, without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) assign this Agreement or the accounts, revenues or proceeds hereof or thereof, as the case may be, in connection with any financing or other financial arrangements to its financing providers as collateral, (ii) transfer

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or assign this Agreement to an Affiliate of such Party which Affiliate's creditworthiness is equal to or higher than that of such Party (and, where Seller is the assignor, demonstrates, to SDG&E's reasonable satisfaction, that such assignee Affiliate has the experience and expertise to perform all of Seller's obligations under this Agreement), or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party and whose creditworthiness is equal to or higher than that of such Party (and, where Seller is the assignor, demonstrates, to SDG&E's reasonable satisfaction, that such assignee Affiliate has the experience and expertise to perform all of Seller's obligations under this Agreement); provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request. Notwithstanding the foregoing, SDG&E may, without the consent of the Seller (and therefor relieving itself from liability hereunder), assign this Agreement to a Qualified Assignee. Qualified Assignee shall mean: any community choice aggregation entity or joint powers authority formed in the State of California or any legal entity that is established by statute or by the CPUC to serve load as a central procurement entity.

15.4 Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of, the Parties and their respective permitted successors and assigns.

15.5 Waiver

None of the provisions of this Agreement shall be considered waived by either Party unless the Party against whom such waiver is claimed gives the waiver in writing. The failure of either Party to insist in any one instance upon strict performance of any the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishments of such rights for the future but the same shall continue and remain in full force and effect. Waiver by either Party of any default of the other Party shall not be deemed a waiver of any other default.

15.6 Obligations Surviving Termination

Except as may be provided or limited by this Agreement, the obligations which by their nature are intended to survive termination of this Agreement, including representations, warranties, covenants and rights and obligations with respect to indemnification, payment, settlement, and confidentiality, shall so survive.

15.7 No Agency

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

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15.8 No Third Party Beneficiaries

This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound by this Agreement), except where such third party is an Indemnified Party under this Agreement.

15.9 Entire Agreement

This Agreement, when fully executed, constitutes the entire agreement by and between the Parties as to the subject matter hereof, and supersedes all prior understandings, agreements or representations by or between the Parties, written or oral, to the extent they have related in any way to the subject matter hereof. Each Party represents that, in entering into this Agreement, it has not relied upon any promise, inducement, representation, warranty, agreement or other statement not set forth in this Agreement.

15.10 Severability

If any term, section, provision or other part of this Agreement, or the application of any term, section, provision or other part of this Agreement, is held to be invalid, illegal or void by a court or regulatory agency of proper jurisdiction, all other terms, sections, provisions or other parts of this Agreement shall not be affected thereby but shall remain in force and effect unless a court or regulatory agency holds that the provisions are not separable from all other provisions of this Agreement.

15.11 Multiple Originals

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any of the signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

15.12 Audit Rights

SDG&E, or its designee, shall have the right, at its sole expense and during normal working hours, to audit the documents, records or data of Seller to the extent reasonably necessary to verify the accuracy of any statement, claim, charge or calculation made pursuant to this Agreement. Seller shall promptly comply with any reasonable request by SDG&E under this Section and provide copies of documents, records or data to SDG&E. The rights and obligations under this Section shall survive the termination of this Agreement for a period of five (5) years. Seller shall include a similar clause in its arrangements with its contractors and subcontractors reserving the right to designate Seller's own designee and/or representative of SDG&E, who shall have the right to verify the accuracy of any statement, claim, charge or calculation made in connection with the work performed under this Agreement.

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15.13 Performance Under this Agreement

Each Party and its representatives shall maintain records and supporting Documentation relating to this Agreement, and the performance of the Parties hereunder in accordance with, and for the applicable time periods required by, all applicable Laws.

15.14 Independent Contractor

- (a) Seller's Relationship with SDG&E. The Parties agree that Seller is performing all work under this Agreement as an independent contractor and no principal-agent or employer-employee relationship or joint-venture or partnership shall be created with SDG&E. Seller represents to SDG&E that Seller and its contractors and subcontractors and agents are properly licensed, fully experienced and qualified (including having all necessary authorizations) to perform the class and type of the work as specified in this Agreement, in addition to being properly insured, equipped, organized, staffed and financed to handle such work. Seller shall perform the work under this Agreement in an orderly and professional manner in accordance with industry standards. Seller shall not employ for the work any personnel or contractor or subcontractor unskilled in the work assigned. Seller shall use prudent business practices in its relationships with subcontractors, suppliers and agents.
- (b) Individuals Performing the Work; Benefits and Affordable Care Act. Regardless of the nature or duration of any assignment with SDG&E, neither Seller, its contractor or subcontractor nor any individuals performing work under this Agreement shall be eligible for or entitled to participate in any of SDG&E's employee benefit plans, programs, policies or practices which may now or in the future be in effect, including, without limitation, any pension, retirement, or 401(k) plan; any profit sharing, stock option, bonus or incentive compensation plan; any life or health insurance plan; any vacation or holiday pay plan; or any separation payment plan. Seller shall, or shall require that the appropriate contractor and subcontractor is contractually obligated to, treat individuals performing the work under this Agreement as its employees for the purposes of satisfying the requirements of the Affordable Care Act, including but not limited to the requirements of Internal Revenue Code Section 4980H, the associated reporting requirements of Internal Revenue Code Section 6056, and the requirements of Sections 18A and 18B of the Fair Labor Standards Act. Furthermore, Seller shall, or shall require that the appropriate contractor and subcontractor is contractually obligated to, offer minimum essential coverage that is both affordable and minimum value to all individuals performing work under this Agreement who are full-time employees (and their dependents) in accordance with Internal Revenue Code section 4980H and the regulations issued thereunder, provided that the Seller or applicable subcontractor is a "large employer" subject to section 4980H.

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IN WITNESS WHEREOF, the Parties have read this Agreement, understand it, and agree to be bound by its terms as of the Execution Date.

**SAN DIEGO GAS & ELECTRIC
COMPANY**

[SELLER]

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

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EXHIBIT A

Form of Letter of Credit

IRREVOCABLE NONTRANSFERABLE STANDBY

LETTER OF CREDIT

Reference Number:

Transaction Date:

BENEFICIARY:

San Diego Gas & Electric Company

Attention Credit Manager

Ladies and Gentlemen:

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

This Letter of Credit shall be of no further force or effect upon the close of business on the Expiration Date or, if such day is not a Business Day (as hereinafter defined), on the next Business Day.

For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in Los Angeles, California.

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

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

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Notwithstanding the foregoing, any full or partial drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at _____ or such other number as specified from time-to-time by the Bank.

The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

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

This Letter of Credit is not transferable or assignable. Any purported transfer or assignment shall be void and of no force or effect.

Banking charges shall be the sole responsibility of the Applicant.

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

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

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

AUTHORIZED SIGNATURE for Issuer

(Name)

Title: _____

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ATTACHMENT A

TO **[ISSUING BANK NAME]**

IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT

No. _____

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Non-transferable Standby Letter of Credit

Reference Number: _____

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

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

]A. An Event of Default, as defined in that certain Energy Efficiency Resource Purchase Agreement between Applicant and Beneficiary, dated as of **[Date of Execution]** (the “Agreement”) with respect to the Applicant has occurred and is continuing.

]B. A Letter of Credit Default (as defined in the Agreement) has occurred and is continuing.

]C. An Early Termination Date (as defined in the Agreement) has occurred or been designated as a result of an Event of Default (as defined in the Agreement) with respect to the Applicant for which there exist any unsatisfied payment obligations.

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

]E. The Bank or Applicant has heretofore provided written notice to the Beneficiary of the Bank’s or Applicant’s intent not to renew the Letter of Credit

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following the present Expiration Date thereof, and Applicant has failed to provide the Beneficiary with a replacement letter of credit satisfactory to Beneficiary in its sole discretion within thirty (30) days following the date of the notice of non-renewal.

[]F. The Beneficiary has not been paid any or all of the Applicant's payment obligations now due and payable under the Agreement.

2. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS AND ____/100ths (U.S.\$_____), which amount does not exceed (i) the amount set forth in paragraph 1 above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.
3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

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

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

Beneficiary: SAN DIEGO GAS & ELECTRIC COMPANY

By:

Name:

Title:

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EXHIBIT B

PROJECT DESCRIPTION & M&V PLAN

This Exhibit B (which includes Exhibits B-1, B-2, B-3 and B-4) describes the Project and the Measures that will deliver the capacity savings defined in this Agreement and sets forth the M&V Plan for determining the Peak Capacity Savings for the Project.

A. Project Description

1. Goals & Objectives. *[To be developed based on bid]*
2. Marketing. *[To be developed based on bid]*.
3. End-Use Customers. Seller shall exclusively target End-Use Customers in the following market segments:

Market Segment	NAICS Code	Description

Seller shall also work with SDG&E to identify high-cost CAISO PNodes and prioritize these areas for implementation.

2. Eligible Measures. Seller’s Project shall only comprise of the following type of measures:

Measure

Each of the above-permitted measures are further described in the Work Paper for such measure attached hereto in Exhibit B-1 (the “Work Papers”). In addition, measures eligible to be installed by Seller for the Project under this Agreement shall meet the following criteria:

- (a) Baseline Energy Performance. *[To be developed]*
- (b) Minimum Useful Life. Measures shall have a minimum effective useful life of five (5) years. SDG&E may allow certain Measures with an effective useful life of less than five (5) years at its sole and absolute discretion.

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(c) Permanent Installation. Measures must be permanently installed and cannot be easily removed, as reasonably determined by SDG&E.

3. Measure Installation, Review, and Certification.

(a) Measure Installation Notices. Prior to the commencement of any construction or installation work for the installation of any measure for the Project, Seller shall notify SDG&E of its intent to install such measure using the form attached hereto as Exhibit B-2 (“Measure Installation Notice”) and obtain SDG&E’s signed approval to install such measure; provided that (i) SDG&E shall be afforded no more than thirty (30) days following receipt of such Measure Installation Notice to approve or disapprove of such measure, and if SDG&E does not provide a notice of disapproval within such thirty (30) days, then SDG&E shall be deemed to have approved of such measure and signed such Measure Installation Notice, and (ii) SDG&E shall only be permitted to disapprove of such measure for good and reasonable cause, which causes may include, but is not limited to (A) non-compliance of Seller or such measure with any of the requirements of the Agreement (including Section 6.2(a) and this Exhibit B), (B) non-compliance of such measure or the installation thereof with applicable Law, (C) use of a contractor or subcontractor to construct or install such measure that is not permitted by this Agreement, or (D) uncured breach by Seller of its obligations to maintain the insurance requirements under Article 13 of the Agreement.

(b) Measure Installation Certificates. Following the completion of the installation of measure that is to be included in the Project, and as a condition to such measure being deemed a “Measure” for purposes of this Agreement, Seller shall submit a Measure Installation Certificate in the form attached hereto as Exhibit B-3 (“Measure Installation Certificate”).

4. List of Installed Measures. Exhibit B-4 attached hereto is an ongoing list of installed Measures for the Project, along with information regarding each such Measure’s End-Use Customer Site and a description of such Measure. No later than five (5) Business Days following the end of each calendar month during the Delivery Period, Seller shall provide SDG&E an updated Exhibit B-4, and Seller represents and warrants that the information contained in each such updated Exhibit B-4 provided by Seller is true, accurate and complete as of the last day of such calendar month.

B. Annual Energy Savings Calculation. The Annual Peak Capacity Savings and Annual Energy Savings for each type of Measure installed shall be calculated utilizing the methodologies specified in the following documents, guidelines and publications:

- (a) The Work Paper for such Measure;
- (b) *[SDG&E to insert industry-standard guidelines for calculating savings for non-residential EE programs]* (“Customized Guidelines”);

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- (c) *Energy Efficiency Evaluation Protocol*, California Public Utilities Commission (2006), or its successor (“CPUC Protocols”); and
- (d) *International Performance Measurement and Verification Protocol: Concepts and Options for Determining Energy and Water Savings, Volume 1*, Efficiency Valuation Organization (January 2012), or its successor (“IPMVP Protocols”).

In the event of any conflict between terms contained in this Agreement or any of the other documents identified in clauses (a)-(d) above, the conflict shall be resolved by the following priority of documents: (i) Agreement (including this Exhibit B), (ii) the Work Paper for such Measure, (iii) Customized Guidelines, (iv) CPUC Protocols, and (v) IPMVP Protocols

C. M&V Plan

[To be developed from bid]

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BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

EXHIBIT B-1

MEASURE WORK PAPERS

[To be provided by Seller for each eligible Measure]

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

EXHIBIT B-2

MEASURE INSTALLATION NOTICE

[To be developed]

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

EXHIBIT B-3

MEASURE INSTALLATION CERTIFICATE

[To be developed]

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

EXHIBIT B-4

INSTALLED MEASURES
(As of *[Insert Date]*)

End-Use Customer ID	Site Description	Installed Measure Description

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

EXHIBIT C

CONTRACTED ANNUAL ENERGY SAVINGS

Contract Year	MWh

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

EXHIBIT D

CONTRACTED ANNUAL PEAK CAPACITY SAVINGS

Contract Year	MW

LONG FORM CONFIRMATION
FOR RESOURCE ADEQUACY CAPACITY PRODUCT
Resource Adequacy Contract Number: _____

This confirmation letter ("Confirmation") confirms the transaction (the "Transaction") between San Diego Gas & Electric Company ("Seller") and _____ ("Buyer"), each individually a "Party" and together the "Parties", dated as of *[date]* ____, 2020 (the "Confirmation Execution Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Section 3 of this Confirmation. This Transaction shall be deemed to have been entered into pursuant to, and shall supplement, form a part of, and be governed by the terms and conditions of the form of Master Power Purchase and Sale Agreement published by the Edison Electric Institute and the National Energy Marketers Association (version 2.1 dated 4/25/00) (the "EEI Agreement") with a Cover Sheet containing the elections and other changes contained herein as if the Parties have executed the EEI Agreement (with such Cover Sheet the "Master Agreement"). The Parties agree that the only transactions to be concluded pursuant to such Master Agreement shall be the Transaction documented in this Confirmation. The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein). To the extent that this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

Name: Party A / Seller

Name: Party B / Buyer

All Notices:

San Diego Gas & Electric Company
8315 Century Park Court CP 21D
San Diego CA 92123-1593
Attn: Contract Administration
Telephone: (858) 650-6176
Facsimile: (858) 650-6190
Duns: 006911457
Federal Tax ID Number: 95-1184800

All Notices:

< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: (____) ____ - ____
Facsimile: (____) ____ - ____
Duns: _____
Federal Tax ID Number: _____

Invoices:

San Diego Gas & Electric Company
8315 Century Park Court
San Diego CA 92123-1593
Attn: Energy Accounting Manager
Telephone: (858) 650-6177
Facsimile: (858) 650-6190

Invoices:

< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: (____) ____ - ____
Facsimile: (____) ____ - ____

Scheduling:

San Diego Gas & Electric Company
 8315 Century Park Court, CP 21D
 San Diego, CA 92123-1593
 Attn: Transaction Scheduling Manager
 Day Ahead: (858) 650-6168
 Real Time: (858) 650-6160
 Facsimile: (858) 650-6191

Payments:

San Diego Gas & Electric Company
 8315 Century Park Court
 San Diego CA 92123-1593
 Attn: Energy Accounting Manager
 Telephone: (858) 650-6177
 Facsimile: (858) 650-6190

Wire Transfer:

Union Bank of California
 445 South Figueroa Street
 Los Angeles CA 90071
 ABA Routing Number: 122000496
 Payee: San Diego Gas & Electric Company
 Account Number: 4430000352
 Confirmation: SDG&E – Major Markets
 Facsimile: (213) 244-8316

Credit and Collections:

San Diego Gas & Electric Company
 555 West Fifth Street, ML 18A3
 Los Angeles, CA 90013-1011
 Attn: Major Markets – Credit and
 Collections Manager
 Telephone: (213) 244-4343
 Facsimile: (213) 244-8316

With additional Notices of an Event of Default or Potential Event of Default to:

San Diego Gas & Electric Company
 8330 Century Park Ct.
 San Diego, California 92123
 Attn: General Counsel
 Telephone: (858) 650-6141
 Facsimile: (858) 650-6106

Scheduling:

< company name >
 < street address >
 < city/state/zip >
 Attn: _____
 Day Ahead: () -
 Real Time: () -
 Facsimile: () -

Payments:

< company name >
 < street address >
 < city/state/zip >
 Attn: _____
 Telephone: () -
 Facsimile: () -

Wire Transfer:

< bank name >
 < bank street address >
 < bank city/state/zip >
 ABA Routing Number: _____
 Payee: _____
 Account Number: _____
 Confirmation: _____
 Facsimile: () -

Credit and Collections:

< company name >
 < street address >
 < city/state/zip >
 Attn: _____
 Telephone: () -
 Facsimile: () -

With additional Notices of an Event of Default or Potential Event of Default to:

< company name >
 < street address >
 < city/state/zip >
 Attn: _____
 Telephone: () -
 Facsimile: () -

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

Article TwoTransaction Terms
and Conditions

- Optional provision in Section 2.4.
If not checked, inapplicable.

Article FourRemedies for Failure
to Deliver or Receive

- Accelerated Payment of Damages.
If not checked, inapplicable.

Article Five

Events of Default; Remedies

- Cross Default for Party A:
 Party A: _____ Cross Default Amount: _____
 Other Entity: _____ Cross Default Amount: _____
- Cross Default for Party B:
 Party B: N/A Cross Default Amount: N/A
 Other Entity: N/A Cross Default Amount: N/A

5.6 Closeout Setoff

- Option A (Applicable if no other selection is made.)
 Option B – Affiliates shall have the meaning set forth in
the Agreement unless otherwise specified as follows:

 Option C (No Setoff)

Article 8Credit and
Collateral Requirements**8.1 Party B Credit Protection:**

- (a) Financial Information:
 Option A
 Option B Specify: _____
 Option C Specify: _____
- (b) Credit Assurances:
 Not Applicable
 Applicable
- (c) Collateral Threshold:
 Not Applicable
 Applicable
- (d) Downgrade Event:
 Not Applicable
 Applicable
- (e) Guarantor for Party B: None.
Guarantee Amount: N/A

**8.2 Party A Credit Protection: [SDG&E CREDIT
DEPARTMENT TO EVALUATE BASED ON
COUNTERPARTY]**

- (a) Financial Information:
 Option A
 Option B Specify: _____
 Option C Specify: _____
- (b) Credit Assurances:
 Not Applicable
 Applicable
- (c) Collateral Threshold:
 Not Applicable
 Applicable
 If applicable, complete the following:
 Party A Collateral Threshold: \$ _____;
 provided, however, that Party A's Collateral
 Threshold shall be zero if an Event of Default or
 Potential Event of Default with respect to Party A
 has occurred and is continuing.
 Party A Independent Amount: \$ _____
 Party A Rounding Amount: \$ _____
- (d) Downgrade Event:
 Not Applicable
 Applicable
 If applicable, complete the following:
 It shall be a Downgrade Event for Party A if
 Party A 's Credit Rating falls below _____
 from S&P or _____ from Moody's or if Party A
 is not rated by either S&P or Moody's
 Other:
 Specify: _____
- (e) Guarantor for Party A: None
 Guarantee Amount: N/A

Article 10

Confidentiality Confidentiality Applicable If not checked, inapplicable.

Schedule M

- Party A is a Governmental Entity or Public Power System
 Party B is a Governmental Entity or Public Power System
 Add Section 3.6. If not checked, inapplicable
 Add Section 8.4. If not checked, inapplicable

Other Changes

1. The modifications to Section 1.12, 1.50 and 5.2 of the Master Agreement specified in that certain Errata published by the Edison Electric Institute (version 1.1, July 18, 2007) are hereby incorporated herein as if set forth in full.

2. Section 10.2(ii) of the Master Agreement shall be modified by inserting “Except for the approval by the CPUC as stated in Section 2.2 of this Confirmation,” at the beginning of the first sentence in such section.

3. Section 10.6 of the Master Agreement shall be deleted in its entirety and replaced with the following:

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

4. Schedule P: Products and Related Definitions shall be deleted in its entirety.

5. Section 10.5 of the Master Agreement shall be deleted in its entirety and replaced with the following:

Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld. For purposes hereof, the transfer of more than fifty percent (50%) of the equity ownership or voting interest of Seller (or any parent entity holding directly or indirectly at least fifty percent (50%) of the equity ownership or voting interest of Seller if such interest constitutes more than twenty percent (20%) of the fair market value of the assets of such parent entity) to a person that is not an Affiliate of Seller shall also constitute an assignment of this Agreement requiring Buyer’s prior written consent. Notwithstanding the foregoing, Buyer may, without the consent of the Seller (and therefor relieving itself from liability hereunder), assign this Agreement to a Qualified Assignee. Qualified Assignee shall mean: any community choice aggregation entity or joint powers authority formed in the State of California or any legal entity that is established by statute or by the CPUC to serve load as a central procurement entity. Notwithstanding the foregoing, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), transfer, sell, pledge, encumber, or assign this Agreement or the accounts, revenues or proceeds hereof to its financing providers. In connection with any financing or refinancing of the Project by Seller, Buyer shall in good faith negotiate and agree upon a consent to collateral assignment of this Agreement in a form

that is commercially reasonable and customary in the industry

1. Definitions

- 1.1 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.2 “Availability Incentive Payments” has the meaning set forth in the Tariff ***[If the Product includes flexible capacity, add: and includes any similarly defined payments under the Tariff in respect of Flexible RA Attributes].***
- 1.3 “Availability Standards” has the meaning set forth in the Tariff ***[If the Product includes flexible capacity, add: and includes any similarly defined standards under the Tariff in respect of Flexible RA Attributes].***
- 1.4 “Buyer” has the meaning specified in the introductory paragraph.
- 1.5 “CAISO” means the California Independent System Operator Corporation, or any successor entity performing the same functions.
- 1.6 “Capacity Attributes” means (a) the Local RA Attributes, (b) the RA Attributes, (c) the Flexible RA Attributes, and (d) any other current or future defined characteristics (including the ability to generate at a given capacity level, provide ancillary services, ramp up or down at a given rate, and flexibility or dispatch-ability attributes), certificates, tags, credits, howsoever entitled, including any accounting construct applied to any Compliance Obligations.
- 1.7 “Capacity Price” means the price specified in the Capacity Price Table in Section 4.1.
- 1.8 “Capacity Replacement Price” means (a) the actual rate per kW-day paid for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) including any penalties, fines, transaction costs and expenses reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of Replacement Capacity, any penalties, fines, transaction costs and expenses plus the per kW-day market price for the Product not delivered by Seller under this Confirmation. Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 1.51 of the Master Agreement, “Capacity Replacement Price” shall be deemed the “Replacement Price” for this Transaction.
- 1.9 “Compliance Obligations” means the RAR, Local RAR, Flexible RAR, and other resource adequacy requirements associated with a generating unit’s Capacity Attributes established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
- 1.10 “Compliance Showing” means one or more of the following: (a) Local RAR Showing, (b) RAR Showing, (c) Flexible RAR Showing, or (d) other Capacity Attributes compliance or advisory filing (or similar or successor showing or filing), in each case, that an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.

- 1.11 “Confirmation” has the meaning specified in the introductory paragraph.
- 1.12 “Confirmation Effective Date” has the meaning specified in Section 2.2.
- 1.13 “Confirmation Execution Date” has the meaning specified in the introductory paragraph.
- 1.14 “Construction Period Security” has the meaning specified in Section 9.1(c).
- 1.15 “Contract Price” means, for any day in any Monthly Delivery Period, the Capacity Price for such period.
- 1.16 “Contract Quantity” means the quantity of Product (in MW) as set forth in Section 3.5.
- 1.17 “Contract Term” has the meaning set forth in Section 2.1.
- 1.18 “CPUC” means the California Public Utilities Commission.
- 1.19 “CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:
- (a) approves this Agreement in its entirety, including payments to be made by the Buyer and all other relief requested in SDG&E’s submission of the Agreement for approval, subject to CPUC review of the Buyer’s administration of the Agreement; and
- (b) **[NOTE: For RPS-eligible facilities only]** finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer’s compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 *et seq.*), Decision 03-06-071, or other applicable Law.
- (c) CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.
- 1.20 “CPUC Approval Security” has the meaning specified in Section 9.1(a).
- 1.21 “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-25, and any other existing or subsequent decisions, resolutions or rulings related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.22 “CPUC Filing Guide” is the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSEs to demonstrate compliance with the CPUC’s resource adequacy program as provided in the CPUC Decisions.
- 1.23 “Credit Rating” means, with respect to any entity, the rating assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) by S&P, Moody’s or any other rating agency agreed by the Parties

as set forth in the Master Agreement, or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Moody's or any other rating agency agreed by the Parties as set forth in the Master Agreement.

- 1.24 "Delivery Period" has the meaning specified in Section 3.4.
- 1.25 "Delivery Period Security" has the meaning specified in Section 9.1(d).
- 1.26 "Development Period Security" has the meaning specified in Section 9.1(b).
- 1.27 "Emission Reduction Credits" or "ERC(s)" means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby such district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.
- 1.28 "Environmental Costs" means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product's compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits (including any costs related to greenhouse gas emissions) required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the site, and the decontamination or remediation, on or off the site, necessitated by the introduction of such hazardous substances on the site.
- 1.29 "Flexible RA Attributes" means, with respect to a Unit, any and all flexible resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and Local RA Attributes.
- 1.30 "Flexible RAR" means the flexible capacity requirements, including, without limitation, maximum continuous ramping, load following, and regulation, established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Flexible RAR may also be known as ramping, maximum ramping, maximum continuous ramping, maximum continuous ramping capacity, maximum continuous ramping ramp rate, load following, load following capacity, load following ramp rate, regulation, regulation capacity, regulation ramp rate.
- 1.31 "Flexible RAR Showing" means the Flexible RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.32 "GADS" means the Generating Availability Data System, or its successor.

- 1.33 “Governmental Body” means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.
- 1.34 “Local Capacity Area” has the meaning set forth in the Tariff.
- 1.35 “Local RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes or other locational attributes for the Unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward a Local RAR, but exclusive of any RA Attributes and Flexible RA Attributes.
- 1.36 “Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.37 “Local RAR Showing” means the Local RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.38 “LSE” means load-serving entity.
- 1.39 “Marketable Emission Trading Credits” means without limitation, emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (see 42 U.S.C. § 7651b.(a) to (f)).
- 1.40 “Master Agreement” has the meaning specified in the introductory paragraph.
- 1.41 “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.42 “Monthly Payment” has the meaning specified in Section 4.1.
- 1.43 “Moody’s” means Moody’s Investors Services, Inc. or its successor.
- 1.44 “NERC” means the North American Electric Reliability Corporation, or its successor.
- 1.45 “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.
- 1.46 “Net Qualifying Capacity” has the meaning set forth in the Tariff.

- 1.47 “Non-Availability Charges” has the meaning set forth in the Tariff *[if the Product includes flexible capacity, add: and includes any similarly defined charges under the Tariff in respect of Flexible RA Attributes]*.
- 1.48 “Non-Specified RA Replacement Capacity” has the meaning set forth in the Tariff *[if the Product includes flexible capacity, add: and includes any similarly defined capacity under the Tariff in respect of Flexible RA Attributes]*.
- 1.49 “Outage” means any disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 1.50 “Outage Schedule” has the meaning specified in Section 3.8.
- 1.51 “Planned Outage” shall have the meaning in CPUC Decisions, and includes a planned, scheduled, or any other Outage approved by the CAISO for the routine repair or maintenance of the Unit, or for the purposes of new construction work, and does not include any Outage designated as either forced or unplanned as defined by the CAISO or NERC/GADS Protocols.
- 1.52 “Product” has the meaning specified in Section 3.1.
- 1.53 “Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix A, of the Unit NQC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.
- 1.54 “Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix A, of the Unit EFC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.
- 1.55 “Qualified Assignee” has the meaning set forth in the new Section 10.5.
- 1.56 “RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any Local RA Attributes and Flexible RA Attributes.
- 1.57 “RA Substitute Capacity” means capacity that the CAISO permits under the CAISO Tariff to be substituted for a Resource Adequacy Resource that is on Outage.
- 1.58 “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
- 1.59 “RAR Showing” means the RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.

- 1.60 “Replacement Capacity” means capacity which has equivalent Capacity Attributes as the portion of the Product not provided by the Units committed to Buyer as of the Confirmation Execution Date.
- 1.61 “Replacement Rules” has the meaning set forth in Section 3.9(b).
- 1.62 “Replacement Unit” means a generating unit providing Replacement Capacity.
- 1.63 “Resource Category” shall be as described in the CPUC Filing Guide.
- 1.64 “RMR Contract” has the meaning set forth in the Tariff.
- 1.65 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc. or its successor).
- 1.66 “Scheduling Coordinator” or “SC” has the meaning set forth in the Tariff.
- 1.67 “Seller” has the meaning specified in the introductory paragraph.
- 1.68 “Showing Month” shall be the calendar month that is the subject of the Compliance Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Execution Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.69 “Substitution Rules” has the meaning set forth in Section 3.9(b).
- 1.70 “Supply Plan” has the meaning set forth in the Tariff ***[If the Product includes flexible capacity, add: and includes any similarly defined plan under the Tariff in respect of Flexible RA Attributes]***.
- 1.71 “Tariff” means the tariff and protocol provisions, including any applicable CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended or supplemented from time to time, of the CAISO.
- 1.72 “Transaction” has the meaning specified in the introductory paragraph.
- 1.73 “Unit” or “Units” shall mean the generation assets described in Appendix A (including any Replacement Units), from which Product is provided by Seller to Buyer.
- 1.74 “Unit Contract Quantity” means the amount of Product (in MW) to be delivered by Seller to Buyer by each individual Unit, as specified in Appendix A as of the Confirmation Execution Date.
- 1.75 “Unit EFC” means the effective flexible capacity or capacity that is qualified to provide Flexible RA Attributes established by the CAISO for the applicable Unit.
- 1.76 “Unit NQC” means the Net Qualifying Capacity established by the CAISO for the applicable Unit.
- 1.77 “Unit Delivered Quantity” means the amount of applicable Product (in MW) actually “delivered” by Seller to Buyer by each individual Unit. As used herein, “delivered” shall mean shown in the Supply Plan and, for purposes of Section 4.1, shall include

any RA Substitute Capacity under Section 3.9, and in all cases, shall not include (i) any portion of Contract Capacity for which Buyer is required under the Compliance Obligations or the Tariff to procure Replacement Capacity, and (ii) any portion of Contract Capacity for which Seller is required hereunder, but fails, to provide Replacement Capacity to Buyer.

2. Term

2.1 Contract Term

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

2.2 Conditions Precedent; Binding Nature

This Agreement shall not be effective or binding on either Party until, and it shall become effective and binding on both Parties as of, the date on which the conditions precedent, if any, described below shall have been achieved (or waived in writing by each of the Parties in their sole discretion) (the “Confirmation Effective Date”).

(a) No later than [_____], Buyer shall have obtained CPUC Approval. Prior to this deadline, should the CPUC issue an order approving this Agreement but with conditions or modifications that materially alter the commercial aspects of this Agreement, the Parties agree to use good faith efforts to renegotiate this Agreement and file the amended agreement with the CPUC seeking CPUC Approval therefor. If, no later than the earlier of (i) sixty (60) days after such order or (ii) the deadline date above, no agreement is reached, either Party may terminate this Agreement upon delivery of Notice to the other Party.

(b) [INSERT OTHERS]

If any of the foregoing conditions precedent are not achieved (or waived in writing by each of the Parties) on or before the deadline dates therefor (without extension for Force Majeure or any other reason), then this Agreement shall automatically terminate. If there are no conditions precedent listed above in this Section 2.2 then the Confirmation Effective Date shall be the Confirmation Execution Date. This Agreement shall be effective and binding as of the Confirmation Effective Date.

3. Transaction

[Note to bidders: For new Projects, SDG&E will require the addition of a guaranteed commercial operation deadline for the Project, along with development and construction milestones. Failure to meet such milestones will be an event of default].

3.1 Product

(a) Seller shall sell and Buyer shall receive and purchase, the Capacity Attributes (including all Local RA Attributes [but excluding Flexible RA Attributes (if any)]) ***[If the Product includes flexible capacity, add: and Flexible RA Attributes]***

of the Units identified in Appendix A (collectively, the “Product”) and Seller shall deliver the Product as described in Section 3.2 below. Product does not include any right to dispatch or receive the energy or ancillary services from the Unit. Seller retains the right to sell any Product from a Unit in excess of its Unit Contract Quantity.

- (b) The Parties agree that (i) the Contract Price for the Product shall not change if the CAISO, CPUC or other Governmental Body (A) defines new or re-defines existing Local Capacity Areas which decreases or increases the amount of Local RA Attributes provided hereunder, or (B) defines new or re-defines existing Local Capacity Areas whereby the Units qualify for a Local Capacity Area and (ii) if the event in Section 3.1(b)(i)(B) occurs then the Product shall include such Local RA Attributes.
- (c) ***[If the Product includes flexible capacity, add This Section 3.1(c):*** The Parties agree that (i) the Contract Price for the Product shall not change if the CAISO, CPUC or other Governmental Body defines new or re-defines existing Flexible RAR, Capacity Attributes related to Flexible RAR, or attributes of the Unit related to Flexible RAR, that results in a decrease or increase in the amount of Capacity Attributes related to Flexible RAR provided hereunder, and (ii) if the event in Section 3.1(c)(i) occurs then the Product shall include such Capacity Attributes related to Flexible RAR.]

3.2 Firm Quantity

[NOTE to bidders: SDG&E is also considering unit contingent bids from specified units. Seller will be excused from delivering and from replacing for reasons of Force Majeure and plant outages. For unit contingent products, seller shall not have the right to replace during excused hours. Unit contingent bids will also have a minimum RA requirement: 70% of bid capacity over any consecutive 12-month period. If seller’s RA falls below this minimum, it shall be an event of default.]

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

3.3 Delivery Period

The “Delivery Period” shall be _____ thru _____, inclusive, unless terminated earlier in accordance with the terms of this Agreement.

3.4 Contract Quantity:

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

CONTRACT QUANTITY TABLE

Unit Name	CAISO Resource ID*	Month(s)	Unit Contract Quantity (MW)	
			Capacity Attributes (excluding Flexible RA Attributes)	Flexible RA Attributes

* CAISO Resource ID should match a Unit described in Appendix A

3.5 Delivery of Product

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

- (a) Seller shall, on a timely basis, submit, or cause each Unit's SC to submit, Supply Plans to identify and confirm the Unit Delivered Quantity for each Unit provided to Buyer so that the total amount of Unit Delivered Quantity identified and confirmed equals the Unit Contract Quantity for each Unit, unless specifically notified or requested not to do so by the Buyer pursuant to Section 3.9, and;
- (b) Seller shall cause each Unit's SC to submit written notification to Buyer, no later than fifteen (15) Business Days before the relevant deadline for any applicable Compliance Showing, that Buyer will be credited with Unit Delivered Quantity for the applicable portion of the Delivery Period in the Unit's SC Supply Plan so that the total amount of Unit Delivered Quantity for each Unit credited equals the Unit Contract Quantity.

3.6 CAISO/CPUC Offer Requirements

Subject to Buyer's request under Section 3.9(a), Seller shall, or cause the Unit's SC to, bid and/or schedule with, or make available to, the CAISO the Unit Contract Quantity for each Unit in compliance with the Tariff and the CPUC Filing Guide, including any must offer obligation under the Tariff or the CPUC Filing Guide, and shall, or cause the Unit's SC, owner, or operator, as applicable, to perform all obligations under the Tariff and the CPUC Filing Guide that are associated with the sale and delivery of Product hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's SC, owner, or operator to comply with such Tariff

and CPUC Filing Guide provisions, including any penalties, charges or fines imposed on Seller or the Unit's SC, owner, or operator for such noncompliance.

3.7 Reserved

3.8 Unit Substitution; RA Replacement Capacity

- (a) RA Replacement Capacity: No later than five (5) Business Days before the relevant deadline for each applicable Compliance Showing, Buyer may (i) request, subject to Seller's reasonable approval, that Seller not, or cause each Unit's SC not to, list a portion or all of a Unit's applicable Unit Contract Quantity on the Supply Plan or (ii) notify Seller that a portion or all of the Unit Contract Quantity of a Unit will be included in an applicable Compliance Showing as RA Substitute Capacity. The amount of Unit Contract Quantity that is the subject of such a request or notice shall be known as "RA Substitute Capacity" and, for purposes of calculating a Monthly Payment pursuant to Section 4.1, to the extent provided, such RA Substitute Capacity shall be deemed Unit Delivered Quantity provided consistent with Section 3.6.
- (b) Seller's Obligations With Respect to RA Substitute Capacity: If Buyer requests RA Substitute Capacity, Seller shall (i) make such RA Substitute Capacity available to Buyer during the applicable Showing Month to allow Buyer to utilize, as applicable, the substitution rules in Sections 9.3.1.3.1, 9.3.1.3.2 and 40.9.4.2.1 of the Tariff ***[If the Product includes flexible capacity, add: including any similarly defined substitution rules under the Tariff in respect of Flexible RA Attributes]*** ("Substitution Rules") and (ii) take, or cause each Unit's SC to take, all action to allow Buyer to utilize, as applicable, the Substitution Rules, including, but not limited to, ensuring that the RA Substitute Capacity will qualify, as applicable, for substitution under the Substitution Rules, and providing Buyer with all information needed to utilize the Substitution Rules.
- (c) Seller agrees that all RA Substitute Capacity utilized by Buyer under the Substitution Rules, as applicable, is subject to the requirements identified in Section 3.7.
- (d) Failure to Provide RA Substitute Capacity: If Seller fails to provide RA Substitute Capacity or Buyer is unable to utilize the RA Substitute Capacity under the Substitution Rules due to Seller's failure to fulfill its obligations under Section 3.9(b)(ii), then Seller shall reimburse Buyer for any and all Non-Availability Charges incurred by Buyer and shall pay Buyer the CPM revenue the CASIO would have paid the Buyer but for Seller failure, due to such failure or inability to utilize the Substitution Rules; provided, that if Buyer is unable to utilize the Substitution Rules because the RA Substitute Capacity does not qualify for substitution under Section 9.3.1.3.1, 9.3.1.3.2, 40.9.4.2.1(1)(i) or (ii) of the Tariff, then Seller shall not be responsible for any such Non-Availability Charges described in this Section 3.9(d) associated with such inability.

3.9 Buyer's Re-Sale of Product

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

4. Payment

4.1 Monthly Payment

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

$$\text{Monthly Payment} = \sum_{n=1}^d (A_n * B_n * 1000)$$

where:

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

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

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

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

CAPACITY PRICE TABLE [Note: add months/years as needed]

Contract Month	Capacity Price (\$/kW-day) 2021
January	
February	
March	
April	
May	
June	
July	

Contract Month	Capacity Price (\$/kW-day) 2021
August	
September	
October	
November	
December	

4.2 Reserved.

4.3 Allocation of Other Payments and Costs

- (a) Seller shall retain any revenues it may receive from and pay all costs charged by, the CAISO or any other third party with respect to any Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, and (iv) any revenues for black start or reactive power services. Seller shall indemnify, defend and hold Buyer harmless from and against all liabilities, damages, claims, losses, costs or expenses (including, without limitation, attorneys' fees) incurred by or brought against Buyer in connection with Environmental Costs.
- (b) Buyer shall be entitled to receive and retain all revenues associated with the Contract Quantity during the Delivery Period including any capacity or availability revenues from RMR Contracts for any Unit, Capacity Procurement Mechanism (CPM) or its successor, and Residual Unit Commitment (RUC) Availability Payments, or its successor but excluding payments described in Section 4.3(a)(i)-(iv).
- (c) In accordance with Section 4.1 of this Confirmation and Article Six of the Master Agreement, all such Buyer revenues described in Section 4.3(b), but received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. In order to verify the accuracy of such revenues, Buyer shall have the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity.
- (d) If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit the Contract Quantity for re-sale in such market, and retain and receive any and all related revenues.

- (e) Subject to the Unit being made available to the CAISO in accordance with Article 3 of this Confirmation, Seller agrees that the Unit is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments under the Tariff. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of Seller and for Seller's account and that any Non-Availability Charges are the responsibility of Seller and for Seller's account.

4.4 Offset Rights

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

5. Seller's Failure to Deliver Contract Quantity

5.1 Seller's Duty to Provide Replacement Capacity

Planned Outage replacement shall be addressed by the Tariff. For all other replacements, if Seller is unable to provide the Contract Quantity from any Unit(s) for any day in any Monthly Delivery Period and Replacement Capacity is required under Section 3.2, then:

- (a) Seller shall notify Buyer of the non-availability of any portion of the Contract Quantity from any Unit(s) and identify Replacement Unit(s), and
- (b) Seller shall, at no additional cost to Buyer, provide Buyer with Replacement Capacity from one or more Replacement Units, such that the total amount of Product provided to Buyer from all Units and Replacement Units equals Contract Quantity.

provided that the designation of any Replacement Unit by Seller shall be subject to Buyer's prior written approval, which shall not be unreasonably withheld. Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 5.1, and Buyer has approved the designation of the Replacement Unit, then any such Replacement Unit shall be deemed a Unit for purposes of this Confirmation for that day in such Monthly Delivery Period. Notwithstanding anything to the contrary in this Confirmation, Seller's failure to properly provide Replacement Capacity, including Seller's obligation to identify Replacement Units within the notice deadlines specified in this Section 5.1, may result in the calculation of damages payable to Buyer and/or the indemnification of Buyer against any penalties, fines or costs under Section 5 and Section 10.

5.2 Damages for Failure to Provide Replacement Capacity

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

- (a) Buyer may, but shall not be obligated to, obtain Replacement Capacity. Buyer may enter into purchase transactions with one or more parties to

replace the portion of Contract Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver the capacity to another party, and such arrangements shall be considered the procurement of Replacement Capacity. Buyer shall act in a commercially reasonable manner in purchasing any Replacement Capacity, and;

- (b) Seller shall pay to Buyer damages, in accordance with the terms of Section 4.1 of the Master Agreement relating to “Accelerated Payment of Damages,” if applicable, an amount equal to the positive difference, if any, between (i) the sum of (A) the Capacity Replacement Price paid by Buyer for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) for such day, plus (B) the Capacity Replacement Price times the portion of Contract Capacity not provided by Seller nor purchased by Buyer pursuant to Section 5.2(a) for such day times 1,000 kW/MW, and (ii) the portion of Contract Capacity not provided for the applicable day in the applicable Monthly Delivery Period times the Contract Price for that day times 1,000 kW/MW.

5.3 Indemnities for Failure to Deliver Contract Capacity

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

- (a) Seller’s failure to provide any portion of the Contract Capacity or any portion of the Replacement Capacity;
- (b) Seller’s failure to provide timely notice of the non-availability of any portion of the Contract Capacity;
- (c) A Unit’s SC’s failure to timely submit Supply Plans that identify Buyer’s right to the Unit Contract Quantity purchased hereunder, or;
- (d) any other failure by Seller to perform its obligations under this Confirmation.

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

6. Other Buyer and Seller Covenants

6.1 Seller’s and Buyer’s Duty to Take Action to Allow the Utilization of the Product

Buyer and Seller shall, throughout the Delivery Period, take commercially reasonable actions and execute any and all documents or instruments reasonably necessary to

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

6.2 Seller's Represents, Warrants and Covenants

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

- (a) Seller owns or has the exclusive right to the Product sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;
- (c) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
- (d) Seller shall, and each Unit's SC, owner and operator is obligated to, comply with Applicable Laws, including the Tariff, relating to the Product;
- (e) If Seller is the owner of any Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for any Unit does not exceed the Unit NQC or Unit EFC, as applicable, for that Unit;
- (f) Seller has notified the SC of each Unit that Seller has transferred the Unit Contract Quantity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff fully reflecting such transfer;
- (g) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to Buyer, at least fifteen (15) Business Days before the relevant deadline for each Compliance Showing, the Unit Contract Quantity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period;
- (h) Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.3, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues;

- (i) In the event Seller has rights to the energy output of any Unit, and Seller or the Unit's SC schedules energy from the Unit for export from the CAISO Control Area, or commits energy to another entity in a manner that could result in scheduling energy from the Unit for export from the CAISO Control Area, it shall do so only as allowed by, and in accordance with, Applicable Laws and such exports may, if allowed by the Tariff, be curtailed by the CAISO, and;
- (j) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities.

7. Confidentiality

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

8. Counterparts

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

9. Collateral Requirements

9.1 To secure its obligations under this Agreement Seller agrees to deliver to Buyer and maintain in full force and effect for the period set forth below, the following Performance Assurance:

- (a) CPUC Approval Security, in the amount of [] in the form of cash or a Letter of Credit [or a Guaranty] from the Execution Date of this Agreement until the return date specified in Section 9.2(a) below;]

- (b) Development Period Security in the amount of [_____] in the form of cash or a Letter of Credit [or a Guaranty] from the CPUC Approval date until the return date specified in Section 9.2(b) below;
- (c) Construction Period Security in the amount of [_____] in the form of cash or a Letter of Credit [or a Guaranty] from the CP Satisfaction Date until the return date specified in Section 9.2(c)) below; and
- (d) Delivery Term Security in the amount of [_____] in the form of cash or a Letter of Credit [or a Guaranty] from the commencement of the Delivery Term until the return date specified in Section 9.2(d) below.

The CPUC Approval Security and the Development Period Security, any such Performance Assurance shall not be deemed a limitation of damages.

9.2 Return of Performance Assurance.

- (a) Buyer shall promptly return to Seller the unused portion of the CPUC Approval Security after the earlier of (A) the date on which Seller has delivered the Development Period Security or the Construction Period Security, as applicable, and (B) termination of the Agreement under Section 2.2(a).
- (b) Buyer shall promptly return to Seller the unused portion of the Development Period Security after the earlier of (A) the date on which Seller has delivered the Construction Period Security, and (B) the date that all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting) after an Early Termination Date.
- (c) Buyer shall promptly return to Seller the unused portion of the Construction Period Security after the earlier of (A) the date on which Seller has delivered the Delivery Term Security, and (B) the date that all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting) after an Early Termination Date.
- (d) Buyer shall promptly return to Seller the unused portion of the Delivery Term Security after the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

10. Declaration of an Early Termination Date and Calculation of Settlement Amounts

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

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

[Signature page follows]

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

_____ SAN DIEGO GAS & ELECTRIC COMPANY
a _____ a California corporation

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

APPROVED as to legal form _____

APPENDIX A**Unit Information**

Unit Resource Name	
CAISO Resource ID	
Unit SCID	
2019 Unit NQC (MW)	
Prorated Percentage of Unit Factor	
2019 Unit EFC (MW)	<i>[Comment: If the Product does not include flexible capacity, insert "Not Applicable"]</i>
Prorated Percentage of Unit Flexible Factor	
Resource Type	
Resource Category (MMC Bucket 1, 2, 3 or 4)	
Path 26 (North or South)	
Local Capacity Area (if any, as of Confirmation Execution Date)	
Unit Contract Quantity (MW) for Capacity Attributes (excluding Flexible RA Attributes)	
Unit Contract Quantity (MW) for Flexible RA Attributes	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	

LONG FORM CONFIRMATION
FOR RESOURCE ADEQUACY CAPACITY PRODUCT
Resource Adequacy Contract Number: _____

This confirmation letter ("Confirmation") confirms the transaction (the "Transaction") between San Diego Gas & Electric Company ("Seller") and _____ ("Buyer"), each individually a "Party" and together the "Parties", dated as of *[date]* ____, 2020 (the "Confirmation Execution Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Section 3 of this Confirmation. This Transaction shall be deemed to have been entered into pursuant to, and shall supplement, form a part of, and be governed by the terms and conditions of the form of Master Power Purchase and Sale Agreement published by the Edison Electric Institute and the National Energy Marketers Association (version 2.1 dated 4/25/00) (the "EEI Agreement") with a Cover Sheet containing the elections and other changes contained herein as if the Parties have executed the EEI Agreement (with such Cover Sheet the "Master Agreement"). The Parties agree that the only transactions to be concluded pursuant to such Master Agreement shall be the Transaction documented in this Confirmation. The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein). To the extent that this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

Name: Party A / Seller

Name: Party B / Buyer

All Notices:

San Diego Gas & Electric Company
8315 Century Park Court CP 21D
San Diego CA 92123-1593
Attn: Contract Administration
Telephone: (858) 650-6176
Facsimile: (858) 650-6190
Duns: 006911457
Federal Tax ID Number: 95-1184800

All Notices:

< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: (____) ____ - ____
Facsimile: (____) ____ - ____
Duns: _____
Federal Tax ID Number: _____

Invoices:

San Diego Gas & Electric Company
8315 Century Park Court
San Diego CA 92123-1593
Attn: Energy Accounting Manager
Telephone: (858) 650-6177
Facsimile: (858) 650-6190

Invoices:

< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: (____) ____ - ____
Facsimile: (____) ____ - ____

Scheduling:

San Diego Gas & Electric Company
 8315 Century Park Court, CP 21D
 San Diego, CA 92123-1593
 Attn: Transaction Scheduling Manager
 Day Ahead: (858) 650-6168
 Real Time: (858) 650-6160
 Facsimile: (858) 650-6191

Payments:

San Diego Gas & Electric Company
 8315 Century Park Court
 San Diego CA 92123-1593
 Attn: Energy Accounting Manager
 Telephone: (858) 650-6177
 Facsimile: (858) 650-6190

Wire Transfer:

Union Bank of California
 445 South Figueroa Street
 Los Angeles CA 90071
 ABA Routing Number: 122000496
 Payee: San Diego Gas & Electric Company
 Account Number: 4430000352
 Confirmation: SDG&E – Major Markets
 Facsimile: (213) 244-8316

Credit and Collections:

San Diego Gas & Electric Company
 555 West Fifth Street, ML 18A3
 Los Angeles, CA 90013-1011
 Attn: Major Markets – Credit and
 Collections Manager
 Telephone: (213) 244-4343
 Facsimile: (213) 244-8316

With additional Notices of an Event of Default or Potential Event of Default to:

San Diego Gas & Electric Company
 8330 Century Park Ct.
 San Diego, California 92123
 Attn: General Counsel
 Telephone: (858) 650-6141
 Facsimile: (858) 650-6106

Scheduling:

< company name >
 < street address >
 < city/state/zip >
 Attn: _____
 Day Ahead: () -
 Real Time: () -
 Facsimile: () -

Payments:

< company name >
 < street address >
 < city/state/zip >
 Attn: _____
 Telephone: () -
 Facsimile: () -

Wire Transfer:

< bank name >
 < bank street address >
 < bank city/state/zip >
 ABA Routing Number: _____
 Payee: _____
 Account Number: _____
 Confirmation: _____
 Facsimile: () -

Credit and Collections:

< company name >
 < street address >
 < city/state/zip >
 Attn: _____
 Telephone: () -
 Facsimile: () -

With additional Notices of an Event of Default or Potential Event of Default to:

< company name >
 < street address >
 < city/state/zip >
 Attn: _____
 Telephone: () -
 Facsimile: () -

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

Article TwoTransaction Terms
and Conditions

- Optional provision in Section 2.4.
If not checked, inapplicable.

Article FourRemedies for Failure
to Deliver or Receive

- Accelerated Payment of Damages.
If not checked, inapplicable.

Article Five

Events of Default; Remedies

- Cross Default for Party A:
 Party A: _____ Cross Default Amount: _____
 Other Entity: _____ Cross Default Amount: _____
- Cross Default for Party B:
 Party B: N/A Cross Default Amount: N/A
 Other Entity: N/A Cross Default Amount: N/A

5.6 Closeout Setoff

- Option A (Applicable if no other selection is made.)
 Option B – Affiliates shall have the meaning set forth in
the Agreement unless otherwise specified as follows:

 Option C (No Setoff)

Article 8Credit and
Collateral Requirements**8.1 Party B Credit Protection:**

- (a) Financial Information:
 Option A
 Option B Specify: _____
 Option C Specify: _____
- (b) Credit Assurances:
 Not Applicable
 Applicable
- (c) Collateral Threshold:
 Not Applicable
 Applicable
- (d) Downgrade Event:
 Not Applicable
 Applicable
- (e) Guarantor for Party B: None.
Guarantee Amount: N/A

**8.2 Party A Credit Protection: [SDG&E CREDIT
DEPARTMENT TO EVALUATE BASED ON
COUNTERPARTY]**

- (a) Financial Information:
 Option A
 Option B Specify: _____
 Option C Specify: _____
- (b) Credit Assurances:
 Not Applicable
 Applicable
- (c) Collateral Threshold:
 Not Applicable
 Applicable
 If applicable, complete the following:
 Party A Collateral Threshold: \$ _____;
 provided, however, that Party A's Collateral
 Threshold shall be zero if an Event of Default or
 Potential Event of Default with respect to Party A
 has occurred and is continuing.
 Party A Independent Amount: \$ _____
 Party A Rounding Amount: \$ _____
- (d) Downgrade Event:
 Not Applicable
 Applicable
 If applicable, complete the following:
 It shall be a Downgrade Event for Party A if
 Party A 's Credit Rating falls below _____
 from S&P or _____ from Moody's or if Party A
 is not rated by either S&P or Moody's
 Other:
 Specify: _____
- (e) Guarantor for Party A: None
 Guarantee Amount: N/A

Article 10

Confidentiality

 Confidentiality Applicable If not checked, inapplicable.**Schedule M**

- Party A is a Governmental Entity or Public Power System
 Party B is a Governmental Entity or Public Power System
 Add Section 3.6. If not checked, inapplicable
 Add Section 8.4. If not checked, inapplicable

Other Changes

1. The modifications to Section 1.12, 1.50 and 5.2 of the Master Agreement specified in that certain Errata published by the Edison Electric Institute (version 1.1, July 18, 2007) are hereby incorporated herein as if set forth in full.

2. Section 10.2(ii) of the Master Agreement shall be modified by inserting “Except for the approval by the CPUC as stated in Section 2.2 of this Confirmation,” at the beginning of the first sentence in such section.

3. Section 10.6 of the Master Agreement shall be deleted in its entirety and replaced with the following:

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

4. Schedule P: Products and Related Definitions shall be deleted in its entirety.

5. Section 10.5 of the Master Agreement shall be deleted in its entirety and replaced with the following:

Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld. For purposes hereof, the transfer of more than fifty percent (50%) of the equity ownership or voting interest of Seller (or any parent entity holding directly or indirectly at least fifty percent (50%) of the equity ownership or voting interest of Seller if such interest constitutes more than twenty percent (20%) of the fair market value of the assets of such parent entity) to a person that is not an Affiliate of Seller shall also constitute an assignment of this Agreement requiring Buyer’s prior written consent. Notwithstanding the foregoing, Buyer may, without the consent of the Seller (and therefor relieving itself from liability hereunder), assign this Agreement to a Qualified Assignee. Qualified Assignee shall mean: any community choice aggregation entity or joint powers authority formed in the State of California or any legal entity that is established by statute or by the CPUC to serve load as a central procurement entity. Notwithstanding the foregoing, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), transfer, sell, pledge, encumber, or assign this Agreement or the accounts, revenues or proceeds hereof to its financing providers. In connection with any financing or refinancing of the Project by Seller, Buyer shall in good faith negotiate and agree upon a consent to collateral assignment of this Agreement in a form

that is commercially reasonable and customary in the industry

1. Definitions

- 1.1 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.2 “Availability Incentive Payments” has the meaning set forth in the Tariff ***[If the Product includes flexible capacity, add: and includes any similarly defined payments under the Tariff in respect of Flexible RA Attributes].***
- 1.3 “Availability Standards” has the meaning set forth in the Tariff ***[If the Product includes flexible capacity, add: and includes any similarly defined standards under the Tariff in respect of Flexible RA Attributes].***
- 1.4 “Buyer” has the meaning specified in the introductory paragraph.
- 1.5 “CAISO” means the California Independent System Operator Corporation, or any successor entity performing the same functions.
- 1.6 “Capacity Attributes” means (a) the Local RA Attributes, (b) the RA Attributes, (c) the Flexible RA Attributes, and (d) any other current or future defined characteristics (including the ability to generate at a given capacity level, provide ancillary services, ramp up or down at a given rate, and flexibility or dispatch-ability attributes), certificates, tags, credits, howsoever entitled, including any accounting construct applied to any Compliance Obligations.
- 1.7 “Capacity Price” means the price specified in the Capacity Price Table in Section 4.1.
- 1.8 “Capacity Replacement Price” means (a) the actual rate per kW-day paid for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) including any penalties, fines, transaction costs and expenses reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of Replacement Capacity, any penalties, fines, transaction costs and expenses plus the per kW-day market price for the Product not delivered by Seller under this Confirmation. Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 1.51 of the Master Agreement, “Capacity Replacement Price” shall be deemed the “Replacement Price” for this Transaction.
- 1.9 “Compliance Obligations” means the RAR, Local RAR, Flexible RAR, and other resource adequacy requirements associated with a generating unit’s Capacity Attributes established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
- 1.10 “Compliance Showing” means one or more of the following: (a) Local RAR Showing, (b) RAR Showing, (c) Flexible RAR Showing, or (d) other Capacity Attributes compliance or advisory filing (or similar or successor showing or filing), in each case, that an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.

- 1.11 “Confirmation” has the meaning specified in the introductory paragraph.
- 1.12 “Confirmation Effective Date” has the meaning specified in Section 2.2.
- 1.13 “Confirmation Execution Date” has the meaning specified in the introductory paragraph.
- 1.14 “Construction Period Security” has the meaning specified in Section 9.1(c).
- 1.15 “Contract Price” means, for any day in any Monthly Delivery Period, the Capacity Price for such period.
- 1.16 “Contract Quantity” means the quantity of Product (in MW) as set forth in Section 3.5.
- 1.17 “Contract Term” has the meaning set forth in Section 2.1.
- 1.18 “CPUC” means the California Public Utilities Commission.
- 1.19 “CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:
- (a) approves this Agreement in its entirety, including payments to be made by the Buyer and all other relief requested in SDG&E’s submission of the Agreement for approval, subject to CPUC review of the Buyer’s administration of the Agreement; and
- (b) ***[NOTE: For RPS-eligible facilities only]*** finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer’s compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 *et seq.*), Decision 03-06-071, or other applicable Law.
- (c) CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.
- 1.20 “CPUC Approval Security” has the meaning specified in Section 9.1(a).
- 1.21 “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-25, and any other existing or subsequent decisions, resolutions or rulings related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.22 “CPUC Filing Guide” is the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSEs to demonstrate compliance with the CPUC’s resource adequacy program as provided in the CPUC Decisions.
- 1.23 “Credit Rating” means, with respect to any entity, the rating assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) by S&P, Moody’s or any other rating agency agreed by the Parties

as set forth in the Master Agreement, or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Moody's or any other rating agency agreed by the Parties as set forth in the Master Agreement.

- 1.24 "Delivery Period" has the meaning specified in Section 3.4.
- 1.25 "Delivery Period Security" has the meaning specified in Section 9.1(d).
- 1.26 "Development Period Security" has the meaning specified in Section 9.1(b).
- 1.27 "Emission Reduction Credits" or "ERC(s)" means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby such district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.
- 1.28 "Environmental Costs" means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product's compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits (including any costs related to greenhouse gas emissions) required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the site, and the decontamination or remediation, on or off the site, necessitated by the introduction of such hazardous substances on the site.
- 1.29 "Flexible RA Attributes" means, with respect to a Unit, any and all flexible resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and Local RA Attributes.
- 1.30 "Flexible RAR" means the flexible capacity requirements, including, without limitation, maximum continuous ramping, load following, and regulation, established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Flexible RAR may also be known as ramping, maximum ramping, maximum continuous ramping, maximum continuous ramping capacity, maximum continuous ramping ramp rate, load following, load following capacity, load following ramp rate, regulation, regulation capacity, regulation ramp rate.
- 1.31 "Flexible RAR Showing" means the Flexible RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.32 "GADS" means the Generating Availability Data System, or its successor.

- 1.33 “Governmental Body” means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.
- 1.34 “Local Capacity Area” has the meaning set forth in the Tariff.
- 1.35 “Local RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes or other locational attributes for the Unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward a Local RAR, but exclusive of any RA Attributes and Flexible RA Attributes.
- 1.36 “Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.37 “Local RAR Showing” means the Local RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.38 “LSE” means load-serving entity.
- 1.39 “Marketable Emission Trading Credits” means without limitation, emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (see 42 U.S.C. § 7651b.(a) to (f)).
- 1.40 “Master Agreement” has the meaning specified in the introductory paragraph.
- 1.41 “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.42 “Monthly Payment” has the meaning specified in Section 4.1.
- 1.43 “Moody’s” means Moody’s Investors Services, Inc. or its successor.
- 1.44 “NERC” means the North American Electric Reliability Corporation, or its successor.
- 1.45 “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.
- 1.46 “Net Qualifying Capacity” has the meaning set forth in the Tariff.

- 1.47 “Non-Availability Charges” has the meaning set forth in the Tariff ***[if the Product includes flexible capacity, add:*** and includes any similarly defined charges under the Tariff in respect of Flexible RA Attributes].
- 1.48 “Non-Specified RA Replacement Capacity” has the meaning set forth in the Tariff ***[if the Product includes flexible capacity, add:*** and includes any similarly defined capacity under the Tariff in respect of Flexible RA Attributes].
- 1.49 “Outage” means any disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 1.50 “Outage Schedule” has the meaning specified in Section 3.8.
- 1.51 “Planned Outage” shall have the meaning in CPUC Decisions, and includes a planned, scheduled, or any other Outage approved by the CAISO for the routine repair or maintenance of the Unit, or for the purposes of new construction work, and does not include any Outage designated as either forced or unplanned as defined by the CAISO or NERC/GADS Protocols.
- 1.52 “Product” has the meaning specified in Section 3.1.
- 1.53 “Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix A, of the Unit NQC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.
- 1.54 “Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix A, of the Unit EFC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.
- 1.55 “Qualified Assignee” has the meaning set forth in the new Section 10.5.
- 1.56 “RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any Local RA Attributes and Flexible RA Attributes.
- 1.57 “RA Substitute Capacity” means capacity that the CAISO permits under the CAISO Tariff to be substituted for a Resource Adequacy Resource that is on Outage.
- 1.58 “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
- 1.59 “RAR Showing” means the RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.

- 1.60 “Replacement Capacity” means capacity which has equivalent Capacity Attributes as the portion of the Product not provided by the Units committed to Buyer as of the Confirmation Execution Date.
- 1.61 “Replacement Rules” has the meaning set forth in Section 3.9(b).
- 1.62 “Replacement Unit” means a generating unit providing Replacement Capacity.
- 1.63 “Resource Category” shall be as described in the CPUC Filing Guide.
- 1.64 “RMR Contract” has the meaning set forth in the Tariff.
- 1.65 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc. or its successor).
- 1.66 “Scheduling Coordinator” or “SC” has the meaning set forth in the Tariff.
- 1.67 “Seller” has the meaning specified in the introductory paragraph.
- 1.68 “Showing Month” shall be the calendar month that is the subject of the Compliance Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Execution Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.69 “Substitution Rules” has the meaning set forth in Section 3.9(b).
- 1.70 “Supply Plan” has the meaning set forth in the Tariff ***[If the Product includes flexible capacity, add: and includes any similarly defined plan under the Tariff in respect of Flexible RA Attributes]***.
- 1.71 “Tariff” means the tariff and protocol provisions, including any applicable CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended or supplemented from time to time, of the CAISO.
- 1.72 “Transaction” has the meaning specified in the introductory paragraph.
- 1.73 “Unit” or “Units” shall mean the generation assets described in Appendix A (including any Replacement Units), from which Product is provided by Seller to Buyer.
- 1.74 “Unit Contract Quantity” means the amount of Product (in MW) to be delivered by Seller to Buyer by each individual Unit, as specified in Appendix A as of the Confirmation Execution Date.
- 1.75 “Unit EFC” means the effective flexible capacity or capacity that is qualified to provide Flexible RA Attributes established by the CAISO for the applicable Unit.
- 1.76 “Unit NQC” means the Net Qualifying Capacity established by the CAISO for the applicable Unit.
- 1.77 “Unit Delivered Quantity” means the amount of applicable Product (in MW) actually “delivered” by Seller to Buyer by each individual Unit. As used herein, “delivered” shall mean shown in the Supply Plan and, for purposes of Section 4.1, shall include

any RA Substitute Capacity under Section 3.9, and in all cases, shall not include (i) any portion of Contract Capacity for which Buyer is required under the Compliance Obligations or the Tariff to procure Replacement Capacity, and (ii) any portion of Contract Capacity for which Seller is required hereunder, but fails, to provide Replacement Capacity to Buyer.

2. Term

2.1 Contract Term

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

2.2 Conditions Precedent; Binding Nature

This Agreement shall not be effective or binding on either Party until, and it shall become effective and binding on both Parties as of, the date on which the conditions precedent, if any, described below shall have been achieved (or waived in writing by each of the Parties in their sole discretion) (the “Confirmation Effective Date”).

(a) No later than [_____], Buyer shall have obtained CPUC Approval. Prior to this deadline, should the CPUC issue an order approving this Agreement but with conditions or modifications that materially alter the commercial aspects of this Agreement, the Parties agree to use good faith efforts to renegotiate this Agreement and file the amended agreement with the CPUC seeking CPUC Approval therefor. If, no later than the earlier of (i) sixty (60) days after such order or (ii) the deadline date above, no agreement is reached, either Party may terminate this Agreement upon delivery of Notice to the other Party.

(b) [INSERT OTHERS]

If any of the foregoing conditions precedent are not achieved (or waived in writing by each of the Parties) on or before the deadline dates therefor (without extension for Force Majeure or any other reason), then this Agreement shall automatically terminate. If there are no conditions precedent listed above in this Section 2.2 then the Confirmation Effective Date shall be the Confirmation Execution Date. This Agreement shall be effective and binding as of the Confirmation Effective Date.

3. Transaction

[Note to bidders: For new Projects, SDG&E will require the addition of a guaranteed commercial operation deadline for the Project, along with development and construction milestones. Failure to meet such milestones will be an event of default].

3.1 Product

(a) Seller shall sell and Buyer shall receive and purchase, the Capacity Attributes (including all Local RA Attributes [but excluding Flexible RA Attributes (if any)]) ***[If the Product includes flexible capacity, add: and Flexible RA Attributes]***

of the Units identified in Appendix A (collectively, the “Product”) and Seller shall deliver the Product as described in Section 3.2 below. Product does not include any right to dispatch or receive the energy or ancillary services from the Unit. Seller retains the right to sell any Product from a Unit in excess of its Unit Contract Quantity.

- (b) The Parties agree that (i) the Contract Price for the Product shall not change if the CAISO, CPUC or other Governmental Body (A) defines new or re-defines existing Local Capacity Areas which decreases or increases the amount of Local RA Attributes provided hereunder, or (B) defines new or re-defines existing Local Capacity Areas whereby the Units qualify for a Local Capacity Area and (ii) if the event in Section 3.1(b)(i)(B) occurs then the Product shall include such Local RA Attributes.
- (c) ***[If the Product includes flexible capacity, add This Section 3.1(c):*** The Parties agree that (i) the Contract Price for the Product shall not change if the CAISO, CPUC or other Governmental Body defines new or re-defines existing Flexible RAR, Capacity Attributes related to Flexible RAR, or attributes of the Unit related to Flexible RAR, that results in a decrease or increase in the amount of Capacity Attributes related to Flexible RAR provided hereunder, and (ii) if the event in Section 3.1(c)(i) occurs then the Product shall include such Capacity Attributes related to Flexible RAR.]

3.2 Firm Quantity

[NOTE to bidders: SDG&E is also considering unit contingent bids from specified units. Seller will be excused from delivering and from replacing for reasons of Force Majeure and plant outages. For unit contingent products, seller shall not have the right to replace during excused hours. Unit contingent bids will also have a minimum RA requirement: 70% of bid capacity over any consecutive 12-month period. If seller’s RA falls below this minimum, it shall be an event of default.]

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

3.3 Delivery Period

The “Delivery Period” shall be _____ thru _____, inclusive, unless terminated earlier in accordance with the terms of this Agreement.

3.4 Contract Quantity:

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

CONTRACT QUANTITY TABLE

Unit Name	CAISO Resource ID*	Month(s)	Unit Contract Quantity (MW)	
			Capacity Attributes (excluding Flexible RA Attributes)	Flexible RA Attributes

* CAISO Resource ID should match a Unit described in Appendix A

3.5 Delivery of Product

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

- (a) Seller shall, on a timely basis, submit, or cause each Unit's SC to submit, Supply Plans to identify and confirm the Unit Delivered Quantity for each Unit provided to Buyer so that the total amount of Unit Delivered Quantity identified and confirmed equals the Unit Contract Quantity for each Unit, unless specifically notified or requested not to do so by the Buyer pursuant to Section 3.9, and;
- (b) Seller shall cause each Unit's SC to submit written notification to Buyer, no later than fifteen (15) Business Days before the relevant deadline for any applicable Compliance Showing, that Buyer will be credited with Unit Delivered Quantity for the applicable portion of the Delivery Period in the Unit's SC Supply Plan so that the total amount of Unit Delivered Quantity for each Unit credited equals the Unit Contract Quantity.

3.6 CAISO/CPUC Offer Requirements

Subject to Buyer's request under Section 3.9(a), Seller shall, or cause the Unit's SC to, bid and/or schedule with, or make available to, the CAISO the Unit Contract Quantity for each Unit in compliance with the Tariff and the CPUC Filing Guide, including any must offer obligation under the Tariff or the CPUC Filing Guide, and shall, or cause the Unit's SC, owner, or operator, as applicable, to perform all obligations under the Tariff and the CPUC Filing Guide that are associated with the sale and delivery of Product hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's SC, owner, or operator to comply with such Tariff

and CPUC Filing Guide provisions, including any penalties, charges or fines imposed on Seller or the Unit's SC, owner, or operator for such noncompliance.

3.7 Reserved

3.8 Unit Substitution; RA Replacement Capacity

- (a) RA Replacement Capacity: No later than five (5) Business Days before the relevant deadline for each applicable Compliance Showing, Buyer may (i) request, subject to Seller's reasonable approval, that Seller not, or cause each Unit's SC not to, list a portion or all of a Unit's applicable Unit Contract Quantity on the Supply Plan or (ii) notify Seller that a portion or all of the Unit Contract Quantity of a Unit will be included in an applicable Compliance Showing as RA Substitute Capacity. The amount of Unit Contract Quantity that is the subject of such a request or notice shall be known as "RA Substitute Capacity" and, for purposes of calculating a Monthly Payment pursuant to Section 4.1, to the extent provided, such RA Substitute Capacity shall be deemed Unit Delivered Quantity provided consistent with Section 3.6.
- (b) Seller's Obligations With Respect to RA Substitute Capacity: If Buyer requests RA Substitute Capacity, Seller shall (i) make such RA Substitute Capacity available to Buyer during the applicable Showing Month to allow Buyer to utilize, as applicable, the substitution rules in Sections 9.3.1.3.1, 9.3.1.3.2 and 40.9.4.2.1 of the Tariff ***[If the Product includes flexible capacity, add:*** including any similarly defined substitution rules under the Tariff in respect of Flexible RA Attributes] ("Substitution Rules") and (ii) take, or cause each Unit's SC to take, all action to allow Buyer to utilize, as applicable, the Substitution Rules, including, but not limited to, ensuring that the RA Substitute Capacity will qualify, as applicable, for substitution under the Substitution Rules, and providing Buyer with all information needed to utilize the Substitution Rules.
- (c) Seller agrees that all RA Substitute Capacity utilized by Buyer under the Substitution Rules, as applicable, is subject to the requirements identified in Section 3.7.
- (d) Failure to Provide RA Substitute Capacity: If Seller fails to provide RA Substitute Capacity or Buyer is unable to utilize the RA Substitute Capacity under the Substitution Rules due to Seller's failure to fulfill its obligations under Section 3.9(b)(ii), then Seller shall reimburse Buyer for any and all Non-Availability Charges incurred by Buyer and shall pay Buyer the CPM revenue the CASIO would have paid the Buyer but for Seller failure, due to such failure or inability to utilize the Substitution Rules; provided, that if Buyer is unable to utilize the Substitution Rules because the RA Substitute Capacity does not qualify for substitution under Section 9.3.1.3.1, 9.3.1.3.2, 40.9.4.2.1(1)(i) or (ii) of the Tariff, then Seller shall not be responsible for any such Non-Availability Charges described in this Section 3.9(d) associated with such inability.

3.9 Buyer's Re-Sale of Product

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

4. Payment

4.1 Monthly Payment

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

$$\text{Monthly Payment} = \sum_{n=1}^d (A_n * B_n * 1000)$$

where:

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

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

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

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

CAPACITY PRICE TABLE [Note: add months/years as needed]

Contract Month	Capacity Price (\$/kW-day) 2021
January	
February	
March	
April	
May	
June	
July	

Contract Month	Capacity Price (\$/kW-day) 2021
August	
September	
October	
November	
December	

4.2 Reserved.

4.3 Allocation of Other Payments and Costs

- (a) Seller shall retain any revenues it may receive from and pay all costs charged by, the CAISO or any other third party with respect to any Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, and (iv) any revenues for black start or reactive power services. Seller shall indemnify, defend and hold Buyer harmless from and against all liabilities, damages, claims, losses, costs or expenses (including, without limitation, attorneys' fees) incurred by or brought against Buyer in connection with Environmental Costs.
- (b) Buyer shall be entitled to receive and retain all revenues associated with the Contract Quantity during the Delivery Period including any capacity or availability revenues from RMR Contracts for any Unit, Capacity Procurement Mechanism (CPM) or its successor, and Residual Unit Commitment (RUC) Availability Payments, or its successor but excluding payments described in Section 4.3(a)(i)-(iv).
- (c) In accordance with Section 4.1 of this Confirmation and Article Six of the Master Agreement, all such Buyer revenues described in Section 4.3(b), but received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. In order to verify the accuracy of such revenues, Buyer shall have the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity.
- (d) If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit the Contract Quantity for re-sale in such market, and retain and receive any and all related revenues.

- (e) Subject to the Unit being made available to the CAISO in accordance with Article 3 of this Confirmation, Seller agrees that the Unit is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments under the Tariff. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of Seller and for Seller's account and that any Non-Availability Charges are the responsibility of Seller and for Seller's account.

4.4 Offset Rights

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

5. Seller's Failure to Deliver Contract Quantity

5.1 Seller's Duty to Provide Replacement Capacity

Planned Outage replacement shall be addressed by the Tariff. For all other replacements, if Seller is unable to provide the Contract Quantity from any Unit(s) for any day in any Monthly Delivery Period and Replacement Capacity is required under Section 3.2, then:

- (a) Seller shall notify Buyer of the non-availability of any portion of the Contract Quantity from any Unit(s) and identify Replacement Unit(s), and
- (b) Seller shall, at no additional cost to Buyer, provide Buyer with Replacement Capacity from one or more Replacement Units, such that the total amount of Product provided to Buyer from all Units and Replacement Units equals Contract Quantity.

provided that the designation of any Replacement Unit by Seller shall be subject to Buyer's prior written approval, which shall not be unreasonably withheld. Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 5.1, and Buyer has approved the designation of the Replacement Unit, then any such Replacement Unit shall be deemed a Unit for purposes of this Confirmation for that day in such Monthly Delivery Period. Notwithstanding anything to the contrary in this Confirmation, Seller's failure to properly provide Replacement Capacity, including Seller's obligation to identify Replacement Units within the notice deadlines specified in this Section 5.1, may result in the calculation of damages payable to Buyer and/or the indemnification of Buyer against any penalties, fines or costs under Section 5 and Section 10.

5.2 Damages for Failure to Provide Replacement Capacity

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

- (a) Buyer may, but shall not be obligated to, obtain Replacement Capacity. Buyer may enter into purchase transactions with one or more parties to

replace the portion of Contract Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver the capacity to another party, and such arrangements shall be considered the procurement of Replacement Capacity. Buyer shall act in a commercially reasonable manner in purchasing any Replacement Capacity, and;

- (b) Seller shall pay to Buyer damages, in accordance with the terms of Section 4.1 of the Master Agreement relating to “Accelerated Payment of Damages,” if applicable, an amount equal to the positive difference, if any, between (i) the sum of (A) the Capacity Replacement Price paid by Buyer for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) for such day, plus (B) the Capacity Replacement Price times the portion of Contract Capacity not provided by Seller nor purchased by Buyer pursuant to Section 5.2(a) for such day times 1,000 kW/MW, and (ii) the portion of Contract Capacity not provided for the applicable day in the applicable Monthly Delivery Period times the Contract Price for that day times 1,000 kW/MW.

5.3 Indemnities for Failure to Deliver Contract Capacity

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

- (a) Seller’s failure to provide any portion of the Contract Capacity or any portion of the Replacement Capacity;
- (b) Seller’s failure to provide timely notice of the non-availability of any portion of the Contract Capacity;
- (c) A Unit’s SC’s failure to timely submit Supply Plans that identify Buyer’s right to the Unit Contract Quantity purchased hereunder, or;
- (d) any other failure by Seller to perform its obligations under this Confirmation.

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

6. Other Buyer and Seller Covenants

6.1 Seller’s and Buyer’s Duty to Take Action to Allow the Utilization of the Product

Buyer and Seller shall, throughout the Delivery Period, take commercially reasonable actions and execute any and all documents or instruments reasonably necessary to

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

6.2 Seller's Represents, Warrants and Covenants

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

- (a) Seller owns or has the exclusive right to the Product sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;
- (c) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
- (d) Seller shall, and each Unit's SC, owner and operator is obligated to, comply with Applicable Laws, including the Tariff, relating to the Product;
- (e) If Seller is the owner of any Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for any Unit does not exceed the Unit NQC or Unit EFC, as applicable, for that Unit;
- (f) Seller has notified the SC of each Unit that Seller has transferred the Unit Contract Quantity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff fully reflecting such transfer;
- (g) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to Buyer, at least fifteen (15) Business Days before the relevant deadline for each Compliance Showing, the Unit Contract Quantity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period;
- (h) Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.3, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues;

- (i) In the event Seller has rights to the energy output of any Unit, and Seller or the Unit's SC schedules energy from the Unit for export from the CAISO Control Area, or commits energy to another entity in a manner that could result in scheduling energy from the Unit for export from the CAISO Control Area, it shall do so only as allowed by, and in accordance with, Applicable Laws and such exports may, if allowed by the Tariff, be curtailed by the CAISO, and;
- (j) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities.

7. Confidentiality

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

8. Counterparts

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

9. Collateral Requirements

9.1 To secure its obligations under this Agreement Seller agrees to deliver to Buyer and maintain in full force and effect for the period set forth below, the following Performance Assurance:

- (a) CPUC Approval Security, in the amount of [] in the form of cash or a Letter of Credit [or a Guaranty] from the Execution Date of this Agreement until the return date specified in Section 9.2(a) below;]

- (b) Development Period Security in the amount of [_____] in the form of cash or a Letter of Credit [or a Guaranty] from the CPUC Approval date until the return date specified in Section 9.2(b) below;
- (c) Construction Period Security in the amount of [_____] in the form of cash or a Letter of Credit [or a Guaranty] from the CP Satisfaction Date until the return date specified in Section 9.2(c)) below; and
- (d) Delivery Term Security in the amount of [_____] in the form of cash or a Letter of Credit [or a Guaranty] from the commencement of the Delivery Term until the return date specified in Section 9.2(d) below.

The CPUC Approval Security and the Development Period Security, any such Performance Assurance shall not be deemed a limitation of damages.

9.2 Return of Performance Assurance.

- (a) Buyer shall promptly return to Seller the unused portion of the CPUC Approval Security after the earlier of (A) the date on which Seller has delivered the Development Period Security or the Construction Period Security, as applicable, and (B) termination of the Agreement under Section 2.2(a).
- (b) Buyer shall promptly return to Seller the unused portion of the Development Period Security after the earlier of (A) the date on which Seller has delivered the Construction Period Security, and (B) the date that all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting) after an Early Termination Date.
- (c) Buyer shall promptly return to Seller the unused portion of the Construction Period Security after the earlier of (A) the date on which Seller has delivered the Delivery Term Security, and (B) the date that all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting) after an Early Termination Date.
- (d) Buyer shall promptly return to Seller the unused portion of the Delivery Term Security after the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

10. Declaration of an Early Termination Date and Calculation of Settlement Amounts

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

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

[Signature page follows]

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

a _____

SAN DIEGO GAS & ELECTRIC COMPANY
a California corporation

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

APPROVED as to legal form _____

APPENDIX A**Unit Information**

Unit Resource Name	
CAISO Resource ID	
Unit SCID	
2019 Unit NQC (MW)	
Prorated Percentage of Unit Factor	
2019 Unit EFC (MW)	<i>[Comment: If the Product does not include flexible capacity, insert "Not Applicable"]</i>
Prorated Percentage of Unit Flexible Factor	
Resource Type	
Resource Category (MMC Bucket 1, 2, 3 or 4)	
Path 26 (North or South)	
Local Capacity Area (if any, as of Confirmation Execution Date)	
Unit Contract Quantity (MW) for Capacity Attributes (excluding Flexible RA Attributes)	
Unit Contract Quantity (MW) for Flexible RA Attributes	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	

LONG FORM CONFIRMATION
FOR RESOURCE ADEQUACY CAPACITY PRODUCT
Resource Adequacy Contract Number: _____

This confirmation letter ("Confirmation") confirms the transaction (the "Transaction") between San Diego Gas & Electric Company ("Seller") and _____ ("Buyer"), each individually a "Party" and together the "Parties", dated as of *[date]* ____, 2020 (the "Confirmation Execution Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Section 3 of this Confirmation. This Transaction shall be deemed to have been entered into pursuant to, and shall supplement, form a part of, and be governed by the terms and conditions of the form of Master Power Purchase and Sale Agreement published by the Edison Electric Institute and the National Energy Marketers Association (version 2.1 dated 4/25/00) (the "EEI Agreement") with a Cover Sheet containing the elections and other changes contained herein as if the Parties have executed the EEI Agreement (with such Cover Sheet the "Master Agreement"). The Parties agree that the only transactions to be concluded pursuant to such Master Agreement shall be the Transaction documented in this Confirmation. The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein). To the extent that this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

Name: Party A / Seller

Name: Party B / Buyer

All Notices:

San Diego Gas & Electric Company
8315 Century Park Court CP 21D
San Diego CA 92123-1593
Attn: Contract Administration
Telephone: (858) 650-6176
Facsimile: (858) 650-6190
Duns: 006911457
Federal Tax ID Number: 95-1184800

All Notices:

< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: (____) ____ - ____
Facsimile: (____) ____ - ____
Duns: _____
Federal Tax ID Number: _____

Invoices:

San Diego Gas & Electric Company
8315 Century Park Court
San Diego CA 92123-1593
Attn: Energy Accounting Manager
Telephone: (858) 650-6177
Facsimile: (858) 650-6190

Invoices:

< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: (____) ____ - ____
Facsimile: (____) ____ - ____

Scheduling:

San Diego Gas & Electric Company
 8315 Century Park Court, CP 21D
 San Diego, CA 92123-1593
 Attn: Transaction Scheduling Manager
 Day Ahead: (858) 650-6168
 Real Time: (858) 650-6160
 Facsimile: (858) 650-6191

Payments:

San Diego Gas & Electric Company
 8315 Century Park Court
 San Diego CA 92123-1593
 Attn: Energy Accounting Manager
 Telephone: (858) 650-6177
 Facsimile: (858) 650-6190

Wire Transfer:

Union Bank of California
 445 South Figueroa Street
 Los Angeles CA 90071
 ABA Routing Number: 122000496
 Payee: San Diego Gas & Electric Company
 Account Number: 4430000352
 Confirmation: SDG&E – Major Markets
 Facsimile: (213) 244-8316

Credit and Collections:

San Diego Gas & Electric Company
 555 West Fifth Street, ML 18A3
 Los Angeles, CA 90013-1011
 Attn: Major Markets – Credit and
 Collections Manager
 Telephone: (213) 244-4343
 Facsimile: (213) 244-8316

**With additional Notices of an Event of
Default or Potential Event of Default to:**

San Diego Gas & Electric Company
 8330 Century Park Ct.
 San Diego, California 92123
 Attn: General Counsel
 Telephone: (858) 650-6141
 Facsimile: (858) 650-6106

Scheduling:

< company name >
 < street address >
 < city/state/zip >
 Attn: _____
 Day Ahead: () - -
 Real Time: () - -
 Facsimile: () - -

Payments:

< company name >
 < street address >
 < city/state/zip >
 Attn: _____
 Telephone: () - -
 Facsimile: () - -

Wire Transfer:

< bank name >
 < bank street address >
 < bank city/state/zip >
 ABA Routing Number: _____
 Payee: _____
 Account Number: _____
 Confirmation: _____
 Facsimile: () - -

Credit and Collections:

< company name >
 < street address >
 < city/state/zip >
 Attn: _____
 Telephone: () - -
 Facsimile: () - -

**With additional Notices of an Event of
Default or Potential Event of Default to:**

< company name >
 < street address >
 < city/state/zip >
 Attn: _____
 Telephone: () - -
 Facsimile: () - -

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

Article TwoTransaction Terms
and Conditions

- Optional provision in Section 2.4.
If not checked, inapplicable.

Article FourRemedies for Failure
to Deliver or Receive

- Accelerated Payment of Damages.
If not checked, inapplicable.

Article Five

Events of Default; Remedies

- Cross Default for Party A:
 Party A: _____ Cross Default Amount: _____
 Other Entity: _____ Cross Default Amount: _____
- Cross Default for Party B:
 Party B: N/A Cross Default Amount: N/A
 Other Entity: N/A Cross Default Amount: N/A

5.6 Closeout Setoff

- Option A (Applicable if no other selection is made.)
 Option B – Affiliates shall have the meaning set forth in
the Agreement unless otherwise specified as follows:

 Option C (No Setoff)

Article 8Credit and
Collateral Requirements**8.1 Party B Credit Protection:**

- (a) Financial Information:
 Option A
 Option B Specify: _____
 Option C Specify: _____
- (b) Credit Assurances:
 Not Applicable
 Applicable
- (c) Collateral Threshold:
 Not Applicable
 Applicable
- (d) Downgrade Event:
 Not Applicable
 Applicable
- (e) Guarantor for Party B: None.
Guarantee Amount: N/A

**8.2 Party A Credit Protection: [SDG&E CREDIT
DEPARTMENT TO EVALUATE BASED ON
COUNTERPARTY]**

- (a) Financial Information:
- Option A
 - Option B Specify: _____
 - Option C Specify: _____
- (b) Credit Assurances:
- Not Applicable
 - Applicable
- (c) Collateral Threshold:
- Not Applicable
 - Applicable
- If applicable, complete the following:
 Party A Collateral Threshold: \$_____;
 provided, however, that Party A's Collateral
 Threshold shall be zero if an Event of Default or
 Potential Event of Default with respect to Party A
 has occurred and is continuing.
- Party A Independent Amount: \$_____
 Party A Rounding Amount: \$_____
- (d) Downgrade Event:
- Not Applicable
 - Applicable
- If applicable, complete the following:
- It shall be a Downgrade Event for Party A if
 Party A 's Credit Rating falls below _____
 from S&P or _____ from Moody's or if Party A
 is not rated by either S&P or Moody's
 - Other:
 Specify: _____
- (e) Guarantor for Party A: None
 Guarantee Amount: N/A

Article 10

Confidentiality

 Confidentiality Applicable If not checked, inapplicable.**Schedule M**

- Party A is a Governmental Entity or Public Power System
- Party B is a Governmental Entity or Public Power System
- Add Section 3.6. If not checked, inapplicable
- Add Section 8.4. If not checked, inapplicable

Other Changes

1. The modifications to Section 1.12, 1.50 and 5.2 of the Master Agreement specified in that certain Errata published by the Edison Electric Institute (version 1.1, July 18, 2007) are hereby incorporated herein as if set forth in full.

2. Section 10.2(ii) of the Master Agreement shall be modified by inserting “Except for the approval by the CPUC as stated in Section 2.2 of this Confirmation,” at the beginning of the first sentence in such section.

3. Section 10.6 of the Master Agreement shall be deleted in its entirety and replaced with the following:

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

4. Schedule P: Products and Related Definitions shall be deleted in its entirety.

5. Section 10.5 of the Master Agreement shall be deleted in its entirety and replaced with the following:

Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld. For purposes hereof, the transfer of more than fifty percent (50%) of the equity ownership or voting interest of Seller (or any parent entity holding directly or indirectly at least fifty percent (50%) of the equity ownership or voting interest of Seller if such interest constitutes more than twenty percent (20%) of the fair market value of the assets of such parent entity) to a person that is not an Affiliate of Seller shall also constitute an assignment of this Agreement requiring Buyer’s prior written consent. Notwithstanding the foregoing, Buyer may, without the consent of the Seller (and therefor relieving itself from liability hereunder), assign this Agreement to a Qualified Assignee. Qualified Assignee shall mean: any community choice aggregation entity or joint powers authority formed in the State of California or any legal entity that is established by statute or by the CPUC to serve load as a central procurement entity. Notwithstanding the foregoing, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), transfer, sell, pledge, encumber, or assign this Agreement or the accounts, revenues or proceeds hereof to its financing providers. In connection with any financing or refinancing of the Project by Seller, Buyer shall in good faith negotiate and agree upon a consent to collateral assignment of this Agreement in a form

that is commercially reasonable and customary in the industry

1. Definitions

- 1.1 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.2 “Availability Incentive Payments” has the meaning set forth in the Tariff ***[If the Product includes flexible capacity, add: and includes any similarly defined payments under the Tariff in respect of Flexible RA Attributes].***
- 1.3 “Availability Standards” has the meaning set forth in the Tariff ***[If the Product includes flexible capacity, add: and includes any similarly defined standards under the Tariff in respect of Flexible RA Attributes].***
- 1.4 “Buyer” has the meaning specified in the introductory paragraph.
- 1.5 “CAISO” means the California Independent System Operator Corporation, or any successor entity performing the same functions.
- 1.6 “Capacity Attributes” means (a) the Local RA Attributes, (b) the RA Attributes, (c) the Flexible RA Attributes, and (d) any other current or future defined characteristics (including the ability to generate at a given capacity level, provide ancillary services, ramp up or down at a given rate, and flexibility or dispatch-ability attributes), certificates, tags, credits, howsoever entitled, including any accounting construct applied to any Compliance Obligations.
- 1.7 “Capacity Price” means the price specified in the Capacity Price Table in Section 4.1.
- 1.8 “Capacity Replacement Price” means (a) the actual rate per kW-day paid for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) including any penalties, fines, transaction costs and expenses reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of Replacement Capacity, any penalties, fines, transaction costs and expenses plus the per kW-day market price for the Product not delivered by Seller under this Confirmation. Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 1.51 of the Master Agreement, “Capacity Replacement Price” shall be deemed the “Replacement Price” for this Transaction.
- 1.9 “Compliance Obligations” means the RAR, Local RAR, Flexible RAR, and other resource adequacy requirements associated with a generating unit’s Capacity Attributes established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
- 1.10 “Compliance Showing” means one or more of the following: (a) Local RAR Showing, (b) RAR Showing, (c) Flexible RAR Showing, or (d) other Capacity Attributes compliance or advisory filing (or similar or successor showing or filing), in each case, that an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.

- 1.11 “Confirmation” has the meaning specified in the introductory paragraph.
- 1.12 “Confirmation Effective Date” has the meaning specified in Section 2.2.
- 1.13 “Confirmation Execution Date” has the meaning specified in the introductory paragraph.
- 1.14 “Construction Period Security” has the meaning specified in Section 9.1(c).
- 1.15 “Contract Price” means, for any day in any Monthly Delivery Period, the Capacity Price for such period.
- 1.16 “Contract Quantity” means the quantity of Product (in MW) as set forth in Section 3.5.
- 1.17 “Contract Term” has the meaning set forth in Section 2.1.
- 1.18 “CPUC” means the California Public Utilities Commission.
- 1.19 “CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:
- (a) approves this Agreement in its entirety, including payments to be made by the Buyer and all other relief requested in SDG&E’s submission of the Agreement for approval, subject to CPUC review of the Buyer’s administration of the Agreement; and
- (b) **[NOTE: For RPS-eligible facilities only]** finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer’s compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 *et seq.*), Decision 03-06-071, or other applicable Law.
- (c) CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.
- 1.20 “CPUC Approval Security” has the meaning specified in Section 9.1(a).
- 1.21 “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-25, and any other existing or subsequent decisions, resolutions or rulings related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.22 “CPUC Filing Guide” is the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSEs to demonstrate compliance with the CPUC’s resource adequacy program as provided in the CPUC Decisions.
- 1.23 “Credit Rating” means, with respect to any entity, the rating assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) by S&P, Moody’s or any other rating agency agreed by the Parties

as set forth in the Master Agreement, or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Moody's or any other rating agency agreed by the Parties as set forth in the Master Agreement.

- 1.24 "Delivery Period" has the meaning specified in Section 3.4.
- 1.25 "Delivery Period Security" has the meaning specified in Section 9.1(d).
- 1.26 "Development Period Security" has the meaning specified in Section 9.1(b).
- 1.27 "Emission Reduction Credits" or "ERC(s)" means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby such district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.
- 1.28 "Environmental Costs" means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product's compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits (including any costs related to greenhouse gas emissions) required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the site, and the decontamination or remediation, on or off the site, necessitated by the introduction of such hazardous substances on the site.
- 1.29 "Flexible RA Attributes" means, with respect to a Unit, any and all flexible resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and Local RA Attributes.
- 1.30 "Flexible RAR" means the flexible capacity requirements, including, without limitation, maximum continuous ramping, load following, and regulation, established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Flexible RAR may also be known as ramping, maximum ramping, maximum continuous ramping, maximum continuous ramping capacity, maximum continuous ramping ramp rate, load following, load following capacity, load following ramp rate, regulation, regulation capacity, regulation ramp rate.
- 1.31 "Flexible RAR Showing" means the Flexible RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.32 "GADS" means the Generating Availability Data System, or its successor.

- 1.33 “Governmental Body” means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.
- 1.34 “Local Capacity Area” has the meaning set forth in the Tariff.
- 1.35 “Local RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes or other locational attributes for the Unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward a Local RAR, but exclusive of any RA Attributes and Flexible RA Attributes.
- 1.36 “Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.37 “Local RAR Showing” means the Local RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.38 “LSE” means load-serving entity.
- 1.39 “Marketable Emission Trading Credits” means without limitation, emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (see 42 U.S.C. § 7651b.(a) to (f)).
- 1.40 “Master Agreement” has the meaning specified in the introductory paragraph.
- 1.41 “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.42 “Monthly Payment” has the meaning specified in Section 4.1.
- 1.43 “Moody’s” means Moody’s Investors Services, Inc. or its successor.
- 1.44 “NERC” means the North American Electric Reliability Corporation, or its successor.
- 1.45 “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.
- 1.46 “Net Qualifying Capacity” has the meaning set forth in the Tariff.

- 1.47 “Non-Availability Charges” has the meaning set forth in the Tariff ***[if the Product includes flexible capacity, add:*** and includes any similarly defined charges under the Tariff in respect of Flexible RA Attributes].
- 1.48 “Non-Specified RA Replacement Capacity” has the meaning set forth in the Tariff ***[if the Product includes flexible capacity, add:*** and includes any similarly defined capacity under the Tariff in respect of Flexible RA Attributes].
- 1.49 “Outage” means any disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 1.50 “Outage Schedule” has the meaning specified in Section 3.8.
- 1.51 “Planned Outage” shall have the meaning in CPUC Decisions, and includes a planned, scheduled, or any other Outage approved by the CAISO for the routine repair or maintenance of the Unit, or for the purposes of new construction work, and does not include any Outage designated as either forced or unplanned as defined by the CAISO or NERC/GADS Protocols.
- 1.52 “Product” has the meaning specified in Section 3.1.
- 1.53 “Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix A, of the Unit NQC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.
- 1.54 “Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix A, of the Unit EFC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.
- 1.55 “Qualified Assignee” has the meaning set forth in the new Section 10.5.
- 1.56 “RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any Local RA Attributes and Flexible RA Attributes.
- 1.57 “RA Substitute Capacity” means capacity that the CAISO permits under the CAISO Tariff to be substituted for a Resource Adequacy Resource that is on Outage.
- 1.58 “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
- 1.59 “RAR Showing” means the RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.

- 1.60 “Replacement Capacity” means capacity which has equivalent Capacity Attributes as the portion of the Product not provided by the Units committed to Buyer as of the Confirmation Execution Date.
- 1.61 “Replacement Rules” has the meaning set forth in Section 3.9(b).
- 1.62 “Replacement Unit” means a generating unit providing Replacement Capacity.
- 1.63 “Resource Category” shall be as described in the CPUC Filing Guide.
- 1.64 “RMR Contract” has the meaning set forth in the Tariff.
- 1.65 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc. or its successor).
- 1.66 “Scheduling Coordinator” or “SC” has the meaning set forth in the Tariff.
- 1.67 “Seller” has the meaning specified in the introductory paragraph.
- 1.68 “Showing Month” shall be the calendar month that is the subject of the Compliance Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Execution Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.69 “Substitution Rules” has the meaning set forth in Section 3.9(b).
- 1.70 “Supply Plan” has the meaning set forth in the Tariff ***[If the Product includes flexible capacity, add: and includes any similarly defined plan under the Tariff in respect of Flexible RA Attributes]***.
- 1.71 “Tariff” means the tariff and protocol provisions, including any applicable CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended or supplemented from time to time, of the CAISO.
- 1.72 “Transaction” has the meaning specified in the introductory paragraph.
- 1.73 “Unit” or “Units” shall mean the generation assets described in Appendix A (including any Replacement Units), from which Product is provided by Seller to Buyer.
- 1.74 “Unit Contract Quantity” means the amount of Product (in MW) to be delivered by Seller to Buyer by each individual Unit, as specified in Appendix A as of the Confirmation Execution Date.
- 1.75 “Unit EFC” means the effective flexible capacity or capacity that is qualified to provide Flexible RA Attributes established by the CAISO for the applicable Unit.
- 1.76 “Unit NQC” means the Net Qualifying Capacity established by the CAISO for the applicable Unit.
- 1.77 “Unit Delivered Quantity” means the amount of applicable Product (in MW) actually “delivered” by Seller to Buyer by each individual Unit. As used herein, “delivered” shall mean shown in the Supply Plan and, for purposes of Section 4.1, shall include

any RA Substitute Capacity under Section 3.9, and in all cases, shall not include (i) any portion of Contract Capacity for which Buyer is required under the Compliance Obligations or the Tariff to procure Replacement Capacity, and (ii) any portion of Contract Capacity for which Seller is required hereunder, but fails, to provide Replacement Capacity to Buyer.

2. Term

2.1 Contract Term

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

2.2 Conditions Precedent; Binding Nature

This Agreement shall not be effective or binding on either Party until, and it shall become effective and binding on both Parties as of, the date on which the conditions precedent, if any, described below shall have been achieved (or waived in writing by each of the Parties in their sole discretion) (the “Confirmation Effective Date”).

(a) No later than [_____], Buyer shall have obtained CPUC Approval. Prior to this deadline, should the CPUC issue an order approving this Agreement but with conditions or modifications that materially alter the commercial aspects of this Agreement, the Parties agree to use good faith efforts to renegotiate this Agreement and file the amended agreement with the CPUC seeking CPUC Approval therefor. If, no later than the earlier of (i) sixty (60) days after such order or (ii) the deadline date above, no agreement is reached, either Party may terminate this Agreement upon delivery of Notice to the other Party.

(b) [INSERT OTHERS]

If any of the foregoing conditions precedent are not achieved (or waived in writing by each of the Parties) on or before the deadline dates therefor (without extension for Force Majeure or any other reason), then this Agreement shall automatically terminate. If there are no conditions precedent listed above in this Section 2.2 then the Confirmation Effective Date shall be the Confirmation Execution Date. This Agreement shall be effective and binding as of the Confirmation Effective Date.

3. Transaction

[Note to bidders: For new Projects, SDG&E will require the addition of a guaranteed commercial operation deadline for the Project, along with development and construction milestones. Failure to meet such milestones will be an event of default].

3.1 Product

(a) Seller shall sell and Buyer shall receive and purchase, the Capacity Attributes (including all Local RA Attributes [but excluding Flexible RA Attributes (if any)]) ***[If the Product includes flexible capacity, add: and Flexible RA Attributes]***

of the Units identified in Appendix A (collectively, the “Product”) and Seller shall deliver the Product as described in Section 3.2 below. Product does not include any right to dispatch or receive the energy or ancillary services from the Unit. Seller retains the right to sell any Product from a Unit in excess of its Unit Contract Quantity.

- (b) The Parties agree that (i) the Contract Price for the Product shall not change if the CAISO, CPUC or other Governmental Body (A) defines new or re-defines existing Local Capacity Areas which decreases or increases the amount of Local RA Attributes provided hereunder, or (B) defines new or re-defines existing Local Capacity Areas whereby the Units qualify for a Local Capacity Area and (ii) if the event in Section 3.1(b)(i)(B) occurs then the Product shall include such Local RA Attributes.
- (c) ***[If the Product includes flexible capacity, add This Section 3.1(c):*** The Parties agree that (i) the Contract Price for the Product shall not change if the CAISO, CPUC or other Governmental Body defines new or re-defines existing Flexible RAR, Capacity Attributes related to Flexible RAR, or attributes of the Unit related to Flexible RAR, that results in a decrease or increase in the amount of Capacity Attributes related to Flexible RAR provided hereunder, and (ii) if the event in Section 3.1(c)(i) occurs then the Product shall include such Capacity Attributes related to Flexible RAR.]

3.2 Firm Quantity

[NOTE to bidders: SDG&E is also considering unit contingent bids from specified units. Seller will be excused from delivering and from replacing for reasons of Force Majeure and plant outages. For unit contingent products, seller shall not have the right to replace during excused hours. Unit contingent bids will also have a minimum RA requirement: 70% of bid capacity over any consecutive 12-month period. If seller’s RA falls below this minimum, it shall be an event of default.]

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

3.3 Delivery Period

The “Delivery Period” shall be _____ thru _____, inclusive, unless terminated earlier in accordance with the terms of this Agreement.

3.4 Contract Quantity:

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

CONTRACT QUANTITY TABLE

Unit Name	CAISO Resource ID*	Month(s)	Unit Contract Quantity (MW)	
			Capacity Attributes (excluding Flexible RA Attributes)	Flexible RA Attributes

* CAISO Resource ID should match a Unit described in Appendix A

3.5 Delivery of Product

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

- (a) Seller shall, on a timely basis, submit, or cause each Unit's SC to submit, Supply Plans to identify and confirm the Unit Delivered Quantity for each Unit provided to Buyer so that the total amount of Unit Delivered Quantity identified and confirmed equals the Unit Contract Quantity for each Unit, unless specifically notified or requested not to do so by the Buyer pursuant to Section 3.9, and;
- (b) Seller shall cause each Unit's SC to submit written notification to Buyer, no later than fifteen (15) Business Days before the relevant deadline for any applicable Compliance Showing, that Buyer will be credited with Unit Delivered Quantity for the applicable portion of the Delivery Period in the Unit's SC Supply Plan so that the total amount of Unit Delivered Quantity for each Unit credited equals the Unit Contract Quantity.

3.6 CAISO/CPUC Offer Requirements

Subject to Buyer's request under Section 3.9(a), Seller shall, or cause the Unit's SC to, bid and/or schedule with, or make available to, the CAISO the Unit Contract Quantity for each Unit in compliance with the Tariff and the CPUC Filing Guide, including any must offer obligation under the Tariff or the CPUC Filing Guide, and shall, or cause the Unit's SC, owner, or operator, as applicable, to perform all obligations under the Tariff and the CPUC Filing Guide that are associated with the sale and delivery of Product hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's SC, owner, or operator to comply with such Tariff

and CPUC Filing Guide provisions, including any penalties, charges or fines imposed on Seller or the Unit's SC, owner, or operator for such noncompliance.

3.7 Reserved

3.8 Unit Substitution; RA Replacement Capacity

- (a) RA Replacement Capacity: No later than five (5) Business Days before the relevant deadline for each applicable Compliance Showing, Buyer may (i) request, subject to Seller's reasonable approval, that Seller not, or cause each Unit's SC not to, list a portion or all of a Unit's applicable Unit Contract Quantity on the Supply Plan or (ii) notify Seller that a portion or all of the Unit Contract Quantity of a Unit will be included in an applicable Compliance Showing as RA Substitute Capacity. The amount of Unit Contract Quantity that is the subject of such a request or notice shall be known as "RA Substitute Capacity" and, for purposes of calculating a Monthly Payment pursuant to Section 4.1, to the extent provided, such RA Substitute Capacity shall be deemed Unit Delivered Quantity provided consistent with Section 3.6.
- (b) Seller's Obligations With Respect to RA Substitute Capacity: If Buyer requests RA Substitute Capacity, Seller shall (i) make such RA Substitute Capacity available to Buyer during the applicable Showing Month to allow Buyer to utilize, as applicable, the substitution rules in Sections 9.3.1.3.1, 9.3.1.3.2 and 40.9.4.2.1 of the Tariff ***[If the Product includes flexible capacity, add:*** including any similarly defined substitution rules under the Tariff in respect of Flexible RA Attributes] ("Substitution Rules") and (ii) take, or cause each Unit's SC to take, all action to allow Buyer to utilize, as applicable, the Substitution Rules, including, but not limited to, ensuring that the RA Substitute Capacity will qualify, as applicable, for substitution under the Substitution Rules, and providing Buyer with all information needed to utilize the Substitution Rules.
- (c) Seller agrees that all RA Substitute Capacity utilized by Buyer under the Substitution Rules, as applicable, is subject to the requirements identified in Section 3.7.
- (d) Failure to Provide RA Substitute Capacity: If Seller fails to provide RA Substitute Capacity or Buyer is unable to utilize the RA Substitute Capacity under the Substitution Rules due to Seller's failure to fulfill its obligations under Section 3.9(b)(ii), then Seller shall reimburse Buyer for any and all Non-Availability Charges incurred by Buyer and shall pay Buyer the CPM revenue the CASIO would have paid the Buyer but for Seller failure, due to such failure or inability to utilize the Substitution Rules; provided, that if Buyer is unable to utilize the Substitution Rules because the RA Substitute Capacity does not qualify for substitution under Section 9.3.1.3.1, 9.3.1.3.2, 40.9.4.2.1(1)(i) or (ii) of the Tariff, then Seller shall not be responsible for any such Non-Availability Charges described in this Section 3.9(d) associated with such inability.

3.9 Buyer's Re-Sale of Product

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

4. Payment

4.1 Monthly Payment

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

$$\text{Monthly Payment} = \sum_{n=1}^d (A_n * B_n * 1000)$$

where:

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

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

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

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

CAPACITY PRICE TABLE [Note: add months/years as needed]

Contract Month	Capacity Price (\$/kW-day) 2021
January	
February	
March	
April	
May	
June	
July	

Contract Month	Capacity Price (\$/kW-day) 2021
August	
September	
October	
November	
December	

4.2 Reserved.

4.3 Allocation of Other Payments and Costs

- (a) Seller shall retain any revenues it may receive from and pay all costs charged by, the CAISO or any other third party with respect to any Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, and (iv) any revenues for black start or reactive power services. Seller shall indemnify, defend and hold Buyer harmless from and against all liabilities, damages, claims, losses, costs or expenses (including, without limitation, attorneys' fees) incurred by or brought against Buyer in connection with Environmental Costs.
- (b) Buyer shall be entitled to receive and retain all revenues associated with the Contract Quantity during the Delivery Period including any capacity or availability revenues from RMR Contracts for any Unit, Capacity Procurement Mechanism (CPM) or its successor, and Residual Unit Commitment (RUC) Availability Payments, or its successor but excluding payments described in Section 4.3(a)(i)-(iv).
- (c) In accordance with Section 4.1 of this Confirmation and Article Six of the Master Agreement, all such Buyer revenues described in Section 4.3(b), but received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. In order to verify the accuracy of such revenues, Buyer shall have the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity.
- (d) If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit the Contract Quantity for re-sale in such market, and retain and receive any and all related revenues.

- (e) Subject to the Unit being made available to the CAISO in accordance with Article 3 of this Confirmation, Seller agrees that the Unit is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments under the Tariff. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of Seller and for Seller's account and that any Non-Availability Charges are the responsibility of Seller and for Seller's account.

4.4 Offset Rights

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

5. Seller's Failure to Deliver Contract Quantity

5.1 Seller's Duty to Provide Replacement Capacity

Planned Outage replacement shall be addressed by the Tariff. For all other replacements, if Seller is unable to provide the Contract Quantity from any Unit(s) for any day in any Monthly Delivery Period and Replacement Capacity is required under Section 3.2, then:

- (a) Seller shall notify Buyer of the non-availability of any portion of the Contract Quantity from any Unit(s) and identify Replacement Unit(s), and
- (b) Seller shall, at no additional cost to Buyer, provide Buyer with Replacement Capacity from one or more Replacement Units, such that the total amount of Product provided to Buyer from all Units and Replacement Units equals Contract Quantity.

provided that the designation of any Replacement Unit by Seller shall be subject to Buyer's prior written approval, which shall not be unreasonably withheld. Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 5.1, and Buyer has approved the designation of the Replacement Unit, then any such Replacement Unit shall be deemed a Unit for purposes of this Confirmation for that day in such Monthly Delivery Period. Notwithstanding anything to the contrary in this Confirmation, Seller's failure to properly provide Replacement Capacity, including Seller's obligation to identify Replacement Units within the notice deadlines specified in this Section 5.1, may result in the calculation of damages payable to Buyer and/or the indemnification of Buyer against any penalties, fines or costs under Section 5 and Section 10.

5.2 Damages for Failure to Provide Replacement Capacity

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

- (a) Buyer may, but shall not be obligated to, obtain Replacement Capacity. Buyer may enter into purchase transactions with one or more parties to

replace the portion of Contract Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver the capacity to another party, and such arrangements shall be considered the procurement of Replacement Capacity. Buyer shall act in a commercially reasonable manner in purchasing any Replacement Capacity, and;

- (b) Seller shall pay to Buyer damages, in accordance with the terms of Section 4.1 of the Master Agreement relating to “Accelerated Payment of Damages,” if applicable, an amount equal to the positive difference, if any, between (i) the sum of (A) the Capacity Replacement Price paid by Buyer for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) for such day, plus (B) the Capacity Replacement Price times the portion of Contract Capacity not provided by Seller nor purchased by Buyer pursuant to Section 5.2(a) for such day times 1,000 kW/MW, and (ii) the portion of Contract Capacity not provided for the applicable day in the applicable Monthly Delivery Period times the Contract Price for that day times 1,000 kW/MW.

5.3 Indemnities for Failure to Deliver Contract Capacity

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

- (a) Seller’s failure to provide any portion of the Contract Capacity or any portion of the Replacement Capacity;
- (b) Seller’s failure to provide timely notice of the non-availability of any portion of the Contract Capacity;
- (c) A Unit’s SC’s failure to timely submit Supply Plans that identify Buyer’s right to the Unit Contract Quantity purchased hereunder, or;
- (d) any other failure by Seller to perform its obligations under this Confirmation.

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

6. Other Buyer and Seller Covenants

6.1 Seller’s and Buyer’s Duty to Take Action to Allow the Utilization of the Product

Buyer and Seller shall, throughout the Delivery Period, take commercially reasonable actions and execute any and all documents or instruments reasonably necessary to

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

6.2 Seller's Represents, Warrants and Covenants

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

- (a) Seller owns or has the exclusive right to the Product sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;
- (c) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
- (d) Seller shall, and each Unit's SC, owner and operator is obligated to, comply with Applicable Laws, including the Tariff, relating to the Product;
- (e) If Seller is the owner of any Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for any Unit does not exceed the Unit NQC or Unit EFC, as applicable, for that Unit;
- (f) Seller has notified the SC of each Unit that Seller has transferred the Unit Contract Quantity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff fully reflecting such transfer;
- (g) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to Buyer, at least fifteen (15) Business Days before the relevant deadline for each Compliance Showing, the Unit Contract Quantity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period;
- (h) Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.3, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues;

- (i) In the event Seller has rights to the energy output of any Unit, and Seller or the Unit's SC schedules energy from the Unit for export from the CAISO Control Area, or commits energy to another entity in a manner that could result in scheduling energy from the Unit for export from the CAISO Control Area, it shall do so only as allowed by, and in accordance with, Applicable Laws and such exports may, if allowed by the Tariff, be curtailed by the CAISO, and;
- (j) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities.

7. Confidentiality

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

8. Counterparts

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

9. Collateral Requirements

9.1 To secure its obligations under this Agreement Seller agrees to deliver to Buyer and maintain in full force and effect for the period set forth below, the following Performance Assurance:

- (a) CPUC Approval Security, in the amount of [] in the form of cash or a Letter of Credit [or a Guaranty] from the Execution Date of this Agreement until the return date specified in Section 9.2(a) below;]

- (b) Development Period Security in the amount of [_____] in the form of cash or a Letter of Credit [or a Guaranty] from the CPUC Approval date until the return date specified in Section 9.2(b) below;
- (c) Construction Period Security in the amount of [_____] in the form of cash or a Letter of Credit [or a Guaranty] from the CP Satisfaction Date until the return date specified in Section 9.2(c)) below; and
- (d) Delivery Term Security in the amount of [_____] in the form of cash or a Letter of Credit [or a Guaranty] from the commencement of the Delivery Term until the return date specified in Section 9.2(d) below.

The CPUC Approval Security and the Development Period Security, any such Performance Assurance shall not be deemed a limitation of damages.

9.2 Return of Performance Assurance.

- (a) Buyer shall promptly return to Seller the unused portion of the CPUC Approval Security after the earlier of (A) the date on which Seller has delivered the Development Period Security or the Construction Period Security, as applicable, and (B) termination of the Agreement under Section 2.2(a).
- (b) Buyer shall promptly return to Seller the unused portion of the Development Period Security after the earlier of (A) the date on which Seller has delivered the Construction Period Security, and (B) the date that all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting) after an Early Termination Date.
- (c) Buyer shall promptly return to Seller the unused portion of the Construction Period Security after the earlier of (A) the date on which Seller has delivered the Delivery Term Security, and (B) the date that all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting) after an Early Termination Date.
- (d) Buyer shall promptly return to Seller the unused portion of the Delivery Term Security after the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

10. Declaration of an Early Termination Date and Calculation of Settlement Amounts

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

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

[Signature page follows]

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

_____ SAN DIEGO GAS & ELECTRIC COMPANY
a _____ a California corporation

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

APPROVED as to legal form _____

APPENDIX A**Unit Information**

Unit Resource Name	
CAISO Resource ID	
Unit SCID	
2019 Unit NQC (MW)	
Prorated Percentage of Unit Factor	
2019 Unit EFC (MW)	<i>[Comment: If the Product does not include flexible capacity, insert "Not Applicable"]</i>
Prorated Percentage of Unit Flexible Factor	
Resource Type	
Resource Category (MMC Bucket 1, 2, 3 or 4)	
Path 26 (North or South)	
Local Capacity Area (if any, as of Confirmation Execution Date)	
Unit Contract Quantity (MW) for Capacity Attributes (excluding Flexible RA Attributes)	
Unit Contract Quantity (MW) for Flexible RA Attributes	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	

LONG FORM CONFIRMATION
FOR RESOURCE ADEQUACY CAPACITY PRODUCT

Resource Adequacy Contract Number: _____

This confirmation letter ("Confirmation") confirms the transaction (the "Transaction") between _____ ("Seller") and San Diego Gas & Electric Company ("Buyer"), each individually a "Party" and together the "Parties", dated as of October __, 2015 (the "Confirmation Execution Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Section 3 of this Confirmation. This Transaction shall be deemed to have been entered into pursuant to, and shall supplement, form a part of, and be governed by the terms and conditions of the form of Master Power Purchase and Sale Agreement published by the Edison Electric Institute and the National Energy Marketers Association (version 2.1 dated 4/25/00) (the "EEI Agreement") with a Cover Sheet containing the elections and other changes contained herein as if the Parties have executed the EEI Agreement (with such Cover Sheet the "Master Agreement"). The Parties agree that the only transactions to be concluded pursuant to such Master Agreement shall be the Transaction documented in this Confirmation. The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein). To the extent that this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

Name: Party A / Seller

All Notices:

< company name >

< street address >

< city/state/zip >

Attn: _____

Telephone: (____) ____ - ____

Facsimile: (____) ____ - ____

Duns: _____

Federal Tax ID Number: _____

Name: Party B / Buyer

All Notices:

San Diego Gas & Electric Company

8315 Century Park Court CP 21D

San Diego CA 92123-1593

Attn: Contract Administration

Telephone: (858) 650-6176

Facsimile: (858) 650-6190

Duns: 006911457

Federal Tax ID Number: 95-1184800

Invoices:

< company name >

< street address >

< city/state/zip >

Attn: _____

Telephone: (____) ____ - ____

Facsimile: (____) ____ - ____

Invoices:

San Diego Gas & Electric Company

8315 Century Park Court

San Diego CA 92123-1593

Attn: Energy Accounting Manager

Telephone: (858) 650-6177

Facsimile: (858) 650-6190

Scheduling:

< company name >
< street address >
< city/state/zip >
Attn: _____
Day Ahead: (____) ____ - ____
Real Time: (____) ____ - ____
Facsimile: (____) ____ - ____

Payments:

< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: (____) ____ - ____
Facsimile: (____) ____ - ____

Wire Transfer:

< bank name >
< bank street address >
< bank city/state/zip >
ABA Routing Number: _____
Payee: _____
Account Number: _____
Confirmation: _____
Facsimile: (____) ____ - ____

Credit and Collections:

< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: (____) ____ - ____
Facsimile: (____) ____ - ____

With additional Notices of an Event of Default or Potential Event of Default to:

< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: (____) ____ - ____
Facsimile: (____) ____ - ____

Scheduling:

San Diego Gas & Electric Company
8315 Century Park Court, CP 21D
San Diego, CA 92123-1593
Attn: Transaction Scheduling Manager
Day Ahead: (858) 650-6168
Real Time: (858) 650-6160
Facsimile: (858) 650-6191

Payments:

San Diego Gas & Electric Company
8315 Century Park Court
San Diego CA 92123-1593
Attn: Energy Accounting Manager
Telephone: (858) 650-6177
Facsimile: (858) 650-6190

Wire Transfer:

Union Bank of California
445 South Figueroa Street
Los Angeles CA 90071
ABA Routing Number: 122000496
Payee: San Diego Gas & Electric Company
Account Number: 4430000352
Confirmation: SDG&E – Major Markets
Facsimile: (213) 244-8316

Credit and Collections:

San Diego Gas & Electric Company
555 West Fifth Street, ML 18A3
Los Angeles, CA 90013-1011
Attn: Major Markets – Credit and
Collections Manager
Telephone: (213) 244-4343
Facsimile: (213) 244-8316

With additional Notices of an Event of Default or Potential Event of Default to:

San Diego Gas & Electric Company
8330 Century Park Ct.
San Diego, California 92123
Attn: General Counsel
Telephone: (858) 650-6141
Facsimile: (858) 650-6106

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

Article Two

Transaction Terms and Conditions

- Optional provision in Section 2.4. If not checked, inapplicable.

Article Four

Remedies for Failure to Deliver or Receive

- Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default; Remedies

- Cross Default for Party A:
- Party A: _____ Cross Default Amount: _____
- Other Entity: _____ Cross Default Amount: _____
- Cross Default for Party B:
- Party B: N/A Cross Default Amount: N/A
- Other Entity: N/A Cross Default Amount: N/A

5.6 Closeout Setoff

- Option A (Applicable if no other selection is made.)
- Option B – Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows:

- Option C (No Setoff)

Article 8

Credit and Collateral Requirements

8.1 Party A Credit Protection:

- (a) Financial Information:
 - Option A
 - Option B Specify: _____
 - Option C Specify: _____
- (b) Credit Assurances:
 - Not Applicable
 - Applicable
- (c) Collateral Threshold:
 - Not Applicable
 - Applicable
- (d) Downgrade Event:
 - Not Applicable
 - Applicable
- (e) Guarantor for Party B: None.
Guarantee Amount: N/A

8.2 Party B Credit Protection: _____

- (a) Financial Information:
 Option A
 Option B Specify: _____
 Option C Specify: _____
- (b) Credit Assurances:
 Not Applicable
 Applicable
- (c) Collateral Threshold:
 Not Applicable
 Applicable
 If applicable, complete the following:
 Party A Collateral Threshold: \$ _____;
 provided, however, that Party A's Collateral
 Threshold shall be zero if an Event of Default or
 Potential Event of Default with respect to Party A
 has occurred and is continuing.
 Party A Independent Amount: \$ _____
 Party A Rounding Amount: \$ _____
- (d) Downgrade Event:
 Not Applicable
 Applicable
 If applicable, complete the following:
 It shall be a Downgrade Event for Party A if
 Party A's Credit Rating falls below _____
 from S&P or _____ from Moody's or if Party A
 is not rated by either S&P or Moody's
 Other:
 Specify: _____
- (e) Guarantor for Party A: None
 Guarantee Amount: N/A

Article 10

Confidentiality Confidentiality Applicable If not checked, inapplicable.

Schedule M

- Party A is a Governmental Entity or Public Power System
 Party B is a Governmental Entity or Public Power System
 Add Section 3.6. If not checked, inapplicable
 Add Section 8.4. If not checked, inapplicable

Other Changes

1. The modifications to Section 1.12, 1.50 and 5.2 of the Master Agreement specified in that certain Errata published by the Edison Electric Institute (version 1.1, July 18, 2007) are hereby incorporated herein as if set forth in full.

2. Section 10.2(ii) of the Master Agreement shall be modified by inserting “Except for the approval by the CPUC as stated in Section 2.2 of this Confirmation,” at the beginning of the first sentence in such section.

3. Section 10.6 of the Master Agreement shall be deleted in its entirety and replaced with the following:

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

4. Schedule P: Products and Related Definitions shall be deleted in its entirety.

1. Definitions

- 1.1 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.2 “Availability Incentive Payments” has the meaning set forth in the Tariff [and includes any similarly defined payments under the Tariff in respect of Flexible RA Attributes] [REDACTED]
- 1.3 “Availability Standards” has the meaning set forth in the Tariff [and includes any similarly defined standards under the Tariff in respect of Flexible RA Attributes] [REDACTED]
- 1.4 “Buyer” has the meaning specified in the introductory paragraph.
- 1.5 “CAISO” means the California Independent System Operator Corporation, or any successor entity performing the same functions.
- 1.6 “Capacity Attributes” means (a) the Local RA Attributes, (b) the RA Attributes, (c) the Flexible RA Attributes, and (d) any other current or future defined characteristics (including the ability to generate at a given capacity level, provide ancillary services, ramp up or down at a given rate, and flexibility or dispatch-ability attributes), certificates, tags, credits, howsoever entitled, including any account construct applied to any Compliance Obligations, based on the applicable Unit’s electric generation capacity.
- 1.7 “Capacity Price” means the price specified in the Capacity Price Table in Section 4.1.

- 1.8 “Capacity Replacement Price” means (a) the actual rate per kW-day paid for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) including any penalties, fines, transaction costs and expenses reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of Replacement Capacity, any penalties, fines, transaction costs and expenses plus the per kW-day market price for the Product not delivered by Seller under this Confirmation. Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 1.51 of the Master Agreement, “Capacity Replacement Price” shall be deemed the “Replacement Price” for this Transaction.
- 1.9 “Compliance Obligations” means the RAR, Local RAR, Flexible RAR, and other resource adequacy requirements associated with a generating unit’s Capacity Attributes established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
- 1.10 “Compliance Showing” means one or more of the following: (a) Local RAR Showing, (b) RAR Showing, (c) Flexible RAR Showing, or (d) other Capacity Attributes compliance or advisory filing (or similar or successor showing or filing), in each case, that an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.11 “Confirmation” has the meaning specified in the introductory paragraph.
- 1.12 [Reserved]
- 1.13 “Confirmation Execution Date” has the meaning specified in the introductory paragraph.
- 1.14 “Contract Price” means, for any day in any Monthly Delivery Period, the Capacity Price for such period.
- 1.15 “Contract Quantity” means the quantity of Product (in MW) as set forth in Section 3.5.
- 1.16 “Contract Term” has the meaning set forth in Section 2.1.
- 1.17 “CPUC” means the California Public Utilities Commission.
- 1.18 “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-25, and any other existing or subsequent decisions, resolutions or rulings related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.19 “CPUC Filing Guide” is the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSEs to demonstrate compliance with the CPUC’s resource adequacy program as provided in the CPUC Decisions.
- 1.20 “Credit Rating” means, with respect to any entity, the rating assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Master Agreement, or if such entity does not have a rating for its

senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Moody's or any other rating agency agreed by the Parties as set forth in the Master Agreement.

- 1.21 "Delivery Period" has the meaning specified in Section 3.4.
- 1.22 "Emission Reduction Credits" or "ERC(s)" means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby such district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.
- 1.23 "Environmental Costs" means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product's compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits (including any costs related to greenhouse gas emissions) required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the site, and the decontamination or remediation, on or off the site, necessitated by the introduction of such hazardous substances on the site.
- 1.24 "Flexible RA Attributes" means, with respect to a Unit, any and all flexible resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and Local RA Attributes.
- 1.25 "Flexible RAR" means the flexible capacity requirements, including, without limitation, maximum continuous ramping, load following, and regulation, established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Flexible RAR may also be known as ramping, maximum ramping, maximum continuous ramping, maximum continuous ramping capacity, maximum continuous ramping ramp rate, load following, load following capacity, load following ramp rate, regulation, regulation capacity, regulation ramp rate.
- 1.26 "Flexible RAR Showing" means the Flexible RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.27 "GADS" means the Generating Availability Data System, or its successor.
- 1.28 "Governmental Body" means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative,

executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

- 1.29 “Local Capacity Area” has the meaning set forth in the Tariff.
- 1.30 “Local RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes or other locational attributes for the Unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward a Local RAR, but exclusive of any RA Attributes and Flexible RA Attributes.
- 1.31 “Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.32 “Local RAR Showing” means the Local RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.33 “LSE” means load-serving entity.
- 1.34 “Marketable Emission Trading Credits” means without limitation, emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (see 42 U.S.C. § 7651b.(a) to (f)).
- 1.35 “Master Agreement” has the meaning specified in the introductory paragraph.
- 1.36 “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.37 “Monthly Payment” has the meaning specified in Section 4.1.
- 1.38 “Moody’s” means Moody’s Investors Services, Inc. or its successor.
- 1.39 “NERC” means the North American Electric Reliability Corporation, or its successor.
- 1.40 “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.
- 1.41 “Net Qualifying Capacity” has the meaning set forth in the Tariff.

- 1.42 “Non-Availability Charges” has the meaning set forth in the Tariff [and includes any similarly defined charges under the Tariff in respect of Flexible RA Attributes]
[REDACTED]
- 1.43 “Non-Specified RA Replacement Capacity” has the meaning set forth in the Tariff [and includes any similarly defined capacity under the Tariff in respect of Flexible RA Attributes]
[REDACTED]
- 1.44 “Outage” means any disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 1.45 “Outage Schedule” has the meaning specified in Section 3.8.
- 1.46 “Planned Outage” shall have the meaning in CPUC Decisions, and includes a planned, scheduled, or any other Outage approved by the CAISO for the routine repair or maintenance of the Unit, or for the purposes of new construction work, and does not include any Outage designated as either forced or unplanned as defined by the CAISO or NERC/GADS Protocols.
- 1.47 “Product” has the meaning specified in Section 3.1.
- 1.48 “Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix A, of the Unit NQC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.
- 1.49 “Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix A, of the Unit EFC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.
- 1.50 “RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any Local RA Attributes and Flexible RA Attributes.
- 1.51 “RA Substitute Capacity” means capacity that the CAISO permits under the CAISO Tariff to be substituted for a Resource Adequacy Resource that is on Outage.
- 1.52 “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
- 1.53 “RAR Showing” means the RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.

- 1.54 “Replacement Capacity” means capacity which has equivalent Capacity Attributes as the portion of the Product not provided by the Units committed to Buyer as of the Confirmation Execution Date.
- 1.55 “Replacement Rules” has the meaning set forth in Section 3.9(b).
- 1.56 “Replacement Unit” means a generating unit providing Replacement Capacity.
- 1.57 “Resource Category” shall be as described in the CPUC Filing Guide.
- 1.58 “RMR Contract” has the meaning set forth in the Tariff.
- 1.59 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc. or its successor).
- 1.60 “Scheduling Coordinator” or “SC” has the meaning set forth in the Tariff.
- 1.61 “Seller” has the meaning specified in the introductory paragraph.
- 1.62 “Showing Month” shall be the calendar month that is the subject of the Compliance Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Execution Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.63 “Substitution Rules” has the meaning set forth in Section 3.9(b).
- 1.64 “Supply Plan” has the meaning set forth in the Tariff [and includes any similarly defined plan under the Tariff in respect of Flexible RA Attributes].
- 1.65 “Tariff” means the tariff and protocol provisions, including any applicable CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended or supplemented from time to time, of the CAISO.
- 1.66 “Transaction” has the meaning specified in the introductory paragraph.
- 1.67 “Unit” or “Units” shall mean the generation assets described in Appendix A (including any Replacement Units), from which Product is provided by Seller to Buyer.
- 1.68 “Unit Contract Quantity” means the amount of Product (in MW) to be delivered by Seller to Buyer by each individual Unit, as specified in Appendix A as of the Confirmation Execution Date.
- 1.69 “Unit EFC” means the effective flexible capacity or capacity that is qualified to provide Flexible RA Attributes established by the CAISO for the applicable Unit.
- 1.70 “Unit NQC” means the Net Qualifying Capacity established by the CAISO for the applicable Unit.
- 1.71 “Unit Delivered Quantity” means the amount of applicable Product (in MW) actually “delivered” by Seller to Buyer by each individual Unit. As used herein, “delivered” shall mean shown in the Supply Plan and, for purposes of Section 4.1, shall include

any RA Substitute Capacity under Section 3.9, and in all cases, shall not include (i) any portion of Contract Capacity for which Buyer is required under the Compliance Obligations or the Tariff to procure Replacement Capacity, and (ii) any portion of Contract Capacity for which Seller is required hereunder, but fails, to provide Replacement Capacity to Buyer.

2. Term

2.1 Contract Term

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

3. Transaction

3.1 Product

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

3.2 Firm Quantity

During the Delivery Period, Seller shall provide Buyer with the Product from the Unit(s) in the amount of the Contract Quantity. Except for reasons of Force Majeure, if the Unit(s) are not available to provide any portion of the Product for any reason

including without limitation any Outage or any adjustment of the Capacity Attributes of any Unit(s), Seller shall provide Buyer with Replacement Capacity from one or more Replacement Units pursuant to Section 5.1. If Seller fails to provide Buyer with Replacement Capacity pursuant to Section 5.1, then Seller shall be liable for damages and/or to indemnify Buyer for penalties, fines or costs pursuant to the terms of Section 5 and Section 10. Reserved.

3.3 Delivery Period

The "Delivery Period" shall be _____ thru _____, inclusive, unless terminated earlier in accordance with the terms of this Agreement.

3.4 Contract Quantity:

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

CONTRACT QUANTITY TABLE

Unit Name	CAISO Resource ID*	Month(s)	Unit Contract Quantity (MW)	
			Capacity Attributes (excluding Flexible RA Attributes)	Flexible RA Attributes

* CAISO Resource ID should match a Unit described in Appendix A

3.5 Delivery of Product

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

- (a) Seller shall, on a timely basis, submit, or cause each Unit's SC to submit, Supply Plans to identify and confirm the Unit Delivered Quantity for each Unit provided to Buyer so that the total amount of Unit Delivered Quantity identified and confirmed equals the Unit Contract Quantity for each Unit, unless specifically notified or requested not to do so by the Buyer pursuant to Section 3.9, and;

- (b) Seller shall cause each Unit's SC to submit written notification to Buyer, no later than fifteen (15) Business Days before the relevant deadline for any applicable Compliance Showing, that Buyer will be credited with Unit Delivered Quantity for the applicable portion of the Delivery Period in the Unit's SC Supply Plan so that the total amount of Unit Delivered Quantity for each Unit credited equals the Unit Contract Quantity.

3.6 CAISO/CPUC Offer Requirements

Subject to Buyer's request under Section 3.9(a), Seller shall, or cause the Unit's SC to, bid and/or schedule with, or make available to, the CAISO the Unit Contract Quantity for each Unit in compliance with the Tariff and the CPUC Filing Guide, including any must offer obligation under the Tariff or the CPUC Filing Guide, and shall, or cause the Unit's SC, owner, or operator, as applicable, to perform all obligations under the Tariff and the CPUC Filing Guide that are associated with the sale and delivery of Product hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's SC, owner, or operator to comply with such Tariff and CPUC Filing Guide provisions, including any penalties, charges or fines imposed on Seller or the Unit's SC, owner, or operator for such noncompliance.

3.7 Reserved

3.8 Unit Substitution; RA Replacement Capacity

- (a) RA Replacement Capacity: No later than five (5) Business Days before the relevant deadline for each applicable Compliance Showing, Buyer may (i) request, subject to Seller's reasonable approval, that Seller not, or cause each Unit's SC not to, list a portion or all of a Unit's applicable Unit Contract Quantity on the Supply Plan or (ii) notify Seller that a portion or all of the Unit Contract Quantity of a Unit will be included in an applicable Compliance Showing as RA Substitute Capacity. The amount of Unit Contract Quantity that is the subject of such a request or notice shall be known as "RA Substitute Capacity" and, for purposes of calculating a Monthly Payment pursuant to Section 4.1, to the extent provided, such RA Substitute Capacity shall be deemed Unit Delivered Quantity provided consistent with Section 3.6.
- (b) Seller's Obligations With Respect to RA Substitute Capacity: If Buyer requests RA Substitute Capacity, Seller shall (i) make such RA Substitute Capacity available to Buyer during the applicable Showing Month to allow Buyer to utilize, as applicable, the substitution rules in Sections 9.3.1.3.1, 9.3.1.3.2 and 40.9.4.2.1 of the Tariff [including any similarly defined substitution rules under the Tariff in respect of Flexible RA Attributes] [REDACTED] ("Substitution Rules") and (ii) take, or cause each Unit's SC to take, all action to allow Buyer to utilize, as applicable, the Substitution Rules, including, but not limited to, ensuring that the RA Substitute Capacity will qualify, as applicable, for substitution under the Substitution Rules, and providing Buyer with all information needed to utilize the Substitution Rules.

- (c) Seller agrees that all RA Substitute Capacity utilized by Buyer under the Substitution Rules, as applicable, is subject to the requirements identified in Section 3.7.
- (d) Failure to Provide RA Substitute Capacity: If Seller fails to provide RA Substitute Capacity or Buyer is unable to utilize the RA Substitute Capacity under the Substitution Rules due to Seller's failure to fulfill its obligations under Section 3.9(b)(ii), then Seller shall reimburse Buyer for any and all Non-Availability Charges incurred by Buyer and shall pay Buyer the CPM revenue the CASIO would have paid the Buyer but for Seller failure, due to such failure or inability to utilize the Substitution Rules; provided, that if Buyer is unable to utilize the Substitution Rules because the RA Substitute Capacity does not qualify for substitution under Section 9.3.1.3.1, 9.3.1.3.2, 40.9.4.2.1(1)(i) or (ii) of the Tariff, then Seller shall not be responsible for any such Non-Availability Charges described in this Section 3.9(d) associated with such inability.

3.9 Buyer's Re-Sale of Product

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

4. Payment

4.1 Monthly Payment

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

$$\text{Monthly Payment} = \sum_{n=1}^d (A_n * B_n * 1000)$$

where:

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

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

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

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

CAPACITY PRICE TABLE

Contract Month	Capacity Price (\$/kW-day) 2020
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

4.2 Reserved.

4.3 Allocation of Other Payments and Costs

- (a) Seller shall retain any revenues it may receive from and pay all costs charged by, the CAISO or any other third party with respect to any Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, and (iv) any revenues for black start or reactive power services. Seller shall be responsible for the Environmental Costs associated with the Product and shall indemnify, defend and hold Buyer harmless from and against all third-party claims brought against Buyer for Environmental Costs.
- (b) Buyer shall be entitled to receive and retain all revenues associated with the Contract Quantity during the Delivery Period including any capacity or

availability revenues from RMR Contracts for any Unit, Capacity Procurement Mechanism (CPM) or its successor, and Residual Unit Commitment (RUC) Availability Payments, or its successor but excluding payments described in Section 4.3(a)(i)-(iv).

- (c) In accordance with Section 4.1 of this Confirmation and Article Six of the Master Agreement, all such Buyer revenues described in Section 4.3(b), but received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. In order to verify the accuracy of such revenues, Buyer shall have the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity.
- (d) If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit the Contract Quantity for re-sale in such market, and retain and receive any and all related revenues.
- (e) Subject to the Unit being made available to the CAISO in accordance with Article 3 of this Confirmation, Seller agrees that the Unit is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments under the Tariff. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of Seller and for Seller's account and that any Non-Availability Charges are the responsibility of Seller and for Seller's account.

4.4 Offset Rights

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

5. Seller's Failure to Deliver Contract Quantity

5.1 Seller's Duty to Provide Replacement Capacity

Planned Outage replacement shall be addressed by the Tariff. For all other replacements, if Seller is unable to provide the Contract Quantity from any Unit(s) for any day in any Monthly Delivery Period and Replacement Capacity is required under Section 3.2, then:

- (a) Seller shall notify Buyer of the non-availability of any portion of the Contract Quantity from any Unit(s) and identify Replacement Unit(s), and
- (b) Seller shall, at no additional cost to Buyer, provide Buyer with Replacement Capacity from one or more Replacement Units, such that the total amount of Product provided to Buyer from all Units and Replacement Units equals Contract Quantity.

provided that the designation of any Replacement Unit by Seller shall be subject to Buyer's prior written approval, which shall not be unreasonably withheld or delayed. Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 5.1, and Buyer has approved the designation of the Replacement Unit, then any such Replacement Unit shall be deemed a Unit for purposes of this Confirmation for that day in such Monthly Delivery Period. Notwithstanding anything to the contrary in this Confirmation, Seller's failure to properly provide Replacement Capacity, including Seller's obligation to identify Replacement Units within the notice deadlines specified in this Section 5.1, may result in the calculation of damages payable to Buyer and/or the indemnification of Buyer against any penalties, fines or costs under Section 5 and Section 10.

5.2 Damages for Failure to Provide Replacement Capacity

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

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

5.3 Indemnities for Failure to Deliver Contract Capacity

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

- (a) Seller's failure to provide any portion of the Contract Capacity or any portion of the Replacement Capacity;

- (b) Seller's failure to provide timely notice of the non-availability of any portion of the Contract Capacity;
- (c) A Unit's SC's failure to timely submit Supply Plans that identify Buyer's right to the Unit Contract Quantity purchased hereunder, or;
- (d) any other failure by Seller to perform its material obligations under this Confirmation.

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

6. Other Buyer and Seller Covenants

6.1 Seller's and Buyer's Duty to Take Action to Allow the Utilization of the Product

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

As used in this Section 6.1, "commercially reasonable actions" or "good faith" shall not require the Seller, or the owner or operator of any Unit to undertake any capital improvements, facility enhancements, or the construction of new facilities.

6.2 Seller's Represents, Warrants and Covenants

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

- (a) Seller owns or has the exclusive right to the Product sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;
- (c) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;

- (d) Seller shall, and each Unit's SC, owner and operator is obligated to, comply with Applicable Laws, including the Tariff, relating to the Product;
- (e) If Seller is the owner of any Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for any Unit does not exceed the Unit NQC or Unit EFC, as applicable, for that Unit;
- (f) Seller has notified the SC of each Unit that Seller has transferred the Unit Contract Quantity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff fully reflecting such transfer;
- (g) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to Buyer, at least fifteen (15) Business Days before the relevant deadline for each Compliance Showing, the Unit Contract Quantity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period;
- (h) Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.3, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues;
- (i) In the event Seller has rights to the energy output of any Unit, and Seller or the Unit's SC schedules energy from the Unit for export from the CAISO Control Area, or commits energy to another entity in a manner that could result in scheduling energy from the Unit for export from the CAISO Control Area, it shall do so only as allowed by, and in accordance with, Applicable Laws and such exports may, if allowed by the Tariff, be curtailed by the CAISO, and;
- (j) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities.

7. Confidentiality

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

8. Counterparts

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

9. Collateral Requirements

On or before the Confirmation Execution Date, to secure its obligations under this Confirmation, Seller agrees to deliver a Letter of Credit or cash in the amount of _____ to Buyer and maintain such security in full force and effect until it is required to be returned in accordance with this Section 9. The security posted under this Section 9 shall not be deemed a limitation of Seller's damages. Buyer shall return to Seller any unused portion of this security after the following have occurred: (i) the Delivery Period has expired or terminated early; and (ii) all payment obligations of the Seller arising under this Confirmation, including compensation for penalties, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

10. Declaration of an Early Termination Date and Calculation of Settlement Amounts

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

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

[Signature page follows]

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

a _____

SAN DIEGO GAS & ELECTRIC COMPANY
a California corporation

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

APPROVED as to legal form _____

APPENDIX A**Unit Information**

Unit Resource Name	
CAISO Resource ID	
Unit SCID	
2019 Unit NQC (MW)	
Prorated Percentage of Unit Factor	
2019 Unit EFC (MW)	<i>[Comment: If the Product does not include flexible capacity, insert "Not Applicable"]</i>
Prorated Percentage of Unit Flexible Factor	
Resource Type	
Resource Category (MMC Bucket 1, 2, 3 or 4)	
Path 26 (North or South)	
Local Capacity Area (if any, as of Confirmation Execution Date)	
Unit Contract Quantity (MW) for Capacity Attributes (excluding Flexible RA Attributes)	
Unit Contract Quantity (MW) for Flexible RA Attributes	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	

**WSPP AGREEMENT
CONFIRMATION
BETWEEN
SAN DIEGO GAS & ELECTRIC COMPANY
AND
[INSERT NAME]**

This confirmation letter ("Confirmation") confirms the transaction ("Transaction") between **San Diego Gas & Electric Company** ("Seller" or "SDG&E" "Party B") and _____ ("Buyer" or "Party A"), each individually a "Party" and together the "Parties", effective as of _____, 2018 (the "Confirmation Effective Date"). This Transaction is governed by the **WSPP Agreement** effective as of June 21, 2018 (the "Master Agreement"), along with any amendments and annexes executed between the Parties thereto (the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement." Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement, Tariff or RPS (as defined below). If any term in this Confirmation conflicts with the Master Agreement, the definitions set forth in this Confirmation shall supersede.

CONTACT INFORMATION

Contact Information:	Name: [INSERT] ("<u>Buyer</u>")	Name: San Diego Gas & Electric Company ("<u>Seller</u>")
	<p style="text-align: center;">All Notices:</p> <p>Attn: Phone: Facsimile: Duns: Federal Tax ID Number:</p>	<p style="text-align: center;">All Notices:</p> <p>San Diego Gas & Electric Company 8315 Century Park Court San Diego, CA Zip: 92123 Attn: Electric & Fuel Procurement Contract Administration Phone: (858) 650-5536 Facsimile: (858) 650-6190 Duns: 006911457 Federal Tax ID Number: 95-1184800</p>
	<p style="text-align: center;">Invoices:</p>	<p style="text-align: center;">Invoices:</p> <p>San Diego Gas & Electric Company 8315 Century Park Ct. San Diego, California 92123-1593 Attn: Energy Accounting Manager Phone: (858) 650-6177 Facsimile: (858) 650-6190</p>
	<p style="text-align: center;">Wire Transfer:</p>	<p style="text-align: center;">Wire Transfer:</p> <p>BNK: Union Bank of California for: San Diego Gas & Electric Company ABA: Routing # 122000496 ACCT: #4430000352 Confirmation: SDG&E, Major Markets FAX:(213) 244-8316</p>

	<p>Credit and Collections:</p> <p>Defaults: With additional Notices of an Event of Default or Potential Event of Default to:</p>	<p>Credit and Collections: San Diego Gas & Electric Company, Major Markets 555 W. Fifth Street, ML 10E3 Los Angeles, CA 90013-1011 Attn.: Major Markets, Credit and Collections Manager Fax No.: (213) 244-8316 Phone: (213) 244-4343</p> <p>Defaults: With additional Notices of an Event of Default or Potential Event of Default to: San Diego Gas & Electric Company 8330 Century Park Ct. San Diego, California 92123 Attn: General Counsel Phone: (858) 650-6141 Facsimile: (858) 650-6106</p>
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DRAFT

ARTICLE 1. COMMERCIAL TERMS

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

Product:	The "Product" is Unit Contingent Obligation electric energy and associated Green Attributes in the Contract Quantity [Note to Buyers: Deliveries in 2020, may be subject to prior allocations]. During the Delivery Period, Seller shall deliver and sell, and Buyer shall purchase and receive, this Product, subject to the terms and conditions of this Confirmation. Seller shall not substitute or purchase any Green Attributes from any generating resource other than the Project for delivery hereunder.
Project:	All Product sold hereunder shall be from the facility listed in Exhibit A (the "Project"). The Project from which Product is sold by Seller to Buyer shall: (a) that have a first point of interconnection with a California balancing authority, (b) have a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area, or (c) are scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source.
Contract Capacity	In any hour throughout the Delivery Term, the "Contract Capacity" shall be, in MW, as determined by Seller in accordance with the Contract Quantity section of this Confirmation.
Contract Quantity:	"Contract Quantity" shall be [INSERT]. Seller shall determine the hourly Contract Quantity during the Delivery Period.
Contract Price:	Index Price plus Green Attributes Price
Index Price:	"Index Price" means the CAISO Integrated Forward Market Day-Ahead price (as such term is defined in the Tariff) for SP15 for each applicable hour as published by the CAISO on the CAISO website; or any successor thereto, unless a substitute publication and/or index is mutually agreed to by the Parties.
Green Attributes Price:	[\$XX.XX] / MWh
Term:	The "Term" of this Transaction shall commence upon the Confirmation Effective Date and shall continue until delivery by Seller to Buyer of the Contract Quantity of the Product has been completed and all other obligations of the Parties under this Agreement have been satisfied, unless terminated earlier due to failure to satisfy the Condition Precedent or as otherwise provided in the Agreement.
Delivery Period:	The "Delivery Period" of this Transaction shall commence on [MM/DD/YYYY] (the "Start Date"), and continue until midnight on [MM/DD/YYYY]; provided that if CPUC approval is not received by the Start Date above, then the Start Date shall be the first day of the month following the month in which CPUC approval is received and shall continue until midnight on the last day of the month in which the [#] anniversary of the Start Date, unless extended for make-up deliveries as specified in the Contract Quantity Section or terminated in accordance with the terms herein.
Delivery Point:	The "Delivery Point" is [insert].

Unit Contingent Delivery Obligation:	<p>“Unit Contingent Obligation” shall have the following meaning:</p> <p>The obligation to provide the Contract Quantity is a unit contingent obligation in that Seller shall deliver the quantity of the Product from the Project, instantaneously with its receipt of such Product, consistent with the terms of this Confirmation if and when generated by the Facility on an as-available basis. Unless expressly stated herein, Seller shall have no obligation to make up any failure of the Facility to generate and deliver the quantity from the Project [Note to Buyers: Deliveries in 2020 may be contingent on whether product has been allocated to other buyers].</p>
Scheduling Obligations:	<p>Seller, or a qualified third party designated by Seller, shall act as Scheduling Coordinator. Buyer hereby authorizes Seller, or its third-party Scheduling Coordinator designee, to deliver the Product, or cause the Product to be delivered, to the CAISO at the Delivery Point.</p>
Condition Precedent:	<p>The commencement of the Delivery Period in accordance with Section 3 below shall be contingent upon the Seller obtaining or waiving CPUC approval as described in this Confirmation. Either Party has the right to terminate this Confirmation upon notice in accordance with Section 12 of the WSPP Agreement, which will be effective five (5) Business Days after such notice is given, if: (i) the CPUC does not issue a final and non-appealable order approving this Agreement or the requested relief contained in the related advice letter filing, both in their entirety, (ii) the CPUC issues a final and non-appealable order which contains conditions or modifications unacceptable to either Party, or (iii) the final and non-appealable CPUC approval has not been obtained by Seller, on or before [INSERT DEADLINE DATE].</p> <p>The date on which CPUC approval of this Confirmation has been obtained or waived, by Seller, in its sole discretion, shall hereinafter be the “Condition Precedent Satisfaction Date.”</p> <p>Any termination made by a Party under this section shall be without liability or obligation to the other Party.</p> <p>Notwithstanding any other provision in this Confirmation, Seller will have no obligation to transfer Green Attributes to Purchaser unless the Condition Precedent Satisfaction Date has occurred.</p>

ARTICLE 2. DEFINITIONS

“Buyer” means “Purchaser”.

“CAISO” means the California Independent System Operator.

“CAISO Energy” means “Energy” as defined in the Tariff.

“Renewables Portfolio Standard” or “RPS” means the renewable energy program and policies established by California State Senate Bills 1078, X1 - 2 and 350, codified in California Public Utilities Code Sections 399.11 through 399.32 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“Condition Precedent Satisfaction Date” means the date on which CPUC approval, as fully described in the “Condition Precedent” provision, has been obtained or waived, by Seller, in its sole discretion.

“CPUC” means the California Public Utilities Commission or its regulatory successor.

“CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:

- (a) Approves this Agreement in its entirety, including payments to be made by the Buyer, subject to CPUC review of the Buyer’s administration of the Agreement; and

(b) Finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 *et seq.*), Decision 03-06-071, or other applicable law.

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

Notwithstanding the foregoing, if a Tier 2 or Tier 3 advice letter process is used to obtain CPUC Approval of this Agreement, CPUC Approval will also be deemed to have occurred on the date that a CPUC Energy Division disposition which contains such findings or deems approved an advice letter requesting such findings becomes final and non-appealable.

"Day-Ahead" has the meaning set forth in the Tariff.

"Delivery Period" means "Delivery Term". "Designated Contract Capacity" means the amount determined by Seller in accordance with the Scheduling Obligations section of this Confirmation.

"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.

"Green Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as:

- (i) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants;
- (ii) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere;¹
- (iii) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy.

Green Attributes do not include;

- (i) any energy, capacity, reliability or other power attributes from the Project,
- (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation,
- (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or
- (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits.

¹ Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

"Integrated Forward Market" has the meaning set forth in the Tariff.

"Tariff" means the tariff and protocol provisions, including any current CAISO-published "Operating Procedures" and "Business Practice Manuals," as amended or supplemented from time to time, of the CAISO.

"Vintage" means the calendar year and month during the Delivery Period in which the WREGIS Certificate is created through the generation of the Product.

"WREGIS" means the Western Renewable Energy Generation Information System or other process recognized under applicable laws for the registration, transfer or ownership of Green Attributes.

"WREGIS Certificate" means "Certificate" as defined by WREGIS in the WREGIS Operating Rules.

"WREGIS Operating Rules" means the operating rules and requirements adopted by WREGIS.

ARTICLE 3. CONVEYANCE OF RENEWABLE ENERGY

3.1. Seller's Conveyance Of Electric Energy

Except as stated in this Section 3.1 and beginning on the first day of the Delivery Period and throughout all applicable months of the Delivery Period, Seller shall deliver and sell, and Buyer shall purchase and receive, the Product, subject to the terms and conditions of this Confirmation. Seller will not be obligated to sell or replace any Product that is not or cannot be delivered as a result of Uncontrollable Force.

Should any electric energy provided by Seller under this Confirmation be determined to have originated from a resource other than the Project, Seller shall remedy such failure in a manner reasonably acceptable to Buyer within a reasonable period of time after written notice of such failure is given to the Seller by the Buyer.

3.2. Seller's Conveyance Of Green Attributes

(a) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project. The Green Attributes are delivered and conveyed upon completion of all actions described in Section 3.2(b) below.

(b) Green Attributes Initially Credited to Seller's WREGIS Account

- (i) During the Delivery Period, Seller, at its own cost and expense, shall maintain its registration with WREGIS. All Green Attributes transferred by Seller hereunder shall be designated California RPS-compliant with WREGIS. Seller shall, at its sole expense, use WREGIS as required pursuant to the WREGIS Operating Rules to effectuate the transfer of Green Attributes to Buyer in accordance with WREGIS reporting protocols and WREGIS Operating Rules.
- (ii) For each applicable month of the Delivery Period, Seller shall deliver and convey the Green Attributes associated with the electric energy delivered in Section 3.1 within five (5) Business Days after the end of the month in which the WREGIS Certificates for the Green Attributes are created by properly transferring such WREGIS Certificates, in accordance with the rules and regulations of WREGIS, equivalent to the quantity of Green Attributes to Purchaser into Purchaser's WREGIS account such that all right,

title and interest in and to the WREGIS Certificates shall transfer from Seller to Purchaser.

- (iii) In addition to its other obligations under this Section 3.2, Seller shall convey to Buyer WREGIS Certificates from the Project that are of the same Vintage as the Product that was provided under Section 3.1 of this Confirmation.

ARTICLE 4. PERFORMANCE ASSURANCE; CPUC FILING AND APPROVAL

4.1. Performance Assurance

(a) To secure its obligations under this Agreement, Buyer agrees to deliver to Seller and maintain in full force and effect Performance Assurance in the amount of **[\$INSERT AMOUNT]** in the form of cash or a Letter of Credit from the Execution Date and for the Delivery Term of this Agreement.

(b) Buyer hereby grants to Seller a present and continuing first priority security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Seller, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Seller's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence and during the continuation of an Event of Default by Seller or an Early Termination Date as a result thereof, Seller may do any one or more of the following: (i) exercise any of the rights and remedies of a secured party with respect to all Performance Assurance, including any such rights and remedies under Law then in effect; (ii) exercise its rights of setoff against such collateral and any and all proceeds resulting therefrom or from the liquidation thereof; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all or any portion of any Performance Assurance then held by or for the benefit of Seller free from any claim or right of any nature whatsoever of Buyer, including any equity or right of purchase or redemption by Buyer. Seller shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Buyer's obligations under the Agreement (Buyer remaining liable for any amounts owing to Seller after such application), subject to Seller's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

(c) Upon an Event of Default of Buyer prior to CPUC approval, Seller may terminate this Agreement in which case Buyer shall owe Seller liquidated damages in the amount of the Performance Assurance and Seller may retain such Performance Assurances to pay such liquidated damages. Each Party agrees and acknowledges that (a) the actual damages that Buyer would incur due to an Event of Default of Buyer prior to CPUC approval would be difficult or impossible to predict with certainty, (b) the liquidated damages set forth in this section are a reasonable and appropriate approximation of such damages, and (c) the liquidated damages set forth in this section are the exclusive remedy for an Event of Default of Seller prior to CPUC approval.

- (d) **[NOTE ADDITIONAL CREDIT TERMS TO BE INSERTED DEPENDING ON LENGTH OF TERM, ETC.]**

4.2. CPUC Filing and Approval

Within **[INSERT]** days after the Confirmation Effective Date, Seller shall file with the CPUC the appropriate request for CPUC approval of this Agreement and possibly other agreements. Seller shall seek CPUC approval of the filing, including promptly responding to any requests for information related to the request for CPUC approval. Buyer shall use commercially reasonable efforts to support Seller in obtaining CPUC approval. Seller and Buyer have no obligation to seek rehearing or to appeal a CPUC decision which fails to approve this Agreement, or which fails to meet the requirements contained in the Condition Precedent section. Notwithstanding anything to the contrary in the Confirmation, Seller shall not have any obligation or liability to Buyer or any third party for any action or inaction of the CPUC or other Governmental Authority affecting the approval or status of this Confirmation as a transaction eligible for portfolio content category, as defined in California Public Utilities Code Section 399.16(b)(1).

ARTICLE 5. COMPENSATION

5.1. Calculation Period

The "Calculation Period" shall be each calendar month, or portion thereof, during the Delivery Period.

5.2. Monthly Cash Settlement Amount

Purchaser shall pay Seller the Monthly Cash Settlement Amount, in arrears, for each Calculation Period in the amount equal to the sum (a) plus (b) minus (c), where:

(a) equals the sum, over all hours of the Calculation Period, of the applicable Index Price for each hour, multiplied by the quantity of CAISO Energy scheduled, delivered and received by Purchaser pursuant to Section 3.1 during that hour; and

(b) equals the product of the Green Attributes Price multiplied by the quantity of Green Attributes (in MWhs) delivered or credited to Purchaser's WREGIS account pursuant to Section 3.2 during the applicable Calculation Period; and

(c) equals the sum, over all hours of the Calculation Period, of the applicable Index Price for each hour, multiplied by the quantity of CAISO Energy scheduled, delivered and received by Purchaser pursuant to Section 3.1 during that hour.

5.3. Payment Date

Notwithstanding any provision to the contrary in Section 9.2 of the Master Agreement, payments of each Monthly Cash Settlement Amount by Purchaser to Seller under this Confirmation shall be due and payable on or before the later of the twentieth (20th) day of the month in which the Purchaser receives from Seller an invoice for the Calculation Period to which the Monthly Cash Settlement Amount pertains, or within ten (10) Business Days, or, if such day is not a Business Day, then on the next Business Day, following receipt of an invoice issued by Seller for the applicable Calculation Period. The invoice shall include a statement detailing the portion of Product transferred to Purchaser during the applicable Calculation Period.

Invoices to Buyer will be sent by Excel/PDF format via email to Buyer's Invoice Contact set forth above in Contact Information, and for purposes of this Confirmation, Buyer shall be deemed to have received an invoice upon the receipt of the Excel/PDF format of the invoice. Payment to Seller shall be made by electronic funds transfer pursuant to the Wire Transfer instructions set forth above in Contract Information.

ARTICLE 6. SELLER'S REPRESENTATIONS, WARRANTIES AND COVENANTS

(a) Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that:

- (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and
- (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.
- (iii) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission

Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation.

To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

The term "commercially reasonable efforts" as set forth in Sections 6.1 (a) and (b) above shall not require Seller to incur out-of-pocket expenses in excess of **\$(INSERT)** in the aggregate in any one calendar year between the Confirmation Effective Date and the last day of the Term.

(c) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

For the avoidance of doubt, the term "contract" as used in the immediately preceding paragraph means this Agreement.

(d) In addition to the foregoing, Seller warrants, represents and covenants, as of the Confirmation Effective Date and throughout the Delivery Period, that:

- (i) Seller has the contractual rights to sell all right, title, and interest in the Product agreed to be delivered hereunder;
- (ii) Seller has not sold the Product to be delivered under this Confirmation to any other person or entity; and
- (iii) at the time of delivery, all rights, title, and interest in the Product to be delivered under this Confirmation are free and clear of all liens, taxes, claims, security interests, or other encumbrances of any kind whatsoever.
- (iv) The original upstream third party contract(s), under which Buyer is re-selling, meets the criteria of California Public Utilities Code Section 399.16(b)(1)(A);
- (v) This Agreement transfers only Energy and Green Attributes that have not yet been generated prior to the commencement of the Delivery Period; and
- (vi) The Energy transferred hereunder is transferred to Buyer in real time.

ARTICLE 7. GENERAL PROVISIONS

7.1. Facility Identification

Upon Buyer's reasonable request, within ten (10) Business Days after the end of each month during the Delivery Period, Seller shall provide indicative identification, based on preliminary meter data, of the Facility.

7.2. Governing Law/Venue

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. The Parties hereby irrevocably and unconditionally agrees that any legal action or proceeding with respect to this Agreement shall be brought in the courts of the State of California in the County of San Diego or the courts of the United States in the County of San Diego, and by executing and delivering this Agreement, both Parties hereby submit to and accept irrevocably and unconditionally, the jurisdiction of the above mentioned courts. The foregoing, however, shall not limit the right of either Party as it may elect to bring any legal action or proceeding or to obtain execution of judgment in any other appropriate jurisdiction. **[SDG&E will consider binding arbitration for longer term deals.]**

7.3. SOVEREIGN IMMUNITY

[NOTE TO BIDDERS: insert only if applicable to governmental agencies, etc.] For purposes of this Confirmation only, the WSPP Agreement is amended by adding the following new provision: "Purchaser hereby waives sovereign immunity with regard to disputes relating to this Confirmation."]

7.4. Confidentiality Amendment to WSPP Agreement.

Changes to the WSPP shall apply to this Confirmation only. For purposes of this Confirmation, Section 30 (Confidentiality) of the WSPP Agreement is deleted in its entirety and replaced with the following:

"30.1(a) Neither Party shall disclose the non-public terms or conditions of this Agreement or any transaction hereunder to a third party, other than (i) the Party's Affiliates and its and their officers, directors, employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential, (ii) for disclosure to the Buyer's Procurement Review Group, as defined in CPUC Decision (D) 02-08-071, subject to a confidentiality agreement, (iii) to the CPUC under seal for purposes of review, (iv) disclosure of terms specified in and pursuant to Section 30.1(b) of this Agreement; (v) in order to comply with any applicable law, regulation, including, but not limited to, the California Public Records Act and/or the California Ralph M Brown Act, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in subsection (vi); or (vi) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the Federal Energy Regulatory Commission. In connection with requests made pursuant to clause (v) of this Section 30.1(a) ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts within its sole and absolute discretion to pursue rights under such applicable laws, regulations, rules or orders which allow for the prevention or limitation of such disclosure. The Disclosing Party's determination of what efforts might be reasonable shall not be subject to challenge by the other Party. After using such reasonable efforts, the Disclosing Party shall not be: (i) prohibited from complying with a Disclosure Order or (ii) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

(b) RPS Confidentiality. Notwithstanding Section 30.1(a) of this Agreement, at any time on or after the date on which the Seller makes its filing seeking CPUC approval for this Agreement, either Party shall be permitted to disclose the following terms with respect to this Agreement: Party names, resource type, Delivery Term, project location, Contract Capacity, Contract Quantity, and Delivery Point.

(c) Publicity. Except as otherwise agreed to in this Section 30.1 above, no announcement, publicity, advertising, press release, promotional or marketing materials regarding the arrangement contemplated under this Agreement, including the existence hereof, shall be made by either Party without the prior written approval of the other Party which approval shall not be unreasonably withheld or delayed." Notwithstanding the foregoing, the Parties understand acknowledge and agree that Buyer is a California Public Agency and that certain actions and documents of Buyer are subject to public notice and/or disclosure under applicable laws and regulations, including, but not limited to, the California Public Records Act and/or the California Ralph M. Brown Act, and that Buyer is not obligated to seek prior approval of Seller when Buyer is complying, in its sole and absolute discretion, with such laws and regulations.

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE:

SAN DIEGO GAS & ELECTRIC COMPANY [INSERT NAME OF PURCHASER]

BY: _____

BY: _____

NAME:

NAME:

TITLE:

TITLE:

_____ APPROVED AS TO LEGAL FORM

DRAFT

EXHIBIT A

TO THE CONFIRMATION BETWEEN _____ AND SAN DIEGO GAS & ELECTRIC
COMPANY
DATED: _____

PROJECT FACILITY

DRAFT

EXHIBIT B

FORM OF LETTER OF CREDIT

[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 WSPP Agreement and Confirmation 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 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, or 2 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)

2020 DRAM RFO PRO FORMA

DEMAND RESPONSE RESOURCE

PURCHASE AGREEMENT

between

[NAME OF SELLER]

and

SAN DIEGO GAS & ELECTRIC COMPANY

**DEMAND RESPONSE AUCTION MECHANISM RESOURCE PURCHASE AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS AND ELECTRIC
COMPANY**

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**DEMAND RESPONSE RESOURCE PURCHASE AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS AND ELECTRIC COMPANY**

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**DEMAND RESPONSE RESOURCE PURCHASE AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS AND ELECTRIC COMPANY**

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**DEMAND RESPONSE RESOURCE PURCHASE AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS AND ELECTRIC COMPANY**

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**DEMAND RESPONSE RESOURCE PURCHASE AGREEMENT
BY AND BETWEEN**

[REDACTED]

AND

SAN DIEGO GAS & ELECTRIC COMPANY

PREAMBLE

This Demand Response Resource Purchase Agreement, together with its exhibits (the “Agreement”) is entered into by and between **SAN DIEGO GAS & ELECTRIC COMPANY**, a California corporation (“Buyer”), and [REDACTED], a [REDACTED] (“Seller”), as of the latest signature date hereof (“Execution Date”). Buyer and Seller are referred to herein individually as a “Party” and collectively as “Parties.” Unless the context otherwise specifies or requires, capitalized terms in this Agreement have the meanings set forth in Exhibit A.

AGREEMENT

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 agree as follows.

ARTICLE 1. TRANSACTION

1.1. Purchase and Sale of the Product

(a) During the Delivery Period, Seller shall sell and deliver, and Buyer shall purchase and receive, the Product as indicated in Table 1.1(b) in the amount of the Monthly Contracted Quantity, as indicated in Exhibit E, subject to and in accordance with the terms and conditions of this Agreement. The Product shall be a Proxy Demand Resource (PDR).

(b) The Product is:

Table 1.1(b)

Product Selected	Type of Product	Local Capacity Area (as applicable)
<input type="checkbox"/>	Product A: System Capacity	Not applicable

Product Selected	Type of Product	Local Capacity Area (as applicable)
<input type="checkbox"/>	Product B-1: Local Capacity with System Capacity	SDG&E
<input type="checkbox"/>	Product B-2: Local Capacity with System Capacity	SDG&E
<input type="checkbox"/>	Product C1: Flexible Capacity (Flexible Category 1) with System Capacity	Not applicable
<input type="checkbox"/>	Product C2: Flexible Capacity (Flexible Category 2) with System Capacity	Not applicable
<input type="checkbox"/>	Product C3: Flexible Capacity (Flexible Category 3) with System Capacity	Not applicable
<input type="checkbox"/>	Product D1-1: Flexible Capacity (Flexible Category 1) with Local and System Capacity	SDG&E
<input type="checkbox"/>	Product D3-1: Flexible Capacity (Flexible Category 3) with Local and System Capacity	SDG&E

(c) Seller to indicate whether the Product is:

_____ a Residential Customer Product; or

_____ not a Residential Customer Product



(d) If Seller has chosen to deliver Product that is not Residential Customer Product, its DRAM Resource may nevertheless include Residential Customers and Small Commercial Customers.

1.2. Term

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

1.3. Delivery Period

The “Delivery Period” shall commence on the later of (a) the first day of the first month that begins after seventy-five (75) calendar days following CPUC Approval, and (b) [REDACTED] and shall continue in full force and effect until [REDACTED] unless terminated earlier in accordance with the terms and conditions of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, the Delivery Period will not commence until CPUC Approval is obtained or waived by Buyer in its sole discretion.

[REDACTED]

[REDACTED]

[REDACTED]

1.4. Seller’s Designation of the DRAM Resource

- (a) On or before the date that is seventy-five (75) calendar days prior to the first Showing Month, and on a monthly basis thereafter no less than seventy-five (75) calendar days prior to the applicable Showing Month if any of the information below changes, Seller shall:
 - (i) Provide to Buyer the Resource ID(s) for each PDR providing the Product pursuant to this Agreement.
 - (ii) Confirm in writing to Buyer that each PDR identified by Seller pursuant to Section 1.4(a)(i) is comprised solely of Bundled Service Customers, comprised solely of Unbundled Service Customers, or comprised of a mixture of Bundled and Unbundled Service Customers.
 - (iii) If the Product pursuant to this Agreement is a Joint Resource, Seller shall confirm in writing to Buyer (x) the amount of the capacity of such Joint Resource that will be used to show Demonstrated Capacity under this Agreement and (y) the total capacity of such Joint Resource.
- (b) Sellers shall sell and deliver System Capacity, Local Capacity, and/or Flexible Capacity from PDRs, as designated in Section 1.1(b).
- (c) The Parties shall cooperate to implement the requirements of Rule 24 to enroll Resource Customers in order for Seller to designate the PDR(s) pursuant Section 1.4(a)(i).

1.5. Monthly Contracted Quantity and Corresponding Contract Price

- (a) The Monthly Contracted Quantity and Contract Price for the type of Product indicated in Table 1.1(b) for each applicable Showing Month during the Delivery Period is set forth in Exhibit E.
- (b) In the event that Seller is not able to register the DRAM Resource for part or all of a Monthly Contracted Quantity for a Showing Month due solely to (i) the actions or inactions of Buyer or the CAISO, or (ii) insufficient Rule 24 registrations under D.16-06-008 Ordering Paragraph 6, then Seller may, in its sole discretion, by providing Notice to Buyer on or before the date that is sixty (60) calendar days prior to the Showing Month for which Seller is unable to register the DRAM Resource, reduce the Monthly Contracted Quantity for the unregistered capacity by type of Product for such Showing Month; *provided*, Seller shall demonstrate to Buyer's reasonable satisfaction that Seller made commercially reasonable efforts to register the DRAM Resource corresponding to such reduced Monthly Contracted Quantity for the unregistered capacity by type of Product in the applicable Showing Month.
- (c) In the event that material changes to definition of Resource Adequacy, including but not limited to changes in the Resource Adequacy Availability Assessment Hours, are adopted during the Term of this Agreement, then Seller may, in its sole discretion, by providing Notice to Buyer on or before **[month, year]** either (i) reduce the Monthly Contracted Quantity for the following year or (ii) terminate this Agreement.
- (d) Seller's exercise of its rights under Sections 1.5(b) or (c) will not be deemed to be a failure of Seller's obligation to sell or deliver the Product or a failure of Buyer's obligation to purchase or receive the Product, and will not be or cause an Event of Default by either Party. Neither Party shall have any further obligation or liability to the other and no Settlement Amount with respect to this Agreement will be due or owing by either Party upon termination of this Agreement due solely to Seller's exercise of its rights under Section 1.5(c).

1.6. Demonstrated Capacity

- (a) Each invoice submitted by Seller to Buyer pursuant to Section 4.2 shall include a statement, in a form substantially similar to Exhibit C, of the amount of the Qualifying Capacity for each type of Product for such Showing Month that Seller was capable of delivering ("Demonstrated Capacity"), utilizing the results from one of the following methods, as provided below (subject to the additional restrictions set forth in Section 1.6(b)):
 - (i) The results of a DC Dispatch of the applicable PDR in the DRAM Resource during such Showing Month. The Demonstrated Capacity for System and Local Capacity will equal the maximum hourly load reduction of such DC Dispatch as calculated using the Capacity Baseline; provided

that, for the Showing Month of August, the Demonstrated Capacity for System and Local Capacity will equal the average hourly load reduction of such DC Dispatch as calculated using the Capacity Baseline. The Demonstrated Capacity for Flexible Capacity will equal the average hourly load reduction of such DC Dispatch as calculated using the Capacity Baseline. If the CAISO issues a dispatch instruction for less than one hundred percent (100%) of the Qualifying Capacity of the applicable PDR in the DRAM Resource (a “Partial DC Dispatch”), then Seller may elect to submit the results of such Partial DC Dispatch during such Showing Month for its Demonstrated Capacity showing. Upon such election, the load reduction resulting from such Partial DC Dispatch shall be compared to the Qualifying Capacity of the entire PDR for purposes of deriving the DC-QC Ratio of the DRAM Resource in accordance with Section 4.1.

- (ii) The results of a DC Test in the event that (A) there is no DC Dispatch of the PDR in the DRAM Resource for one hundred percent (100%) of the Qualifying Capacity of the applicable Showing Month, and (B) Seller does not submit the results of a Partial DC Dispatch during the Showing Month as contemplated under 1.6(a)(i) above. The Demonstrated Capacity for System and Local Capacity will equal the maximum hourly load reduction during any hour of such DC Test as calculated using the Capacity Baseline; provided that, for the Showing Month of August the Demonstrated Capacity for System and Local Capacity will equal the average hourly load reduction during any two (2) consecutive hours as calculated using the Capacity Baseline. The Demonstrated Capacity for Flexible Capacity will equal the average hourly load reduction during any hour of such DC Test as calculated using the Capacity Baseline; provided that, for the Showing Month of August the Demonstrated Capacity for Flexible Capacity will equal the average hourly load reduction during any two (2) consecutive hours as calculated using the Capacity Baseline.
 - (iii) In the event that (A) there is no DC Dispatch of the PDR in the DRAM Resource during the Showing Month for one hundred percent (100%) of the Qualifying Capacity of the applicable Showing Month, (B) Seller does not submit the results of a Partial DC Dispatch as contemplated under 1.6(a)(i) above, and (C) there is no DC Test of the PDR in the DRAM Resource during the Showing Month as contemplated under 1.6(a)(ii) above, the Demonstrated Capacity will equal the average amount of capacity for such PDR in the DRAM Resource that the Seller bid into the applicable CAISO Markets solely during the Availability Assessment Hours of the Showing Month in compliance with the CAISO MOO.
- (b) Seller’s use of the methods described in Sections 1.6(a)(i)-(iii) is subject to the following additional restrictions:

- (i) Demonstrated Capacity for each PDR in the DRAM Resource must be calculated under Section 1.6(a)(i) or 1.6(a)(ii) for the August Showing Month of each year and for at least fifty percent (50%) of all contracted Showing Months during the Delivery Period (rounded downward if the Delivery Period is an odd number of Showing Months). For example, if the Delivery Period consists of seven (7) Showing Months, then a DC Test or DC Dispatch shall be required for at least three (3) of such Showing Months, including the Showing Month of August.
 - (ii) Demonstrated Capacity for any PDR in the DRAM Resource shall not be calculated under Section 1.6(a)(iii) for more than five (5) consecutive Showing Months during the Delivery Period (prorated, if the Delivery Period is less than twelve (12) Showing Months, to a number equal to half of the Showing Months in the Delivery Period minus one: e.g., two consecutive Showing Months for a six-month Delivery Period).
- (c) The same Capacity Baseline must be used (i) to estimate Qualifying Capacity for Seller's month-ahead submissions pursuant to Section 3.1(a) for a Showing Month; (ii) to calculate Demonstrated Capacity for the applicable Showing Month; and (iii) for energy settlement at the CAISO for the applicable Showing Month.
- (d) Solely for purposes of establishing the Demonstrated Capacity pursuant to Section 1.6(a), Seller shall use data available through Buyer's Customer Data Access Systems that has been designated by Buyer as final Revenue Quality Meter Data and such data shall be considered final by the Parties as of the date Seller submits its invoice for the applicable Showing Month to Buyer.
- (e) If the DRAM Resource is composed of more than one PDR, then:
- (i) Seller may establish the portion of the Demonstrated Capacity for each such PDR by using the methods described in Sections 1.6(a)(i) through (iii), in which case the Demonstrated Capacity will equal the sum of the individual PDRs' Demonstrated Capacities.
 - (ii) The Showing Months in which DC Dispatches or DC Tests are conducted may be different for each such PDR except for the Showing Month of August, in which a DC Dispatch or DC Test is required for every PDR in the DRAM Resource pursuant to Section 1.6(b)(i).
- (f) With respect to any DRAM Resource Customer service account that was moved in a Showing Month pursuant to Section 3.4(d), Seller shall include the performance of such DRAM Resource Customer service account only in one PDR for purposes of the calculation of Demonstrated Capacity for such Showing Month.
- (g) If any respective PDR in the DRAM Resource is a Joint Resource, Seller's invoice shall indicate (i) the amount of the capacity of such Joint Resource used to

show Demonstrated Capacity for a specific type of Product for such Showing Month and (ii) the total capacity of such Joint Resource during such Showing Month.

- (h) If the type of Product Seller delivers under this Agreement is a Residential Customer Product, Seller's invoice shall indicate the number of Residential Customer SAID agreements and the number of Small Commercial SAID accounts in each PDR for such type of Product.
- (i) In addition to the requirements in Section 1.6(a), if Seller is electing Demonstrated Capacity for Local Capacity, then, as part of Seller's Demonstrated Capacity for Local Capacity, Seller's invoice shall indicate the number of SAID agreements in the applicable LCA that are associated with the Local Capacity as indicated in Table 1.1(b) and Exhibit C.
- (j) Following Buyer's receipt of Seller's invoice and Notice of Demonstrated Capacity, Buyer may, upon Notice to Seller, require Seller to provide documentation from Seller or Seller's SC that establishes to Buyer's reasonable satisfaction the Demonstrated Capacity of each Product type from a PDR or Joint Resource as stated by Seller in its invoice for the applicable Showing Month. In the event that Seller does not provide such documentation within ten (10) Business Days from Buyer's Notice or such documentation is not reasonably satisfactory to Buyer, then Buyer may require an audit of Seller or Seller's SC records upon Notice ("Audit Notice"). With respect to an Audit Notice, Seller shall cause its SC to allow Buyer or its designated independent third-party auditor to have access to the records and data necessary to conduct such audit within five (5) Business Days of Seller's receipt of an Audit Notice; *provided*, such audit will be limited solely to verification of the data upon which Seller based its claim of the amount of the Demonstrated Capacity. If the type of Product designated in Section 1.1(b) is a Residential Customer Product, then, in addition to the documentation specified above, Buyer may, in its Audit Notice, require Seller or Seller's SC to provide additional documentation that establishes to Buyer's reasonable satisfaction that the type of Product is Residential Customer Product as stated by Seller in its invoice for the applicable Showing Month. Buyer's costs, including the costs for any third-party auditor, incurred in connection with the conducting such audit are the sole responsibility of Buyer.

ARTICLE 2. CPUC APPROVAL

2.1. Obtaining CPUC Approval

Within thirty (30) calendar days after the Execution Date, Buyer shall file with the Commission the appropriate request for CPUC Approval. Seller shall use commercially reasonable efforts to support Buyer in preparing for and obtaining CPUC Approval. Buyer has no obligation to seek rehearing or to appeal a Commission decision which fails to approve this Agreement or which contains findings required for CPUC Approval with conditions or modifications unacceptable to either Party.

2.2. CPUC Approval Termination Right

- (a) Either Party has the right to terminate this Agreement upon Notice, which will be effective five (5) Business Days after such Notice is given, if (i) CPUC Approval has not been obtained or waived by Buyer in its sole discretion within sixty (60) calendar days after Buyer files its request for CPUC Approval and (ii) such Notice of termination is given on or before the ninetieth (90th) day after Buyer files the request for CPUC Approval.
- (b) Failure to obtain CPUC Approval in accordance with this Article 2 will not be deemed to be a failure of Seller to sell or deliver the Product or a failure of Buyer to purchase or receive the Product, and will not be or cause an Event of Default by either Party. No Settlement Amount with respect to this Agreement will be due or owing by either Party, and neither Party shall have any obligation or liability to the other, upon termination of this Agreement due solely to failure to obtain CPUC Approval.

ARTICLE 3. SELLER OBLIGATIONS

3.1. Delivery of Product

- (a) No later than the deadlines set forth in subsections (i) and (ii) below, Seller shall submit, or cause Seller's SC(s) to submit:
 - (i) No later than fifteen (15) calendar days prior to Buyer's Compliance Showing deadlines each year or Showing Month (as applicable), Notice to Buyer which shall include Seller's Supply Plan for such year or Showing Month (as applicable) in (A) a form substantially similar to Exhibit D, or (B) a form as communicated in writing by Buyer to Seller no later than fifteen (15) Business Days prior to Buyer's Compliance Showing deadlines for such year or Showing Month (as applicable). Such Supply Plan shall include the Qualifying Capacity for each PDR identified by Seller pursuant to Section 1.4(a)(i), the sum of which shall not exceed the Monthly Contracted Quantity.
 - (ii) No later than ten (10) Business Days prior to the deadline for Seller's Supply Plan submission in subsection (i) immediately above, the additional information required by the implementation guidelines set forth in D.19-07-009, Appendix A, attached hereto as Exhibit F (the "QC Implementation Guidelines"), including the Qualifying Capacity for each PDR identified by Seller pursuant to Section 1.4(a)(i), presented in the standardized reporting format developed by the CPUC pursuant to Ordering Paragraph 8 of D.19-07-009.
- (b) Seller shall, on a timely basis, submit, or cause its SC to submit, a Supply Plan to CAISO in accordance with the CAISO Tariff. The quantities in the Supply Plan that is submitted to the Buyer under Section 3.1(a)(i) shall exactly match what is

submitted by the Seller or its SC to the CAISO due on the earliest monthly applicable Buyer's Compliance Showing deadlines with CAISO and CPUC.

3.2. Resource Adequacy Benefits

Seller grants, pledges, assigns, and otherwise commits to Buyer the Qualifying Capacity for each PDR specified in the Supply Plan and all Resource Adequacy Benefits of the Product as associated with the DRAM Resource to enable Buyer to meet its RAR, Local RAR and/or Flexible RAR, as applicable. The Parties shall take all commercially reasonable actions, and execute all documents or instruments necessary, to effect the use of the Product for Buyer's sole benefit.

3.3. Provision of Information

Within a reasonable period of time, or such time prescribed by the CPUC, Seller shall provide to the CPUC all information requested by the CPUC relating to Seller's obligations and performance pursuant to this Agreement and the DRAM to which this Agreement relates. In responding to any information request from the CPUC, the Seller may designate information for confidential treatment consistent with CAISO and/or Commission rule, tariff or decision. Any such confidential information provided by Seller to the CPUC shall be held in confidence by the CPUC and excluded from public inspection or disclosure, unless inspection or disclosure is otherwise required by Applicable Laws.

3.4. Seller's Obligations

- (a) Seller shall, and shall cause each of the PDRs in the DRAM Resource and corresponding DRPs and SCs to, comply with all applicable CAISO Tariff provisions, CPUC Decisions and all other Applicable Laws, including the Bidding of the DRAM Resource into the applicable CAISO Markets during the Availability Assessment Hours as required by the CAISO Tariff.
- (b) Seller shall or shall cause Seller's DRP to execute Buyer's Demand Response Provider Service Agreement in accordance with Rule 24.
- (c) Seller shall not include any Customer premises or resource in a PDR in the DRAM Resource that is concurrently enrolled in or otherwise concurrently committed to any other demand response program offered, maintained, or funded by Buyer (e.g., without limitation, behind-the-meter storage products in the Energy Storage RFO), or that is registered with CAISO as a part of any other demand response resource or Distributed Energy Resource Aggregation, other than as provided under this Agreement.
- (d) Seller shall not change or modify the customer composition of the DRAM Resource, including without limitation moving a DRAM Resource Customer service account in or out of any PDR of the DRAM Resource, during any Showing Month except under the following circumstances:

- (i) Seller may add a newly recruited service account to a PDR in the DRAM Resource if that service account is not part of a PDR that is already included in a Supply Plan submitted by Seller to Buyer or any other LSE for the same Showing Month.
- (ii) Seller may remove a service account from a PDR in the DRAM Resource.
- (iii) If as a result of the changes in Sections 3.4(d)(i) and 3.4(d)(ii) a PDR in the DRAM Resource becomes large enough to trigger the CAISO's above 10 MW telemetry requirement, Seller may split the affected PDR into two or more smaller resources as necessary to comply with CAISO requirements.
- (iv) If as a result of the changes in Sections 3.4(d)(i) and 3.4(d)(ii) a PDR in the DRAM Resource becomes small enough to drop below the 100 kW minimum PDR size requirement, Seller may combine the affected PDR with other resources as necessary to comply with CAISO requirements.
- (v) If a service account has moved to a new LSE (e.g., to or from a community choice aggregator), and if the CAISO Tariff requires PDRs to consist of service accounts that are customers of the same LSE, then Seller may add or remove the affected service accounts as necessary to comply with CAISO requirements.

3.5. Indemnities for Failure to Perform.

Seller agrees to indemnify, defend and hold harmless Buyer from any costs, penalties, fines or charges assessed against Buyer by the CPUC, CAISO, FERC, or any other Governmental Body with jurisdiction over Buyer, resulting from Seller's failure to do, or cause to be done, any of the following:

- (a) Provide all of the Monthly Contracted Quantity in any Showing Month, except to the extent (i) such failure is solely the result of a failure by Buyer to perform any of its obligations pursuant to Section 6.2, or (ii) Seller reduces the Monthly Contracted Quantity in accordance with Section 1.5(b) or (c);
- (b) Submit timely and accurate Supply Plans that identify Buyer's right to the Monthly Contracted Quantity for each Showing Month;
- (c) Comply with the requirements in Section 3.2 to enable Buyer to meet its RAR;
- (d) Meet CPUC Resource Adequacy requirements per the CPUC RA Filing Guide; or
- (e) Comply with the CAISO Tariff.

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

to minimize these costs, penalties, fines and charges. If Seller fails to pay the foregoing penalties, fines, charges, or costs, or fails to reimburse Buyer for those penalties, fines, charges, or costs, then Buyer may offset those penalties, fines, charges or costs against any amounts it may owe to Seller under this Agreement.

Notwithstanding Seller’s obligations in Section 3.5(a), Seller is not required to indemnify or reimburse Buyer for any costs allocated to Buyer by the CAISO for any capacity procured by CAISO pursuant to the Capacity Procurement Mechanism with respect to any Shortfall Capacity.

ARTICLE 4. PAYMENT AND BILLING

4.1. Delivered Capacity Payment

Buyer shall make a monthly payment to Seller, after the applicable Showing Month, (“Delivered Capacity Payment”) equal to the product of (A x B x C).

$$\text{Delivered Capacity Payment} = [A \times B \times C]$$

Where:

A = The Contract Price for the applicable Showing Month, including SC costs.

B = The value from the chart below corresponding to the applicable ratio of Demonstrated Capacity (which shall be a total sum of the individual PDRs in the DRAM Resource) as a percentage of the Qualifying Capacity (which shall be a total sum of the individual PDRs in the DRAM Resource) (“DC-QC Ratio”):

Delivered Capacity (DC) Payment Values		
Band	DC- QC Ratio	Value for B
Tolerance	> 90.00%	Qualifying Capacity (kW)
Pro-rated	> 70.00% to 90.00%	Demonstrated Capacity (kW)
De-rated	50.00% to 70.00%	Demonstrated Capacity (kW) * 75%
Forfeiture	< 50.00%	0

C = 1.0 if Seller has chosen (i) not to deliver Residential Customer Product in Section 1.1(c) or (ii) to deliver Residential Customer Product in Section 1.1(c) and the Product delivered meets the definition of Residential Customer Product, or 0.90 if the Product delivered does not meet the definition of Residential Customer Product.

4.2. Invoice and Payment Process

- (a) Within thirty (30) calendar days after Seller has received Revenue Quality Meter Data for at least ninety-five percent (95%) of all intervals required for settlement of the DRAM Resource for the applicable Showing Month, Seller will render to Buyer an invoice for the Demonstrated Capacity and associated payment amount due, if any, with respect to such Showing Month. Seller's failure to render any invoice on or before the deadline set forth herein shall be deemed to be a submission by the Seller of a DC Dispatch-based invoice with Demonstrated Capacity at an amount below fifty percent (50%) of the Qualifying Capacity for the applicable Showing Month (i.e., within the "forfeiture" payment band in the chart in Section 4.1).
- (b) Buyer will pay Seller all undisputed invoice amounts on or before the later of (i) the twentieth (20th) day of each month, or (ii) the tenth (10th) day after receipt of Seller's invoice and Demonstrated Capacity or, if such day is not a Business Day, then on the next Business Day.
- (c) 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 amounts not paid by the due date will be deemed delinquent and will accrue interest at the Cash Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.
- (d) Buyer may offset against any future payments by any amount(s) that were previously overpaid.
- (e) Either Party may, in good faith, dispute the correctness of any invoice, bill, charge, or any adjustment to an invoice, rendered under this Agreement, or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, bill, charge, or adjustment to an invoice, was rendered. Disputes are subject to the provisions of Article 10 below. In the event an invoice or portion thereof, or any other claim or adjustment 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. Upon resolution of the dispute, any required payment shall be made within ten (10) Business Days of such resolution.

- (f) Buyer may deduct any amounts that would otherwise be due to Seller under this Agreement from any amounts owing and unpaid by Seller to Buyer under this Agreement.
- (g) With respect to any Joint Resource, if Seller and any third party both submit claims to Buyer for payment with respect to such Joint Resource which, when added together, exceed the total capacity of the Joint Resource, Buyer shall not be obligated to make payment to Seller in respect of such Joint Resource until Seller reconciles the error with such third party and Seller re-submits the corrected invoice to Buyer.
- (h) With respect to a Joint Resource, if such Joint Resource's Demonstrated Capacity for a particular type of Product in any Showing Month is less than such Joint Resource's QC for such type of Product (as set forth in Exhibit C), Seller shall have the right to demonstrate to Buyer the Joint Resource's actual performance, and shall be compensated in accordance with Section 1.6. In the event Buyer finds Seller's demonstration inconclusive, the Joint Resource's total capacity shall be allocated pro-rata among the parties with rights to a portion of such Joint Resource's type of Product based on the information required to be provided in Section 1.6(g), and Seller's compensation shall be calculated using its percentage allocation of such PDR's capacity, accordingly.

4.3. Allocation of Other CAISO Payments and Costs

As between Buyer and Seller, Seller shall retain any revenues Seller or Seller's SC may receive from and pay all costs, penalties, charges charged to Seller or Seller's SC by the CAISO or any other third party in connection with the DRAM Resource, except as expressly provided otherwise in this Agreement.

ARTICLE 5. CREDIT AND COLLATERAL

5.1. Seller's Credit and Collateral Requirements

- (a) If, at any time during the Term Seller does not have a Credit Rating, or if its Credit Rating is below BBB- from S&P or Baa3 from Moody's, if rated by both S&P and Moody's or below BBB- from S&P or Baa3 from Moody's, if rated by either S&P or Moody's, but not both, Seller shall provide and maintain collateral with Buyer in an amount equal to twenty percent (20%) of the sum of the estimated Delivered Capacity Payments for all of the remaining months of the Delivery Period including the current month, with such estimated Delivered Capacity Payments being based on the applicable Monthly Quantity values times the applicable Contract Price ("Performance Assurance").
- (b) If Seller's Credit Rating is at or above BBB- from S&P and Baa3 from Moody's, if rated by both S&P and Moody's, or at or above BBB- from S&P or Baa3 from Moody's, if rated by either S&P or Moody's, but not both, Seller shall have no obligation to provide Performance Assurance to Buyer, and Sections 5.2 through 5.5 will not be applicable.

- (c) If required pursuant to Section 5.1(a), Seller shall post the Performance Assurance with Buyer within ten (10) Business Days of the Execution Date.

5.2. Grant of Security Interest/Remedies

- (a) To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing security interest in, and lien on (and right of setoff against), and collateral assignment of, the Performance Assurance and all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Buyer, and each Party agrees to take such action as the other Party reasonably requires in order to perfect Buyer's first-priority security interest in, and lien on (and right of setoff against), such Performance Assurance and collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, Buyer, if it is the Non-Defaulting Party, may do any one or more of the following: (i) exercise any of the rights and remedies of a Buyer with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. In such an event Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under the Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

5.3. Reduction and Substitution of Performance Assurance

- (a) If the amount of Performance Assurance held by Buyer exceeds the amount required pursuant to Section 5.1, on any Business Day, Seller may give Notice to Buyer requesting a reduction in the amount of Performance Assurance previously provided by Seller for the benefit of Buyer, provided that, (i) after giving effect to the requested reduction in Performance Assurance, no Event of Default or Potential Event of Default with respect to Seller has occurred and is continuing, (ii) no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to Seller for which there exist any unsatisfied payment obligations, and (iii) no amounts are owing and unpaid from Seller to Buyer hereunder. A permitted reduction in Performance Assurance may be effected by the Transfer of Cash to Seller or the reduction of the amount of an outstanding Letter of Credit previously issued for the benefit of Buyer. Seller shall have the right to specify the means of effecting the reduction in Performance Assurance. In all cases, the cost and expense of reducing Performance Assurance

(including, but not limited to, the reasonable costs, expenses, and attorneys' fees of Buyer) shall be borne by Seller. Unless otherwise agreed in writing by the Parties, if Seller's reduction demand is made on or before the Notification Time on a Business Day, then Buyer shall have five (5) Business Days to effect a permitted reduction in Performance Assurance, and if Seller's reduction demand is made after the Notification Time on a Business Day, then Buyer shall have six (6) Business Days to effect a permitted reduction in Performance Assurance, in each case, if such reduction is to be effected by the return of Cash to Seller. If a permitted reduction in Performance Assurance is to be effected by a reduction in the amount of an outstanding Letter of Credit previously issued for the benefit of Buyer, Buyer shall promptly take such action as is reasonably necessary to effectuate such reduction.

- (b) Except when an Event of Default or Potential Event of Default with respect to Seller shall have occurred and be continuing or an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to Seller for which there exist any unsatisfied payment obligations, Seller may substitute Performance Assurance for other existing Performance Assurance of equal value upon five (5) Business Days' Notice (provided such Notice is made on or before the Notification Time, otherwise the notification period shall be six (6) Business Days) to Buyer. Upon the Transfer to Buyer of the substitute Performance Assurance, Buyer shall Transfer the relevant replaced Performance Assurance to Seller within five (5) Business Days. Notwithstanding anything herein to the contrary, no such substitution shall be permitted unless (i) the substitute Performance Assurance is Transferred simultaneously or has been Transferred to Buyer prior to the release of the Performance Assurance to be returned to Seller and the security interest in, and general first lien upon, such substituted Performance Assurance granted pursuant hereto in favor of Buyer shall have been perfected as required by applicable law and shall constitute a first priority perfected security interest therein and general first lien thereon, and (ii) after giving effect to such substitution, the substitute Performance Assurance shall equal the amount of Performance Assurance being replaced. Each substitution of Performance Assurance shall constitute a representation and warranty by Seller that the substituted Performance Assurance shall be subject to and governed by the terms and conditions of this Article 5, including without limitation the security interest in, general first lien on and right of offset against, such substituted Performance Assurance granted pursuant hereto in favor of Buyer pursuant to this Article 5.
- (c) The Transfer of any Performance Assurance by Buyer in accordance with this Section 5.3 shall be deemed a release by Buyer of its security interest, general first lien and right of offset granted pursuant to this Article 5 hereof only with respect to such returned Performance Assurance. In connection with each Transfer of any Performance Assurance pursuant to this Article 5, Seller will, upon request of Buyer, execute a receipt showing the Performance Assurance Transferred to it.

5.4. Administration of Performance Assurance

- (a) Cash. Performance Assurance provided in the form of Cash to Buyer shall be subject to the following provisions:
- (i) Notwithstanding the provisions of applicable law, if no Event of Default has occurred and is continuing with respect to Buyer and no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to Buyer for which there exist any unsatisfied payment obligations, then Buyer shall have the right to sell, pledge, rehypothecate, assign, invest, use, commingle or otherwise use in its business any Cash that it holds as Performance Assurance hereunder, free from any claim or right of any nature whatsoever of Seller, including any equity or right of redemption by Seller.
 - (ii) So long as no Event of Default or Potential Event of Default with respect to Seller has occurred and is continuing, and no Early Termination Date has occurred or been designated as the result of an Event of Default with respect to Seller, and no amounts are owing and unpaid from Seller to Buyer hereunder, and to the extent that an obligation to Transfer Performance Assurance would not be created or increased by the Transfer, in the event that Buyer is holding Cash, Buyer will Transfer (or caused to be Transferred) to Seller, in lieu of any interest or other amounts paid or deemed to have been paid with respect to such Cash (all of which may be retained by Buyer), the Interest Amount when Buyer returns the Cash to Seller following the termination or expiration of this Agreement, as applicable and in conformity with Section 9.6. On or after the occurrence of a Potential Event of Default or an Event of Default with respect to Seller or an Early Termination Date as a result of an Event of Default with respect to Seller, Buyer shall retain any such Interest Amount as additional Performance Assurance hereunder until the obligations of Seller under the Agreement have been satisfied in the case of an Early Termination Date or for so long as such Event of Default is continuing in the case of an Event of Default.
- (b) Letters of Credit. Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions:
- (i) Each Letter of Credit shall be maintained for the benefit of Buyer. Seller shall (A) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (B) if the bank or financial institution that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide either a substitute Letter of Credit or Cash, in each case at least thirty (30) calendar days prior to the expiration of the outstanding Letter of Credit, and (C) if a bank or financial institution issuing a Letter of Credit shall fail to honor Buyer's properly documented request to draw on an outstanding Letter of

Credit, provide for the benefit of Buyer either a substitute Letter of Credit that is issued by a bank or financial institution acceptable to Buyer or Cash, in each case within one (1) Business Day after such refusal.

- (ii) As one method of providing Performance Assurance, Seller may increase the amount of an outstanding Letter of Credit or establish one or more additional Letters of Credit.
 - (iii) Upon the occurrence of a Letter of Credit Default, Seller agrees to Transfer to Buyer either a substitute Letter of Credit or Cash, in each case on or before the first (1st) Business Day after the occurrence thereof (or the fifth (5th) Business Day after the occurrence thereof if only clause (i) under the definition of Letter of Credit Default applies).
 - (iv) Upon or at any time after the occurrence and continuation of an Event of Default or Letter of Credit Default with respect to Seller, or if an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to Seller for which there exist any unsatisfied payment obligations, then Buyer may draw on the entire, undrawn portion of any outstanding Letter of Credit upon submission to the bank or financial institution issuing such Letter of Credit of one or more certificates specifying that such Event of Default, Letter of Credit Default or Early Termination Date has occurred and is continuing. Cash proceeds received from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for Seller's obligations to Buyer and Buyer shall have the rights and remedies set forth in Section 5.5 with respect to such Cash proceeds. Notwithstanding Buyer's receipt of Cash proceeds of a drawing under the Letter of Credit, Seller shall remain liable (A) for any failure to Transfer sufficient Performance Assurance and (B) for any amounts owing to Buyer and remaining unpaid after the application of the amounts so drawn by Buyer.
 - (v) In all cases, the costs and expenses of establishing, renewing, substituting, canceling, and increasing the amount of a Letter of Credit shall be borne by Seller.
- (c) Care of Performance Assurance. Except as otherwise provided in Section 5.4(a)(i) and beyond the exercise of reasonable care in the custody thereof, Buyer shall have no duty as to any Performance Assurance in its possession or control or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto. Buyer shall be deemed to have exercised reasonable care in the custody and preservation of the Performance Assurance in its possession if the Performance Assurance is accorded treatment substantially equal to that which it accords its own property, and shall not be liable or responsible for any loss or damage to any of the Performance Assurance, or for any diminution in the value thereof, except to the extent such loss or damage is

the result of Buyer's willful misconduct or gross negligence. Buyer shall at all times retain possession or control of any Performance Assurance Transferred to it.

5.5. Exercise of Rights against Performance Assurance

- (a) If an Event of Default with respect to Seller has occurred and is continuing or an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to Seller, Buyer may exercise any one or more of the rights and remedies provided under this Agreement, or as otherwise available under Applicable Law. Without limiting the foregoing, if at any time an Event of Default with respect to Seller has occurred and is continuing, or an Early Termination Date occurs or is deemed to occur as a result of an Event of Default with respect to Seller, then Buyer may, in its sole discretion, exercise any one or more of the following rights and remedies:
 - (i) All rights and remedies available to a Buyer under the Uniform Commercial Code and any other applicable jurisdiction and other Applicable Laws with respect to the Performance Assurance held by or for the benefit of Buyer;
 - (ii) The right to set off any Performance Assurance held by or for the benefit of Buyer against and in satisfaction of any amount payable by Seller in respect of any of its obligations; and
 - (iii) The right to draw on any outstanding Letter of Credit issued for its benefit.
- (b) Buyer shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available hereunder. Seller shall in all events remain liable to Buyer for any amount payable by Seller in respect of any of its obligations remaining unpaid after any such liquidation, application and set off.

5.6. Financial Information

If requested by a Party, the other Party shall deliver, if available, (a) within one hundred twenty (120) calendar days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year setting forth in each case in comparative form the figures for the previous year for the Party, as the case may be, and (b) within sixty (60) calendar days after the end of each of its first three fiscal quarters of each fiscal year, a copy of a quarterly report containing unaudited consolidated financial statements for such fiscal quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year, and if the Party files reports with the Securities and Exchange Commission, certified in accordance with all applicable laws and regulations, including without limitation all applicable Securities and Exchange Commission rules and regulations. If the Party does not file reports with the Securities and Exchange Commission, the reports must be certified by a Chief Financial

Officer, Treasurer or any Assistant Treasurer as being fairly stated in all material respects (subject to normal year end audit adjustments); provided, for the purposes of this Section 5.6, if a Party's financial statements are publicly available electronically on the Securities and Exchange Commission's website, then this requirement shall be deemed satisfied. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

5.7. Access to Financial Information

- (a) Buyer shall determine, through consultation with its internal accountants and review with their independent registered public accounting firm, that Buyer is required to consolidate Seller's financial statements with Buyer's financial statements for financial accounting purposes under Accounting Standards Codification (ASC) 810/Accounting Standards Update 2009-17, "Consolidation of Variable Interest Entities" (ASC 810), or future guidance issued by accounting profession governance bodies or the SEC that affects Buyer accounting treatment for this Agreement (the "Financial Consolidation Requirement").
- (b) If the Financial Consolidation Requirement is applicable, then:
 - (i) Within twenty (20) calendar days following the end of each calendar year (for each year that such treatment is required), Seller shall deliver to Buyer unaudited financial statements and related footnotes of Seller as of the end of the year. It is permissible for Seller to use accruals and prior months' estimates with true-up to actual activity, in subsequent periods, when preparing the unaudited financial statements. The annual financial statements should include quarter-to-date and yearly information. Buyer shall provide to Seller a checklist before the end of each year listing the items which Buyer believes are material to Buyer and required for this purpose, and Seller shall provide the information on the checklist, subject to the availability of data from Seller's records. It is permissible for Seller to use accruals and prior month's estimates with true-up to actual activity, in subsequent periods, when preparing the information on the checklist. If audited financial statements are prepared for Seller for the year, Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.
 - (ii) Within fifteen (15) calendar days following the end of each fiscal quarter (for each quarter that such treatment is required), Seller shall deliver to Buyer unaudited financial statements and related footnotes of Seller as of the end of the quarterly period. The financial statements should include quarter-to-date and year-to-date information. Buyer shall provide to Seller a checklist before the end of each quarter listing items which Buyer believes are material to Buyer and required for this purpose, and Seller

shall provide the information on the checklist, subject to the availability of data from Seller's records. It is permissible for Seller to use accruals and prior months' estimates with true-up to actual activity, in subsequent periods, when preparing the unaudited financial statements.

- (iii) If Seller regularly prepares its financial data in accordance with GAAP, IFRS, or Successor, the financial information provided to Buyer shall be prepared in accordance with such principles. If Seller is not a SEC registrant and does not regularly prepare its financial data in accordance with GAAP, IFRS or Successor, the information provided to Buyer shall be prepared in a format consistent with Seller's regularly applied accounting principles, e.g., the format that Seller uses to provide financial data to its auditor.
- (c) If the Financial Consolidation Requirement is applicable, then promptly upon Notice from Buyer, Seller shall allow Buyer's independent registered public accounting firm such access to Seller's records and personnel, as reasonably required so that Buyer's independent registered public accounting firm can conduct financial statement audits in accordance with the standards of the Public Company Accounting Oversight Board (United States), as well as internal control audits in accordance with Section 404 of the Sarbanes-Oxley Act of 2002, as applicable. All expenses for the foregoing shall be borne by Buyer. If Buyer's independent registered public accounting firm during or as a result of the audits permitted in this Section 5.7(c) determines a material weakness or significant deficiency, as defined by GAAP, IFRS or Successor, as applicable, exists in Seller's internal controls over financial reporting, then within ninety (90) calendar days of Seller's receipt of Notice from Buyer, Seller shall remediate any such material weakness or significant deficiency; provided, Seller has the right to challenge the appropriateness of any determination of material weakness or significant deficiency. Seller's true up to actual activity for yearly or quarterly information as provided herein shall not be evidence of material weakness or significant deficiency.
- (d) Buyer shall treat Seller's financial statements and other financial information provided under the terms of this Section 5.7 in strict confidence and, accordingly:
 - (i) Shall utilize such Seller financial information only for purposes of preparing, reviewing or certifying Buyer's or any Buyer parent company financial statements, for making regulatory, tax or other filings required by law in which Buyer is required to demonstrate or certify its or any parent company's financial condition or to obtain credit ratings;
 - (ii) Shall make such Seller financial information available only to its officers, directors, employees or auditors who are responsible for preparing, reviewing or certifying Buyer's or any Buyer parent company financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any

Buyer parent company financial statement and to those persons who are entitled to receive confidential information as identified in Article 13; and

- (iii) Buyer shall ensure that its internal auditors and independent registered public accounting firm (A) treat as confidential any information disclosed to them by Buyer pursuant to this Section 5.7, (B) use such information solely for purposes of conducting the audits described in this Section 5.7, and (C) disclose any information received only to personnel responsible for conducting the audits.
- (e) If the Financial Consolidation Requirement is applicable, then, within two (2) Business Days following the occurrence of any event affecting Seller which Seller understands, during the Term, would require Buyer to disclose such event in a Form 8-K filing with the SEC, Seller shall provide to Buyer a Notice describing such event in sufficient detail to permit Buyer to make a Form 8-K filing.
- (f) If, after consultation and review, the Parties do not agree on issues raised by Section 5.7(a), then such dispute shall be subject to review by another independent audit firm not associated with either Party's respective independent registered public accounting firm, reasonably acceptable to both Parties. This third independent audit firm will render its recommendation on whether consolidation by Buyer is required. Based on this recommendation, Seller and Buyer shall mutually agree on how to resolve the dispute. If Seller fails to provide the data consistent with the mutually agreed upon resolution, Buyer may declare an Event of Default pursuant to Section 9.1. If the independent audit firm associated with Buyer still determines, after review by the third-party independent audit firm, that Buyer must consolidate, then Seller shall provide the financial information necessary to permit consolidation to Buyer; provided, in addition to the protections in Article 13, such information shall be password protected and available only to those specific officers, directors, employees and auditors who are preparing and certifying the consolidated financial statements and not for any other purpose.

5.8. Uniform Commercial Code Waiver

This Agreement sets forth the entirety of the agreement of the Parties regarding credit, collateral, financial assurances and adequate assurances. Except as expressly set forth in this Agreement, including, those provisions set forth in Article 5 and Article 9, neither Party:

- (a) has or will have any obligation to post margin, provide Letters of Credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, or
- (b) will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of Article 5 and Article 9; and all implied rights relating to financial assurances arising from Section 2-609

of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived.

ARTICLE 6. SPECIAL TERMS AND CONDITIONS

6.1. Limitation of Liability

Buyer has no obligations to any person or entity that is, or may participate as, a DRAM Resource Customer, DRP (if Seller is not a DRP), or Seller's SC and Seller shall indemnify Buyer against any claim made by any such DRAM Customer, the DRP (if Seller is not a DRP), or Seller's SC with respect to its participation in or with the PDR or DRAM Resource, as applicable.

6.2. Buyer Provision of Information

Buyer shall provide to Seller, to the extent available and permitted by Applicable Law, including Rule 24, provide specific information consistent with the Customer Information Service Request Form for Demand Response Providers (CISR-DRP) adopted by the CPUC in D.13-12-029 and Resolution E-4630 including, but not limited to, usage, and/or meter data of a Customer, if Seller provides to Buyer written authorization from such Customer to release such information. Such written authorization must be provided in a form reasonably acceptable to Buyer. Buyer shall be liable for penalties or charges incurred by Seller from either the CAISO or the CPUC resulting solely from Buyer's failure to provide timely, accurate data to Seller in accordance with this Section 6.2.

6.3. Changes in Applicable Laws

- (a) If a change in Applicable Laws renders this Agreement or any material terms herein incapable of being performed or administered, then either Party, on Notice, may request the other Party to enter into good faith negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed or administered, while attempting to preserve to the maximum extent possible the benefits, burdens and obligations set forth in this Agreement as of the Execution Date. The Parties acknowledge that such changes may require the approval of the CPUC before becoming effective.
- (b) If the Parties have been unable to reach agreement within thirty (30) calendar days after receipt of such Notice, then either Party may terminate this Agreement by providing Notice. A Party's exercise of its rights under this Section 6.3 will not be deemed to be a failure of Seller to sell or deliver the Product or a failure of Buyer to purchase or receive the Product, and will not be or cause an Event of Default by either Party. Neither Party shall have any further obligation or liability to the other and no Settlement Amount with respect to this Agreement will be due or owing by either Party upon termination of this Agreement due solely to a Party's exercise of its right pursuant to this Section 6.3.

6.4. DBE Reporting

No later than twenty (20) calendar days after each semi-annual period ending on June 30th or December 31st during the Term, Seller shall provide to Buyer a report listing all Diverse Business Enterprises that supplied goods or services to Seller during such period, including any certifications or other documentation of such Diverse Business Enterprises' status as such and the amount paid to each Diverse Business Enterprise during such period.

- a. Buyer has the right to disclose to the CPUC all such information provided by Seller pursuant to this Section 6.4.
- b. Seller shall make reasonable efforts to accommodate requests by the CPUC (or by Buyer in response to a request by the CPUC) to audit Seller in order to verify data provided by Seller pursuant to this Section 6.4.

6.5. Governmental Charges

Seller shall pay on request and indemnify Buyer against any taxes (including without limitation, any applicable transfer taxes and stamp, registration or other documentary taxes), assessments, or charges that may become payable by reason of the security interests, general first lien and right of offset granted under this Agreement or the execution, delivery, performance or enforcement of this Agreement, as well as any penalties with respect thereto.

6.6. Customers in Buyer Automated Demand Response Program

Seller agrees to and acknowledges the following with respect to Buyer's non-Residential Customers which are included in Seller's DRAM Resource and have received ADR incentives or rebates to install demand response capable control technologies:

- (a) Customers in Seller's DRAM Resource are eligible for ADR incentives or rebates, subject to the requirements of this Agreement, Commission requirements, and Applicable Laws. The Customer remains responsible for fulfilling its obligations under Buyer's ADR program rules during the time period such ADR Customer is in Seller's DRAM Resource.
- (b) Seller shall be responsible for (i) notification to ADR Customers in its DRAM Resource of each Bid awarded by the CAISO ("Award") for a PDR, and (ii) operation of the ADR Customers' ADR control technology in response to an Award. During the time period that an ADR Customer is enrolled in a DRAM Resource, Buyer (or its agent) will not send notifications to such ADR Customer of Awards and will not operate ADR Customers' ADR control technology.
- (c) If Seller or its DRP enrolls a Customer who has received ADR incentives or rebates in Seller's DRAM Resource, Seller shall provide Buyer (or its agent) with Notice within five (5) Business Days of such enrollment of the ADR Customer's enrollment along with the ADR Customer's name, service account address, SAID,

location, the ADR agreement, and confirmation that the ADR Customer has unenrolled from all or any of Buyer's event-based demand response programs (other than ADR) prior to enrolling in Seller's DRAM Resource. Seller shall provide Buyer (or its agent) with Notice within fifteen (15) calendar days after such Customer leaves Seller's DRAM Resource.

- (d) Customers who have received ADR incentives within the past year who enroll in a DRAM Resource will be required to demonstrate performance through the DRAM Resource to qualify for additional ADR incentive payments as indicated in the statewide ADR Guidelines.
- (e) Buyer (or its agent) may communicate (i) with Seller's Customers who have received ADR incentives or rebates about the requirements for the Customer to participate in a demand response program, and (ii) with Seller's Customers with respect to anything involving their ADR incentive or rebate eligibility.
- (f) Seller shall provide to Buyer (or its agent) all information necessary for Buyer to administer the Customers' ADR incentives or rebates, including, but not limited to: (i) the information described in Section 6.6(c), (ii) the days in each Showing Month of Dispatch of the applicable PDR in the DRAM Resource, (iii) all hours in such Showing Month, corresponding to the days in subsection (ii), when Seller dispatched or called on the ADR Customer to respond to an Award, and (iv) information on ADR Customers that Seller did not dispatch or call on to respond to an Award for such Showing Month. The Customer's participation in the Seller's DRAM Resource as described in this Section 6.6(f) will be used in conjunction with the ADR Customer's participation in Buyer's demand response programs, to calculate the Customer's actual performance and subsequent incentive payments.
- (g) If Seller does not provide all the information Buyer needs to administer the ADR incentives for the Customer, the ADR Customer will be in non-compliance with the requirements of the ADR program.
- (h) Following the termination or expiration of this Agreement, Buyer (or its agent) may notify the Customers in Seller's DRAM Resource that have received ADR incentives or rebates of their commitment to participate in a demand response program for a total of three years.

ARTICLE 7. REPRESENTATIONS, WARRANTIES AND COVENANTS

7.1. Representations and Warranties of Both Parties

On the Execution Date, each Party represents and warrants to the other Party that:

- (a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

- (b) Except for CPUC Approval in the case of Buyer, it has or will timely acquire all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;
- (c) 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) This Agreement constitutes its legally valid and binding obligation, enforceable against it in accordance with its terms;
- (e) 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 become Bankrupt;
- (f) There is not pending or, to its knowledge, threatened against it, any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
- (g) It (i) is acting for its own account, (ii) 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, (iii) is not relying upon the advice or recommendations of the other Party in so doing, and (iv) is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions, and risks of this Agreement; and
- (h) It has entered into this Agreement in connection with the conduct of its business and it has the capability or ability to make available or take delivery of, as applicable, the Product under this Agreement in accordance with the terms of this Agreement.

7.2. Additional Seller Representations, Warranties and Covenants

- (a) On the Execution Date, Seller represents and warrants to Buyer that Seller has not used, granted, pledged, assigned, or otherwise committed any of the Monthly Quantity to meet the RAR, Local RAR and/or Flexible RAR, as applicable, or confer Resource Adequacy Benefits upon, any entity other than Buyer during the Delivery Period.
- (b) Seller covenants that throughout the Delivery Period:
 - (i) Seller will deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person;

- (ii) Seller has been authorized by each Customer, to act as an aggregator on behalf of such Customer to participate as a PDR in the DRAM Resource, if Seller is not also a Customer;
- (iii) The DRP has been authorized by each Customer to act on behalf of such Customer to participate as a PDR for the DRAM Resource, if Seller is not the DRP; and
- (iv) Seller will not use, grant, pledge, assign, or otherwise commit any Monthly Contracted Quantity to meet the RAR, Local RAR, and/or Flexible RAR, as applicable, or confer Resource Adequacy Benefits of the Product upon, any entity other than Buyer during the Delivery Period;
- (v) During each month of the Delivery Period, if any participating Customers in the DRAM Resource have a Prohibited Resource, Seller shall ensure that such Prohibited Resource is not used to reduce load during a Dispatch by any PDR providing Product to Buyer during such month, as follows:
 - A. For all Residential Customers, Seller shall include a provision in its contract forbidding the use of Prohibited Resources to reduce load during a Dispatch by any PDR providing Product to Buyer. Any Customer that does not accept the prohibition will not be eligible to participate in the Seller's DRAM Resource.
 - B. Seller shall require from each of its non-Residential Customers an attestation form attesting to one of the following conditions:
 - 1. the Customer does not have a Prohibited Resource on site;
 - 2. the Customer has a Prohibited Resource on site and will not use the resource to reduce load during a Dispatch by any PDR providing Product to Buyer; or,
 - 3. the Customer has a Prohibited Resource on site and may have to use the resource during Demand Response events for operational, health or safety reasons. The total nameplate capacity in kW of the Customer's resource(s) will be used as the Default Adjustment Value (DAV) to adjust the Demand Response incentives / charge for the Customer's account.

For condition 1 above, the Customer's attestation must include the service account number. For conditions 2 and 3 above, each attestation must provide the service account number, the number of unit(s) of Prohibited Resources on site, and the nameplate capacity of the Prohibited Resource (or, if the Customer has multiple Prohibited Resources, the sum of the nameplate capacity values from all Prohibited Resources on site) (the "Default Adjustment Value"). For condition (3), this Default Adjustment Value will be subtracted from

the Potential Load Reduction or Nominated Capacity. Customers must agree to a default adjustment in which the amount of Product such Customer can provide is reduced by the Default Adjustment Value, regardless of whether the Prohibited Resource was actually used. Customers with multiple service accounts enrolled through Seller may submit one attestation form per attestation scenario.

- C. Seller shall collect and store all such Customer attestations and make them available upon request, to a Verification Administrator or the CPUC. Seller shall also collect and store supporting documentation, such as nameplate capacities for each resource under each attestation scenario, and make them available upon request to Buyer, the Verification Administrator or the CPUC.
- D. For non-Residential Customers, the attestation shall occur at the time of enrollment and may be provided with a wet signature, a click, or an electronic signature. Any non-Residential Customer that does not complete this component of the enrollment process will not be eligible to participate in Seller's DRAM Resource. Consistent with CPUC Resolution E-4906, the Seller's contractual agreement is contingent upon compliance with both the prohibition and the submission of the Customers' attestations, which are subject to verification.
- E. Seller shall include provisions in its contracts that Customers are subject to random annual audits (1) requiring compliance with verification requests and facility access for site visits as deemed necessary by the Verification Administrator; (2) requiring the Customer to provide the Verification Administrator with written operating manifest(s), date and time stamped photo(s) of the Prohibited Resource unit(s), load curtailment plan(s), single line diagram(s) permit copy(ies), or other information or documentation about their onsite Prohibited Resources; and (3) allowing the Buyer or its contractor(s) to install monitoring equipment at the Sites for the purposes of verification of attestations.
- F. Seller shall include additional and separate provisions near the beginning of its contracts with Customers explaining and implementing these restrictions specifying that Customer compliance will be subject to verification, indicating the consequences for noncompliance with the provision. All contracts with non-Residential Customers shall indicate that the non-compliance consequences will be as set forth in this section. If the instance of non-compliance involves clerical or administrative errors, such as an inaccurate listing of a Customer name or the nameplate value of a Prohibited Resource in an attestation, or a failure to include a Customer's Prohibited Resource on an attestation, provided in all cases that such Prohibited Resource is not used in violation of the terms of this Agreement (collectively,

“Type One Non-Compliance”), Seller shall specify that Customers will have sixty (60) calendar days from receipt of notice to cure such Type-One Non-Compliance. If the instance of non-compliance involves either (1) the Customer does not attest to the use of any Prohibited Resource but is using a Prohibited Resource to reduce load during a demand response event; or (2), a Customer submits an invalid nameplate capacity value for the Prohibited Resource(s) that is lower than the actual capacity value on the nameplate (collectively “Type Two Non-Compliance”), then Customer will be removed from Seller’s DRAM Resource as follows. If there is an instance of (x) an uncured Type One Non-Compliance, or (y) a Type Two Non-Compliance, the consequences will be removal from Seller’s DRAM Resource and ineligibility to enroll in any DRAM Seller’s Resource or Buyer’s demand response program subject to the prohibited resource requirement in D.16-09-056 for twelve calendar months from the removal date (for a single instance of noncompliance), or three years from the removal date (for two or more instances of noncompliance).

- G. Seller shall provide such documentation as may be reasonably necessary for Buyer to verify the accuracy of the attestations referenced in subsections B(1)–(3) above and Seller’s compliance with and enforcement of this Section 7.2(b)(v). For all non-Residential Customers, (1) Sellers will provide the Default Adjustment Values (DAVs) monthly (with Demonstrated Capacity information); and, (2) Sellers will ensure that CAISO wholesale market bids reflect portfolio amounts prior to de-rating. Seller shall comply with any Prohibited Resource audit verification plan that is developed in accordance with D. 16-09-056 and approved by the CPUC.
- H. On an annual basis, Seller shall provide to Buyer the language on the prohibition included in its respective Residential Customer contracts. Seller will develop metrics, targets and record keeping systems to assess the effectiveness of its Customer outreach and notification efforts required under this Section 7.2(b)(v), and will provide such materials to the Buyer, the CPUC, and the Verification Administrator upon the request of Buyer or the CPUC.
- I. Seller shall include provisions in its contracts with non-Residential Customers permitting updates to their attestations to (1) add, remove or modify an on-site Prohibited Resource; (2) change the status or use of a Prohibited Resource to reduce load during any Dispatch; or (3) change the Default Adjustment Value, but only if, in each case, the change is supported by documentation that confirms the operational change and can be verified by a Verification Administrator.

- J. Verification methods for Customers under the condition noted in Section 7.2(b)(v)(I)(3) above shall be based on documentation of nameplate capacity, instead of load curtailment plans..
 - K. If further documentation in the form of load curtailment plans are required, Seller shall comply with the Verification Administrator's requests for supporting materials.
 - L. The Buyer has been directed by the CPUC to require a standardized non-disclosure agreement (NDA) that the Verification Administrator executes with the Buyer. This NDA pertains to all sellers and their customers from whom they collect market-sensitive, proprietary data. Verification information obtained from sellers and their customers is only to be submitted to and collected by the Verification Administrator consistent with CPUC Resolution E-4906. Under the terms of this NDA, third party customers' market-sensitive, proprietary information shall not to be shared with the Buyer, will be kept under seal, and shall be made available to the Commission upon request. Per Ordering Paragraph 14 of CPUC Resolution E-4906, all aggregators must store Customer attestations and make them available to the CPUC upon request. The Seller shall store non-Residential Customer attestations and make them available to the Buyer or Commission upon request.
- (vi) If any respective PDR is a Joint Resource, Seller shall ensure that: (A) the use of the Joint Resource does not result in Buyer making payment in respect of Demonstrated Capacity for a type of Product in excess of the total capacity of the Joint Resource, whether to Seller or any other party, regardless of whether payment is made under this Agreement, another agreement in the DRAM, any other demand resource agreement or program, or any combination thereof; (B) the use of the Joint Resource does not result in Buyer making payment more than once in respect of capacity relating to a particular Customer registered in the Joint Resource, regardless of whether payment is made under this Agreement, another agreement in the DRAM, any other demand resource agreement or program, or any combination thereof; and (C) Seller has the right to access and provide to Buyer the records and data regarding any DRAM Resource Customer that is not designated by Seller under Section 1.6(g) as part of the amount to be used to show Demonstrated Capacity for a type of Product under this Agreement to permit Buyer to audit such Joint Resource under Section 1.6(j) to the same extent Buyer may audit PDRs that are not Joint Resources.

ARTICLE 8. NOTICES

8.1. Notices

Notices, requests, statements or payments from one Party to the other Party shall be made to the addresses and persons specified in Section 8.2. All Notices, requests, statements or payments from one Party to the other Party shall be made in writing and may be delivered by hand delivery, first class United States mail, overnight courier service, e-mail or facsimile. Notice from one Party to the other Party by e-mail or facsimile (where confirmation of successful transmission is received) shall be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it shall be deemed received on the next Business Day). Notice from one Party to the other Party by hand delivery or overnight delivery shall be deemed to have been received when delivered. A Party may change its contact information by providing Notice of the same in accordance herewith.

8.2. Contact Information

For Buyer:

Contract General Contact:

Street: 8315 Century Park Court
City: San Diego, CA Zip: 92123
Attn: Demand Response – DRAM –
Brad Mantz
Phone: 858) 654-1588
Email: BMantz@SDGE.com
Duns: 006911457
Federal Tax ID Number: 95-1184800

Supply Plan Contact:

San Diego Gas & Electric Company
8315 Century Park Ct.
San Diego, California 92123-1593
Attn: Electric and Fuel Procurement – Nuo Tang
Phone: (858) 654-1818
Email: NTang@SDGE.com

Other Buyer Contact Information

Payments:

San Diego Gas & Electric Company
PO Box 25110
Santa Ana, CA 92799-5110
Attn: Mail Payments
Phone: (619) 696-4521

Facsimile: (619) 696-4899

Wire Transfer:

BNK: Union Bank of California for: San Diego Gas & Electric Company

ABA: Routing #122000496

ACCT: #4430000352

Reference: SAP # 2130015

Confirmation: SDG&E, Major Markets

Facsimile: (213) 244-8316

Credit and Collections:

San Diego Gas & Electric Company, Major Markets

555 W. Fifth Street, ML 18A3

Los Angeles, CA 90013-1011

Attn.: Major Markets, Credit and Collections Manager

Fax No.: (213) 244-8316

Phone: (213) 244-4343

Notices of an Event of Default or Potential Event of Default:

San Diego Gas & Electric Company

8330 Century Park Ct.

San Diego, California 92123

Attn: General Counsel

Phone: (858) 650-6141

Facsimile: (858) 650-6106

For Seller:

Billing Representative

[Name]

Phone:

Facsimile:

Email:

Contract Representative

[Name]

Phone:

Facsimile:

Email:

Supply Plan Contact

[Name]

Phone:

Facsimile:

Email:

Other Seller Contact Information

ACH

BNK:

Credit and Collections

Attn:

ABA: Phone:
ACCT: Facsimile:
Email:

Notices of Event of Default or Potential Event of Default to:

[Name]

Phone:
Facsimile:
Email:

The Parties acknowledge and agree that those persons set forth in this Section 8.2 are designated by each Party as their respective authorized representatives to act on their behalf for the purposes described therein.

ARTICLE 9. EVENTS OF DEFAULT; TERMINATION

9.1. Events of Default

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

- (a) With respect to either Party:
 - (i) The failure to make, when due, any payment required to be made to the other Party pursuant to this Agreement, if such failure is not remedied within three (3) Business Days after written Notice of such failure is given by the Non-Defaulting Party;
 - (ii) Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature;
 - (iii) The failure to perform any material covenant, obligation, term or condition of this Agreement (except to the extent constituting a separate Event of Default), where such breach is not remedied within five (5) Business Days of Notice of such breach by the Non-Defaulting Party.
 - (iv) Such Party becomes Bankrupt; or
 - (v) A Merger Event occurs with respect to such Party.
- (b) With respect to Seller:
 - (i) The failure of Seller to satisfy the collateral requirements set forth in Article 5;

- (ii) During the Term, Seller makes any material misrepresentation or omission in any report required to be made or furnished by Seller, the Seller's DRP or the Seller's SC pursuant to this Agreement;
- (iii) During the Delivery Period, Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, to any party other than Buyer without Buyer's written consent; or
- (iv) During the Term, the occurrence and continuation of a default, event of default or other similar condition or event (however described) in respect of Seller under one or more agreements or instruments relating to indebtedness for borrowed money (whether present or future, contingent or otherwise), which results in such indebtedness for borrowed money (whether present or future, contingent or otherwise) becoming, or becoming capable at such time of being declared, immediately due and payable under such agreements or instruments, before it would otherwise have been due and payable, or a default by Seller in making one or more payments on the due date thereof in an aggregate amount of not less than [REDACTED] under such agreements or instruments (after giving effect to any applicable notice requirement or grace period).
- (v) During the Term, Seller fails to comply with the requirements of Section 7.2(b)(v), where such breach is not remedied within thirty (30) calendar days of Notice of such breach by Buyer.
- (vi) The aggregate Demonstrated Capacity for the DRAM Resource is less than fifty percent (50%) of the aggregate Qualifying Capacity for the DRAM Resource in any two (2) sequential Showing Months for which Demonstrated Capacity was calculated with reference to the results of a DC Dispatch pursuant to Section 1.6(a)(i) or a DC Test pursuant to Section 1.6(a)(ii) (excluding any intervening months with invoices based on MOO bids pursuant to Section 1.6(a)(iii)).

9.2. Early Termination

If an Event of Default shall have occurred, the Party taking the default (the "Non-Defaulting Party") has the right:

- (a) To designate by Notice, which will be effective five (5) Business Days after the Notice is given, a day, no later than twenty (20) calendar days after the Notice is effective, for the early termination of this Agreement (an "Early Termination Date");
- (b) Withhold any payments due to the Defaulting Party under this Agreement;
- (c) Suspend performance of this Agreement, but excluding Seller's obligation to post and maintain Performance Assurance in accordance with Article 5; and

- (d) To pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages), except to the extent that such remedies are limited by the terms of this Agreement.

9.3. Termination Payment

- (a) As soon as practicable after an Early Termination Date is declared, the Non-Defaulting Party shall provide Notice to the Defaulting Party of the amount of the Termination Payment. The Notice must include a written statement setting forth, in reasonable detail, the calculation of such Termination Payment including the Settlement Amount, together with appropriate supporting documentation.
- (b) If the Termination Payment is positive, the Defaulting Party shall pay such amount to the Non-Defaulting Party within two (2) Business Days after the Notice is provided. If the Termination Payment is negative (i.e., the Non-Defaulting Party owes the Defaulting Party more than the Defaulting Party owes the Non-Defaulting Party), then the Settlement Amount shall be zero dollars (\$0), and the Non-Defaulting Party shall only pay to the Defaulting Party, within thirty (30) calendar days after the Notice is provided, any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date.
- (c) If a Party disputes the other Party's calculation of the Termination Payment, in whole or in part, the disputing Party shall, within two (2) Business Days of receipt of the Party's calculation of the Termination Payment, provide to the other Party a detailed written explanation of the basis for such dispute. Any disputes as to the calculation of the Termination Payment which the Parties are unable to resolve may be submitted to dispute resolution as provided in Article 10.

9.4. Reserved

9.5. Suspension of Performance

Notwithstanding any other provision of this Agreement, if (a) an Event of Default or (b) a Potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon Notice to the Defaulting Party, shall have the right (i) to suspend performance under this Agreement and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

9.6. Rights and Obligations Surviving Termination or Expiration

The rights and obligations that are intended to survive a termination or expiration of this Agreement are all of those rights and obligations that this Agreement expressly provides survive any such termination or expiration and those that arise from a Party's covenants, agreements, representations, and warranties applicable to, or to be performed, at or during any time before or as a result of the termination or expiration of this Agreement, including:

- (a) A Party's obligation to provide information, including but not limited to Sections 3.3, 5.7, 6.2 and 6.4.

- (b) A Party's obligations with respect to invoices and payments pursuant to this Agreement;
- (c) The obligation of Seller to maintain Performance Assurance as set forth in Section 5.1;
- (d) The obligation of Buyer to return any Performance Assurance under Section 5.3;
- (e) The right to pursue remedies as set forth in Sections 9.2(d) and Article 10;
- (f) The obligations with respect to a Termination Payment as set forth in Section 9.3;
- (g) The dispute resolution provisions of Article 10;
- (h) The indemnity obligations expressly set forth in this Agreement;
- (i) The limitation of liabilities as set forth in Sections 3.5, 6.1 and Article 12; and
- (j) The obligation of confidentiality as set forth in Article 13.

ARTICLE 10. DISPUTE RESOLUTION

10.1. Dispute Resolution

Other than requests for provisional relief under Section 10.5, any and all Disputes which the Parties have been unable to resolve by informal methods after undertaking a good faith effort to do so, must first be submitted to mediation under the procedures described in Section 10.3 below, and if the matter is not resolved through mediation, then for final and binding arbitration under the procedures described in Section 10.4 below.

The Parties waive any right to a jury and agree that there will be no interlocutory appellate relief (such as writs) available. Any Dispute resolution process pursuant to this Article 10 shall be commenced within one (1) year of the date of the occurrence of the facts giving rise to the Dispute, without regard to the date such facts are discovered; provided, if the facts giving rise to the Dispute were not reasonably capable of being discovered at the time of their occurrence, then such one (1) year period shall commence on the earliest date that such facts were reasonably capable of being discovered. If the Dispute resolution process pursuant to Article 10 with respect to a Dispute is not commenced within such one (1) year time period, such Dispute shall be barred, without regard to any other limitations period set forth by law or statute.

10.2. Negotiation

Except for disputes arising with respect to a Termination Payment, the Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement by prompt negotiations between each Party's Contract Representative, as identified in

Section 8.2, or such other person designated in writing as a representative of the Party ("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, who shall have authority to settle the dispute ("Executive(s)"). Within five (5) Business Days of the Initial Negotiation End Date ("Referral Date"), each Party shall provide one another written notice confirming the referral and identifying the name and title of the Executive who will represent the Party.

Within five (5) Business Days of the Referral Date the Executives shall establish a mutually acceptable location and date, which date shall not be greater than thirty (30) 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 the relevant information and to attempt to resolve the dispute.

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

If the matter is not resolved within forty-five (45) calendar days of the Referral Date, or if the Party receiving the written request to meet, pursuant to the first paragraph of this Section 10.2, refuses or will not meet within ten (10) Business Days, either Party may initiate mediation of the controversy or claim according to the terms of the following Section 10.3.

If a dispute exists with respect to the Termination Payment, and such dispute cannot be resolved by good faith negotiation of the Parties within ten (10) Business Days of the Non-Defaulting Party's receipt of the detailed basis for the explanation of the dispute then either Party may refer the matter directly to Arbitration, as set forth in Section 10.4 below.

10.3. Mediation

Either Party may initiate mediation by providing Notice to the other Party of a written request for mediation, setting forth a description of the Dispute and the relief requested.

The Parties will cooperate with one another in selecting the mediator ("Mediator") from the panel of neutrals from Judicial Arbitration and Mediation Services, Inc. ("JAMS"), its successor, or any other mutually acceptable non-JAMS Mediator, and in scheduling the time and place of the mediation.

The Parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs (other than each Party's individual attorneys' fees and costs related to the Party's participation in the mediation, which fees and costs will be borne by such Party).

All offers, promises, conduct and statements, whether oral or written, made in connection with or during the mediation by either of the Parties, their agents, representatives, employees, experts and attorneys, and by the Mediator or any of the Mediator's agents, representatives and employees, will not be subject to discovery and will be confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding between or involving the Parties, or either of them; provided, evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

10.4. Arbitration

Either Party may initiate binding arbitration with respect to the matters first submitted to mediation by providing Notice in accordance with Article 8 of a demand for binding arbitration before a single, neutral arbitrator (the "Arbitrator") if mediation pursuant to Section 10.3 above does not result in resolution of the dispute within sixty (60) calendar days after service of a written demand for mediation (as the same may be extended by mutual agreement of the Parties).

If Notice of arbitration is not provided by either Party within sixty (60) calendar days following the unsuccessful conclusion of the mediation provided for in Section 10.3 above, the Dispute resolution process shall be deemed complete and further resolution of such Dispute shall be barred, without regard to any other limitations period set forth by law or statute.

The Parties will cooperate with one another in selecting the Arbitrator and scheduling the arbitration. If, notwithstanding their good faith efforts, the Parties are unable to agree upon a mutually-acceptable Arbitrator, the Arbitrator will be appointed as provided for in California Code of Civil Procedure Section 1281.6.

To be qualified as an Arbitrator, each candidate must be a retired judge of a trial court of any state or federal court, or retired justice of any appellate or supreme court.

Unless otherwise agreed to by the Parties, the individual acting as the Mediator will be disqualified from serving as the Arbitrator in the dispute, although the Arbitrator may be another member of the JAMS panel of neutrals or such other panel of neutrals from which the Parties have agreed to select the Mediator.

Upon Notice of a Party's demand for binding arbitration, such Dispute submitted to arbitration, including the determination of the scope or applicability of this agreement to arbitrate, will be determined by binding arbitration before the Arbitrator, in accordance with the laws of the State of California, without regard to principles of conflicts of laws.

Except as provided for herein, the arbitration will be conducted by the Arbitrator in accordance with the rules and procedures for arbitration of complex business disputes for the organization with which the Arbitrator is associated.

Absent the existence of such rules and procedures, the arbitration will be conducted in accordance with the California Arbitration Act, California Code of Civil Procedure Section

1280 et seq. and California procedural law (including the Code of Civil Procedure, Civil Code, Evidence Code and Rules of Court, but excluding local rules).

Notwithstanding the rules and procedures that would otherwise apply to the arbitration, and unless the Parties agree to a different arrangement, the place of the arbitration will be in San Diego County, California.

Also notwithstanding the rules and procedures that would otherwise apply to the arbitration, and unless the Parties agree to a different arrangement, discovery will be limited as follows:

- (a) Before discovery commences, the Parties shall exchange an initial disclosure of all documents and percipient witnesses which they intend to rely upon or use at any arbitration proceeding (except for documents and witnesses to be used solely for impeachment);
- (b) The initial disclosure will occur within thirty (30) calendar days after the initial conference with the Arbitrator or at such time as the Arbitrator may order;
- (c) Discovery may commence at any time after the Parties' initial disclosure;
- (d) The Parties will not be permitted to propound any interrogatories or requests for admissions;
- (e) Discovery will be limited to twenty-five (25) document requests (with no subparts), three (3) lay witness depositions, and three (3) expert witness depositions (unless the Arbitrator holds otherwise following a showing by the Party seeking the additional documents or depositions that the documents or depositions are critical for a fair resolution of the Dispute or that a Party has improperly withheld documents);
- (f) Each Party is allowed a maximum of three (3) expert witnesses, excluding rebuttal experts;
- (g) Within sixty (60) calendar days after the initial disclosure, or at such other time as the Arbitrator may order, the Parties shall exchange a list of all experts upon which they intend to rely at the arbitration proceeding;
- (h) Within thirty (30) calendar days after the initial expert disclosure, the Parties may designate a maximum of two (2) rebuttal experts;
- (i) Unless the Parties agree otherwise, all direct testimony will be in form of affidavits or declarations under penalty of perjury; and
- (j) Each Party shall make available for cross examination at the arbitration hearing its witnesses whose direct testimony has been so submitted.

Subject to Article 11, the Arbitrator will have the authority to grant any form of equitable or legal relief a Party might recover in a court action. The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms of the Agreement, that money damages would not be a sufficient remedy for any breach of these provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to specific performance and injunctive or other equitable relief as a remedy for a breach of Article 13.

Judgment on the award may be entered in any court having jurisdiction.

The Arbitrator must, in any award, allocate all of the costs of the binding arbitration (other than each Party's individual attorneys' fees and costs related to the Party's participation in the arbitration, which fees and costs will be borne by such Party), including the fees of the Arbitrator and any expert witnesses, against the Party who did not prevail.

Until such award is made, however, the Parties will share equally in paying the costs of the arbitration.

Within thirty (30) calendar days after the conclusion of the arbitration hearing, the Arbitrator shall prepare in writing and provide to each Party a decision setting forth factual findings, legal analysis, and the reasons on which the Arbitrator's decision is based. The Arbitrator shall also have the authority to resolve claims or issues in advance of the arbitration hearing that would be appropriate for a California superior court judge to resolve in advance of trial. The Arbitrator shall not have the power to commit errors of law or fact, or to commit any abuse of discretion, that would constitute reversible error had the decision been rendered by a California superior court. The Arbitrator's decision may be vacated or corrected on appeal to a California court of competent jurisdiction for such error. Unless otherwise agreed to by the Parties, all proceedings before the Arbitrator shall be reported and transcribed by a certified court reporter, with each Party bearing one-half of the court reporter's fees.

10.5. Provisional Relief

The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms of this Agreement, that money damages would not be a sufficient remedy for any breach of these provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to seek a preliminary injunction, temporary restraining order, or other provisional relief as a remedy for a breach of Article 13 in any court of competent jurisdiction, notwithstanding the obligation to submit all other Disputes (including all claims for monetary damages under this Agreement) to arbitration pursuant to this Article 10. The Parties further acknowledge and agree that the results of the arbitration may be rendered ineffectual without the provisional relief.

Such a request for provisional relief does not waive a Party's right to seek other remedies for the breach of the provisions specified above in accordance with Article 10,

notwithstanding any prohibition against claim-splitting or other similar doctrine. The other remedies that may be sought include specific performance and injunctive or other equitable relief, plus any other remedy specified in this Agreement for the breach of the provision, or if the Agreement does not specify a remedy for the breach, all other remedies available at law or equity to the Parties for the breach.

ARTICLE 11. INDEMNIFICATION

11.1. Seller's Indemnification Obligations

- (a) In addition to any other indemnification obligations Seller may have elsewhere in this Agreement, which are hereby incorporated in this Section 11.1, Seller releases, and shall indemnify, defend and hold harmless Buyer, and Buyer's directors, officers, employees, agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, penalty, fine or expense of any kind or nature (including any direct, damage, claim, cost, charge, demand, or expense, and attorneys' fees (including cost of in-house counsel) and other costs of litigation, arbitration or mediation, and in the case of third-party claims only, indirect or consequential loss or damage of such third-party), arising out of or in connection with:
- (i) any breach made by Seller of its representations, warranties and covenants in Article 7 or any payment disputes resulting from the use of a Joint Resource;
 - (ii) Seller's failure to fulfill its obligations regarding Resource Adequacy Benefits as set forth in Article 3;
 - (iii) any violation of Applicable Law or the CAISO Tariff arising out of or in connection with Seller's performance of, or failure to perform this Agreement;
 - (iv) injury or death to persons, including Buyer employees, and physical damage to property, including Buyer property, where the damage arises out of, is related to, or is in connection with, Seller's obligations or performance under this Agreement.

This indemnity applies notwithstanding Buyer's active or passive negligence; *provided*, Buyer will not be indemnified for its loss, liability, damage, claim, cost, charge, demand or expense to the extent caused by its gross negligence or willful misconduct.

11.2. Indemnification Claims

All claims for indemnification by Buyer will be asserted and resolved as follows:

If a claim or demand for which Buyer may claim indemnity is asserted against or sought to be collected from Seller by a third party, Buyer shall as promptly as practicable give Notice to Seller; *provided*, failure to provide this Notice will relieve Seller only to the extent that the failure actually prejudices Seller.

- (a) Seller will have the right to control the defense and settlement of any claims in a manner not adverse to Buyer but cannot admit any liability or enter into any settlement without Buyer's approval.
- (b) Buyer may employ counsel at its own expense with respect to any claims or demands asserted or sought to be collected against it; *provided*, if counsel is employed due to a conflict of interest or because Seller does not assume control of the defense, Seller will bear the expense of this counsel.

ARTICLE 12. LIMITATION OF REMEDIES, LIABILITY, AND DAMAGES

EXCEPT AS SET FORTH HEREIN WITH RESPECT TO THE PRODUCT, THERE ARE NO WARRANTIES BY EITHER PARTY UNDER THIS AGREEMENT, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY WILL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE.

SUBJECT TO SECTION 9.3, IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY WILL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

UNLESS EXPRESSLY PROVIDED IN THIS AGREEMENT, INCLUDING WITHOUT LIMITATION THE PROVISIONS OF ARTICLE 11 (INDEMNIFICATION), NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

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.

NOTHING IN THIS ARTICLE PREVENTS, OR IS INTENDED TO PREVENT BUYER FROM PROCEEDING AGAINST OR EXERCISING ITS RIGHTS WITH RESPECT TO ANY PERFORMANCE ASSURANCE.

ARTICLE 13. CONFIDENTIALITY

13.1. Confidentiality Obligation

Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's or the Party's Affiliates' officers, directors, employees, lenders, counsel, accountants, advisors, or Rating Agencies, who have a need to know such information and have agreed to keep such terms confidential) except (a) in order to comply with any Applicable Law, summons, subpoena, exchange rule, or accounting disclosure rule or standard, or to make any showing required by any applicable Governmental Body other than as set forth in Sections 13.1(e) and (f); (b) to the extent necessary for the enforcement of this Agreement; (c) as may be obtained from a non-confidential source that disclosed such information in a manner that did not violate its obligations to the non-disclosing Party in making such disclosure; (d) to the extent such information is or becomes generally available to the public prior to such disclosure by a Party; (e) when required to be released in connection with any regulatory proceeding (provided that the releasing Party makes reasonable efforts to obtain confidential treatment of the information being released); (f) with respect to Buyer, as may be furnished to its duly authorized Governmental Bodies, including without limitation the Commission and all divisions thereof, to Buyer's Procurement Review Group, a group of participants including members of the Commission and other governmental agencies and consumer groups established by the Commission in Commission decisions 02-08-071 and 03-06-071, and to Buyer's Cost Allocation Mechanism Group established by the CPUC in D.07-12-052, or (g) Seller may disclose the transfer of the Monthly Quantity under this Agreement to its SC in order for such SC to timely submit accurate Supply Plans. The existence of this Agreement is not subject to this confidentiality obligation; *provided*, neither Party shall make any public announcement relating to this Agreement unless required pursuant to subsection (a) or (e) of the foregoing sentence of this Article 13.

13.2. Obligation to Notify

In connection with discovery requests or orders pertaining to confidential information in connection with this Agreement as referenced in Section 13.1(a) ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts to:

- (a) Notify the other Party before disclosing the Confidential Information; and
- (b) Prevent or limit such disclosure.

After using such reasonable efforts, the Disclosing Party will not be:

- (c) Prohibited from complying with a Disclosure Order; or
- (d) Liable to the other Party for monetary or other damages incurred in connection with the disclosure of the Confidential Information.

13.3. Remedies; Survival

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. With respect to information provided in connection with this Agreement, this obligation shall survive for a period of three (3) years following the expiration or termination of this Agreement.

ARTICLE 14. FORCE MAJEURE

To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the “Claiming Party”) gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

ARTICLE 15. MISCELLANEOUS

15.1. General

- (a) 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.
- (b) The term “including,” when used in this Agreement, shall be by way of example only and shall not be considered in any way to be in limitation.
- (c) The headings used herein are for convenience and reference purposes only.
- (d) Each Party agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.

- (e) Words having well-known technical or industry meanings have these meanings unless otherwise specifically defined in this Agreement.
- (f) Whenever this Agreement specifically refers to any Applicable Law, tariff, government department or agency, or Rating Agency, the Parties hereby agree that the reference also refers to any successor to such law, tariff or organization.
- (g) Nothing in this Agreement relieves either Party from, or modifies, any obligation or requirement that exists in any Applicable Law, tariff, rule, or regulation.
- (h) The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a “forward contract” within the meaning of the Bankruptcy Code and that Buyer and Seller are each “forward contract merchants” within the meaning of the Bankruptcy Code.

15.2. Governing Law and Venue

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 LAWS. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY DISPUTE ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

15.3. Amendment

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

15.4. Assignment

Neither Party shall assign this Agreement or its rights hereunder, as the case may be, without the prior written consent of the other Party, which consent may not be unreasonably withheld; *provided*, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof or thereof, as the case may be, in connection with any financing or other financial arrangements to any person or entity whose creditworthiness is equal to or higher than that of such Party, (b) transfer or assign this Agreement to an Affiliate of such Party which Affiliate’s creditworthiness is equal to or higher than that of such Party, or (c) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party and whose creditworthiness is equal to or higher than that of such Party; *provided*, in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

15.5. Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of, the Parties and their respective successors and assigns. This Agreement is not intended to confer any rights or remedies upon any other persons other than the Parties.

15.6. Waiver

None of the provisions of this Agreement shall be considered waived by either Party unless the Party against whom such waiver is claimed gives the waiver in writing. The failure of either Party to insist in any one instance upon strict performance of any the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishments of such rights for the future but the same shall continue and remain in full force and effect. Waiver by either Party of any default of the other Party shall not be deemed a waiver of any other default.

15.7. No Agency

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

15.8. No Third-Party Beneficiaries

This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound by this Agreement).

15.9. Entire Agreement

This Agreement, when fully executed, constitutes the entire agreement by and between the Parties as to the subject matter hereof, and supersedes all prior understandings, agreements or representations by or between the Parties, written or oral, to the extent they have related in any way to the subject matter hereof. Each Party represents that, in entering into this Agreement, it has not relied upon any promise, inducement, representation, warranty, agreement or other statement not set forth in this Agreement.

15.10. Severability

If any term, section, provision or other part of this Agreement, or the application of any term, section, provision or other part of this Agreement, is held to be invalid, illegal or void by a court or regulatory agency of proper jurisdiction, all other terms, sections, provisions or other parts of this Agreement shall not be affected thereby but shall remain in force and effect unless a court or regulatory agency holds that the provisions are not separable from all other provisions of this Agreement.

15.11. Multiple Originals

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any of the signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

15.12. 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).

15.13. Performance Under this Agreement

Each Party and its representatives shall maintain records and supporting documentation relating to this Agreement, and the performance of the Parties hereunder in accordance with, and for the applicable time periods required by, all Applicable Laws.

[Remainder of Page Intentionally Left Blank]

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

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

[SELLER]

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A

DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below:

"ADR Guidelines" means the guidelines for Buyer's Automated Demand Response Program implemented pursuant to Decisions 12-04-045, 14-05-025, and 18-11-029, as modified or updated from time to time, including the updates to the guidelines that are submitted in the Tier Two advice letter process on September 1 of each year in compliance with Ordering Paragraph 8 of Decision 18-11-029.

"Affiliate" means, with respect to a Party, any entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with that Party. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.

"Agreement" has the meaning in the Preamble.

"Applicable Laws" means all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Body that apply to either or both of the Parties, the DRP, the PDR or the terms of this Agreement.

"Arbitrator" has the meaning set forth in Article 10.4.

"Audit Notice" has the meaning set forth in Section 1.6(j).

"Automated Demand Response" or "ADR" is Buyer's demand response program offering Customers an incentive to install automated communication equipment and associated software that enhances their ability to reduce load during Buyer's demand response program events. For purposes ADR, Seller's participation in the CAISO Markets pursuant to this Agreement is a Buyer demand response program, pursuant to the September 24, 2015 disposition letter from Commission staff. The CPUC approved the ADR programs by Decision 12-04-045 and Decision 14-05-025.

"Automated Demand Response Customer" or "ADR Customer" is a non-Residential Customer that has installed the ADR equipment under Buyer's ADR and received, at minimum, approval from Buyer that it has been approved for its first (60%) incentive payment.

"Availability Assessment Hours" or "AAH" has the meaning set forth in the CAISO Tariff.

"Award" has the meaning set forth in Section 6.6(b).

"Bankrupt" means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of

creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

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

“Bid” shall have the meaning in the CAISO Tariff.

“Bundled Service Customer” means a customer of Buyer as a utility distribution company who takes bundled services from Buyer as a utility distribution company including having all its power requirements purchased by Buyer.

“Business Day” means a day that is not a Saturday, Sunday, a Federal Reserve Bank holiday, or the Friday immediately following the U.S. Thanksgiving holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

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

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

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

“CAISO Tariff” means the most current tariff and protocol provisions, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended or supplemented from time to time, of the CAISO.

“Capacity Baseline” means a CAISO baseline as applicable to the PDR(s) in the DRAM Resource, as specified in the CAISO Tariff and approved by the CPUC for retail settlement purposes in the DRAM, and as limited by the following: (i) a day matching customer load ten-in-ten baseline with a twenty percent (20%) cap; (ii) a weather matching baseline with a forty percent (40%) cap; (iii) the use of control groups; and (iv) a five-in-ten baseline for residential customers, with a forty percent (40%) cap, as utilized for the calculation of Qualifying Capacity and Demonstrated Capacity, and for CAISO settlements, in accordance with Section 1.6 of this Agreement.

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

“Cash” means U.S. Dollars held by or on behalf of Buyer as Performance Assurance hereunder.

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

“Claiming Party” has the meaning set forth in Article 14.

“Commission” or “CPUC” means the California Public Utilities Commission, and all divisions thereof, or any successor thereto.

“Compliance Showing(s)” means the RAR compliance or advisory showings (or similar or successor showings), that an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, to the CAISO pursuant to the CAISO Tariff, or to any Governmental Body having jurisdiction.

“Contract Price” means the price for each type of Product as specified in Exhibit E for each Showing Month.

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

“CPUC Approval” means a decision of the CPUC that (i) is final and no longer subject to appeal, which approves the Agreement in full and in the form presented on terms and conditions acceptable to both Parties, including without limitation terms and conditions related to cost recovery and cost allocation of amounts paid to Seller under the Agreement; (ii) does not contain conditions or modifications unacceptable to both Parties; and (iii) finds that any procurement pursuant to this Agreement satisfies the requirement to procure preferred resources under Commission Decision 13-02-015.

“CPUC Decisions” means Commission Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-031, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 09-12-053, 10-06-036, 10-12-038, 11-06-022, 11-10-003, 12-06-025, 13-02-006, 13-04-013, 13-06-024, 14-03-026, 14-06-050, 14-12-024, 15-02-007, 15-06-063, 19-07-009, 19-06-026 and any other existing or subsequent decisions, resolutions, or rulings related to resource adequacy, including, without limitation, the CPUC RA Filing Guide, in each case as may be amended from time to time by the CPUC.

“CPUC RA Filing Guide” is the [INSERT] annual document issued by the Commission which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the Commission’s resource adequacy program.

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by the Ratings Agencies.

“Customer” means a person or entity that is either a: (i) Bundled Service Customer; (ii) community choice aggregation customer or direct access customer who would otherwise be eligible to be a Bundled Service Customer; or (iii) Unbundled Service Customer.

“Customer Data Access Systems” has the meaning described in CPUC Decision 13-09-025.

“Day-Ahead Market” has the meaning set forth in the CAISO Tariff.

“Day-Ahead Schedule” has the meaning set forth in the CAISO Tariff.

“DC Dispatch” means a Dispatch of a PDR in the DRAM Resource in the CAISO market, in accordance with the CAISO Tariff, for a duration of (i) one (1) hour within the Availability Assessment Hours for all Showing Months except the Showing Month of August or (ii) two (2) consecutive hours within the Availability Assessment Hours for the Showing Month of August that is used to demonstrate capacity; provided that, such two (2) consecutive hours requirement may be satisfied by a combination of a DC Dispatch and a DC Test.

“DC-QC Ratio” has the meaning set forth in Section 4.1.

“DC Test” means a capacity test of a PDR in the DRAM Resource for one hundred percent (100%) of such PDR’s Qualifying Capacity for the applicable Showing Month (where such Qualifying Capacity has been submitted in Seller’s Supply Plan for that Showing Month), with a duration of at least two (2) consecutive Availability Assessment Hours, conducted by the Seller’s SC during the applicable Showing Month, in accordance with the CAISO Tariff and D.14-06-050, Appendix B, that is used to demonstrate capacity.

“Default Adjustment Value” has the meaning set forth in Section 7.2(b)(v)(B), CPUC Resolution E-4838, and CPUC Resolution E-4906.

“Defaulting Party” has the meaning set forth in Section 9.1.

“Delivered Capacity Payment” has the meaning described in and is calculated pursuant to Section 4.1.

“Delivery Period” has the meaning set forth in Section 1.3.

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

“Demonstrated Capacity” has the meaning set forth in Section 1.6(a).

“Dispatch” means the act of reducing all or a portion of the electrical consumption of the PDR pursuant to a Dispatch Instruction.

“Dispatch Instruction” has the meaning in the CAISO Tariff.

“Dispute” means any and all disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Agreement, or to either Party’s performance or failure of performance under this Agreement.

“Distributed Energy Resource Aggregation” has the meaning in the CAISO Tariff.

“Diverse Business Enterprises” or “DBE” means Women, Minority, Disabled Veteran (WMDV) and Lesbian, Gay, Bisexual and Transgender (LGBT) Business Enterprises as defined in CPUC General Order 156.

“DRAM” means the Demand Response Auction Mechanism, which is a procurement mechanism during [*Year*] for the Product as described in CPUC D.14-12-024, D.17-10-017, and D.19-07-009.

“DRAM Resource” means the sum of the PDR(s) that Seller identifies pursuant to Section 1.4 that will provide Product to Buyer.

“DRAM Resource Customer” is a Bundled Service Customer or Unbundled Service Customer account at the Service Account Identification level that is included in the DRAM Resource.

“Early Termination Date” has the meaning set forth in Section 9.2(a).

“EFC” shall mean Effective Flexible Capacity as defined in the CAISO Tariff.

“Event of Default” has the meaning set forth in Section 9.1.

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

“Executive(s)” has the meaning set forth in Section 10.2.

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

“Financial Consolidation Requirement” has the meaning set forth in Section 5.7(a).

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

“Flexible Capacity” means any and all flexible resource adequacy attributes associated with the PDR(s) designated by Seller pursuant to Section 1.4, as such attributes may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction, that can be counted toward Flexible RAR, and which may be (i) exclusive of Local Capacity and (ii) be in Flexible Category 1 (base flexibility), 2 (peak flexibility) or 3 (super-peak flexibility) as described in the CAISO Tariff.

“Flexible RAR” means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.

“Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under this Agreement, which event or circumstance was not anticipated as of the Execution Date, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller’s supply; (iv) Seller’s ability to sell the Product at a greater price; (v) a failure of performance of any other entity that is not a Party, except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure event; or (vi) breakage or malfunction of equipment, except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure event.

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

“Governmental Body” means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

“IFRS” means the International Financial Reporting Standards.

“Initial Negotiation End Date” has the meaning set forth in Section 10.2.

“Interest Amount” means with respect to a Party and an Interest Period, the sum of the daily interest amounts for all calendar days in such Interest Period; each daily interest amount to be determined by such Party as follows: (i) the amount of Cash held by such Party on that day; multiplied by (ii) the Cash Interest Rate for that day, divided by (iii) 360.

“Interest Period” means the period from (and including) the last Business Day on which an Interest Amount was Transferred by a Party (or if no Interest Amount has yet been Transferred by such Party, the Business Day on which Cash was Transferred to such Party) to (but excluding) the Business Day on which the current Interest Amount is to be Transferred.

“JAMS” has the meaning set forth in Article 10.3.

“Joint Resource” means respectively a PDR which includes DRAM Resource Customers registered by the Seller (or its DRP) and other customers registered by another aggregator (or its DRP) who are not considered part of the respective PDR for purposes of meeting Seller’s obligations under this Agreement.

“LCA Customers” means a Customer that either (i) directly takes or receives electricity services from Buyer’s LCA or [(ii) directly takes or receives electricity services from a lower voltage substation that electrically connects to Buyer’s LCA.][Does this work for SDG&E?]

“Letter of Credit” means an irrevocable, nontransferable standby letter of credit, substantially in the form of Exhibit B and acceptable to Buyer, provided by Seller from an issuer acceptable to Buyer that is either a U.S. financial institution or a U.S. commercial bank or a U.S. branch of a foreign bank with such financial institution or the bank (i) having (a) Credit Ratings of at least "A-" by S&P, "A-" by Fitch and "A3" by Moody's, if such entity is rated by the Ratings Agencies; (b) if such entity is rated by only two of the three Ratings Agencies, a Credit Rating from two of the three Ratings Agencies of at least "A-" by S&P, if such entity is rated by S&P, "A-" by Fitch, if such entity is rated by Fitch, and "A3" by Moody's, if such entity is rated by Moody's; or (c) a Credit Rating of at least "A-" by S&P or "A3" by Moody's, or "A-" by Fitch if such entity is rated by only one Ratings Agency; and (ii) having shareholder equity (determined in accordance with generally accepted accounting principles) of at least \$1,000,000,000.00 (ONE BILLION AND 00/100 DOLLARS). Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

“Letter of Credit Default” means with respect to a Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit shall fail to maintain a Credit Rating of at least (A) "A-" by S&P, "A-" by Fitch, and "A3" by Moody's, if such issuer is rated by the Ratings Agencies, (B) "A-" by S&P, "A-" by Fitch or "A3" by Moody's if such issuer is rated by only two of the Ratings Agencies, or (C) "A-" by S&P, "A-" by Fitch, or "A3" by Moody's, if such issuer is rated by only one Ratings Agency; (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect at any time during the Term of the Agreement, in any such case without replacement; or (v) the issuer of such Letter of Credit shall become Bankrupt; *provided*, no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Agreement.

“Local Capacity” means any and all resource adequacy attributes or other locational attributes associated with the PDR(s) designated by Seller and comprised of LCA Customers pursuant to Section 1.4, from a Local Capacity Resource (as defined in CAISO Tariff) in Buyer's Local Capacity Area, as applicable and as such attributes may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction, that can be counted toward Local RAR, which may be exclusive of any Flexible Capacity, as applicable to the Product.

“Local Capacity Area” or “LCA” means the areas where LCA Customers are electrically interconnected to any of the [INSERT].

“Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

“LSE” means load-serving entity.

“Manager” has the meaning set forth in Section 10.2.

“Mediator” has the meaning set forth in Section 10.3.

“Merger Event” means, with respect to a Party, that such Party consolidates or amalgamates with, merges into or with, or transfers substantially all its assets to another entity and (i) the resulting entity fails to assume all the obligations of such Party hereunder, or (ii) the resulting entity's creditworthiness is materially weaker than that of such Party immediately prior to such action. The creditworthiness of the resulting entity shall not be deemed to be ‘materially weaker’ so long as the resulting entity maintains a Credit Rating of at least that of the applicable Party, as the case may be, immediately prior to the consolidation, merger or transfer.

“Monthly Contracted Quantity” means the respective amount of each type of Product set forth in Exhibit E that Seller has agreed to provide to Buyer from the DRAM Resource for each day of the respective Showing Months.

“Monthly Quantity” means the aggregate amount of all Monthly Contracted Quantities set forth in Exhibit E that Seller has agreed to provide to Buyer from the DRAM Resource for each day of the respective Showing Months for the respective types of Product.

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

“Must-Offer Obligation” or “MOO” means Seller’s obligation to Bid or cause Seller’s SC to Bid the DRAM Resource into the CAISO Markets based on the type of Product and in accordance with the CAISO Tariff.

“NQC” shall mean Net Qualifying Capacity as defined in the CAISO Tariff.

“Notification Time” means the 10:00 a.m. Pacific Prevailing Time on a Business Day.

“Non-Competitive Behavior” means bidding behavior providing clear evidence of market manipulation or collusion.

“Non-Defaulting Party” has the meaning set forth in Section 9.2.

“Notice” means notices, requests, statements or payments provided in accordance with Article 8.

“Partial DC Dispatch” has the meaning set forth in Section 1.6(a)(i).

“Performance Assurance” has the meaning set forth in Section 5.1(a). Performance Assurance must be in the form of Cash or Letter of Credit. Any Cash received and held by Buyer after drawing on any Letter of Credit will constitute Performance Assurance in the form of Cash.

“Potential Event of Default” means an event which, with Notice or passage of time or both, would constitute an Event of Default.

“Procurement Review Group” has the meaning set forth in Section 13.1.

“Product” means either System Capacity, Local Capacity and/or Flexible Capacity. The particular type of Product sold by Seller to Buyer under this Agreement is specified in Table 1.1(b). Buyer and Seller will have separate agreements for separate products and will combine multiple awards of the same product into one agreement at a weighted average price.

“Prohibited Resource” means a distributed generation technology using diesel, natural gas, gasoline, propane, or liquefied petroleum gas, in topping cycle Combined Heat and Power (CHP) or non-CHP configuration. The following resources are exempt: pressure reduction turbines and waste-heat-to-power bottoming cycle CHP, resources using renewable fuels (i.e. renewable gas, renewable diesel, and biodiesel) that have received certification from the California Air Resources Board, as well as energy storage resources not coupled with fossil fueled resources.

“Proxy Demand Resource” or “PDR” has the meaning in the CAISO Tariff.

“QC Implementation Guidelines” has the meaning set forth in Section 3.1(a)(ii).

“Qualifying Capacity” means the load reduction for each PDR in the DRAM Resource, calculated utilizing the Capacity Baseline, consistent with the QC Implementation Guidelines, the CPUC Decisions and the CAISO Tariff.

“RAR” means the resource adequacy requirements established for LSEs by the Commission pursuant to the CPUC Decisions, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Body having jurisdiction, or successor program requirements.

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

“Referral Date” has the meaning set forth in Section 10.2.

“Resource Adequacy” and “Resource Adequacy Benefits” have the meanings set forth in the CPUC Decisions.

“Resource ID” has the meaning in the CAISO Tariff.

“Residential Customer” means a DRAM Resource Customer which is a Single Family or Multi-Family Dwelling customer on a Domestic rate, including RV Parks, Residential Hotels, and Mobile Home Parks and includes electric vehicle charging for customers on Domestic Rate if separately metered, as such capitalized terms are defined in Rule 1.

“Residential Customer Product” means Product that is comprised solely of Residential Customers and Small Commercial Customers; *provided* that the percentage of Residential Customers in the PDR(s) constituting the DRAM Resource is equal to or greater than ninety percent (90%). Where multiple PDRs, or portions thereof, are used to meet Seller’s Demonstrated Capacity obligations, the percentage requirements apply in the aggregate, based on the total number of PDR Customer service accounts in the DRAM Resource used to show Demonstrated Capacity.

“Revenue Quality Meter Data” means interval meter data that has been validated, edited, and estimated in accordance with the Direct Access Standards for Metering and Meter Data as described in Rule 22. [Double check]

“Rule 24” means Direct Participation Demand Response:
https://www.sce.com/NR/sc3/tm2/pdf/Rule_24.pdf.

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

“SAID” or “Service Account Identification” means a Buyer specific identifier or number for tracking energy service deliveries for a specific load through one or more meters at a customer premises or location as described in Rule 1.

“Scheduling Coordinator” or “SC” has the meaning set forth in the CAISO Tariff.

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

“Settlement Amount” means the sum of the estimated Delivered Capacity Payments for all of the remaining Showing Months of the original Delivery Period as in effect prior to such early termination, including the current Showing Month if not invoiced pursuant to Section 4.2, as of the Early Termination Date, with such estimated Delivered Capacity Payments being based on the sum of the applicable Monthly Contracted Quantity times the applicable Contract Price for each type of Product.

“Shortfall Capacity” means the amount of capacity with respect to the Monthly Contracted Quantity for a type of Product for any portion of a Showing Month which was shown by Buyer in its Compliance Showing that CAISO determines requires outage replacement in accordance with Section 40.7 of the CAISO Tariff.

“Showing Month” shall be each day of each calendar month of the Delivery Period that is the subject of the Compliance Showing, as set forth in the CPUC Decisions and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and CPUC Decisions in effect as of the Execution Date, the monthly Compliance Showing made in June is for the Showing Month of August.

“Small Commercial Customer” means a DRAM Resource Customer which is a non-Residential Customer with monthly maximum demand of 20 kW or less, including agricultural/pumping customers (PA-1, PA-2, TOU-PA-2 rates) and TOU-EV3, service to electric charging facilities with monthly maximum demand of 20 kW or less. Excludes customers on rate schedules for fixed usage and unmetered service (Schedules LS-1, LS-2, OL-1, TC-1, Wi-Fi-1, and WTR).

“Successor” means any successor accounting practices to GAAP or IFRS.

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

“System Capacity” means system Resource Adequacy Benefits associated with the PDR(s) designated by Seller pursuant to Section 1.4, as such attributes may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction, that can be counted toward RAR, which may be exclusive of any Local Capacity and Flexible Capacity as indicated on Table 1.1(b).

“Term” has the meaning set forth in Section 1.2.

“Termination Payment” means the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement, which shall include the Settlement Amount, less any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date. If Buyer is the Non-Defaulting Party and reasonably expects to incur penalties, fines or costs from the CPUC, the CAISO, or any other Governmental Body, then Buyer may estimate the penalties or fines and include them in the Termination Payment amount.

“Transfer” means, with respect to any Performance Assurance or Interest Amount, and in accordance with the instructions of the Party entitled thereto: (i) in the case of Cash, the payment or transfer by wire transfer into one or more bank accounts specified by the recipient; (ii) in the case of Letters of Credit, delivery of the Letter of Credit or an amendment thereto to the recipient.

“Unbundled Service Customer” means a retail customer of the Buyer acting as a utility distribution company, who takes and receives its electrical power requirements from a different Load Serving Entity that is not the Buyer, pursuant to CPUC Rule 22 Direct Access or Rule 23 Community Choice Service.

“Verification Administrator” has the meaning set forth in CPUC Resolution E-4838 and CPUC Resolution E-4906.

EXHIBIT B

Form of Letter of Credit

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT

Bank Reference Number: _____

Issuance Date:

Issuing Bank:

[insert bank name and address]

Applicant:

[insert applicant name and address]

BENEFICIARY:

San Diego Gas & Electric Company

[Address]

Available Amount: [insert amount and spell out]

Expiration Date: [insert date]

Ladies and Gentlemen:

_____ (the "Bank") hereby establishes this Irrevocable Nontransferable Standby Letter of Credit ("Letter of Credit") in favor of San Diego Gas & Electric Company, a California corporation (the "Beneficiary"), for the account of _____, a _____ corporation, also known as ID# _____ (the "Applicant"), for the amount stated above (the "Available Amount"), effective immediately.

This Letter of Credit shall be of no further force or effect at 5:00 p.m., California time, on the expiration date stated above or, if such day is not a Business Day (as hereinafter defined), on the next Business Day (as may be extended pursuant to the terms of this Letter of Credit (the "Expiration Date").

For the purpose hereof, "Business Day" shall mean any day other than:

1. A Saturday or a Sunday,
2. A day on which banking institutions in the city of San Diego, California, are required or authorized by Law to remain closed, or
3. A day on which the payment system of the Federal Reserve System is not operational.

It is a condition of this Letter of Credit that the Expiration Date shall be automatically extended without amendment for one (1) year from the Expiration Date hereof or any future Expiration Date unless at least sixty (60) calendar days prior to such Expiration Date, we send notice to you by certified mail or hand delivered courier, at the address stated below, that we elect not to extend this Letter of Credit for any such additional period.

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

1. A copy of this Letter of Credit and all amendments;
2. A copy of the Drawing Certificate in the form of Attachment "A" attached hereto and which forms an integral part hereof, duly completed and bearing the signature of an authorized representative of the Beneficiary signing as such; and
3. A copy of the Sight Draft in the form of Attachment "B" attached hereto and which forms an integral part hereof, duly completed and bearing the signature of an authorized representative of the Beneficiary.

Drawings may also be presented by facsimile transmission ("Fax") to fax number [insert number] under telephone pre-advice to [insert number] or alternatively to [insert number]; provided that such Fax presentation is received on or before the Expiration Date on this instrument in accordance with the terms and conditions of this Letter of Credit. It is understood that any such Fax presentation shall be considered the sole operative instrument of drawing. In the event of presentation by Fax, the original documents should not also be presented.

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

This Letter of Credit is not transferable or assignable. Any purported transfer or assignment shall be void and of no force or effect.

All correspondence and any drawings (other than those made by facsimile) hereunder are to be directed to [Bank address/contact].

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: [INSERT] Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

Banking charges shall be the sole responsibility of the Applicant.

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

or extension of the Expiration Date, this Letter of Credit may not be amended or modified without the Beneficiary's prior written consent.

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

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

AUTHORIZED SIGNATURE for Bank

By

Name: [print name]_____

Title: [print title]_____

ATTACHMENT A

DRAWING CERTIFICATE

TO [ISSUING BANK NAME & ADDRESS]

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT
REFERENCE NUMBER: _____

DATE: _____

[insert Beneficiary name] (the “Beneficiary”), demands *[Issuing Bank Name]* (the “Bank”) payment to the order of the Beneficiary the amount of U.S. \$_____ (_____ U.S. Dollars), drawn under the Letter of Credit referenced above (the “Letter of Credit”), for the following reason(s) [check applicable provision]:

A. An Event of Default, as defined in that certain Demand Response Resource Purchase Agreement between *[insert counterparty name]* or its successor (the “Counterparty”) and Beneficiary, dated as of *[Date of Execution]* (the “Agreement”) with respect to the Counterparty has occurred and is continuing.

B. The Letter of Credit will expire in fewer than twenty (20) Business Days (as defined in the Agreement) from the date hereof, and the Counterparty or its successor has not provided Beneficiary alternative financial security acceptable to Beneficiary.

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

Authorized Signature for Beneficiary:

[insert Beneficiary name]

By:

Name: [print name]

Title: [print title]

ATTACHMENT B

SIGHT DRAFT

[INSERT DATE]

TO:
[ISSUING BANK NAME & ADDRESS]

PAY AT SIGHT TO THE ORDER OF [INSERT BENEFICIARY NAME] (THE
“BENEFICIARY”) THE AMOUNT OF USD [INSERT AMOUNT] DRAWN UNDER
[ISSUING BANK NAME] IRREVOCABLE NON-TRANSFERABLE STANDBY
LETTER OF CREDIT NUMBER [INSERT NUMBER] ISSUED ON [INSERT DATE].

FUNDS PAID PURSUANT TO THE PROVISIONS OF THE LETTER OF CREDIT
SHALL BE WIRE TRANSFERRED TO THE BENEFICIARY IN ACCORDANCE WITH
THE FOLLOWING INSTRUCTIONS:

[INSERT WIRING INSTRUCTION]

AUTHORIZED SIGNATURE
[INSERT BENEFICIARY NAME]

NAME: [PRINT NAME]

TITLE: [PRINT TITLE]

EXHIBIT C-1

Form of Notice of Demonstrated Capacity

Demand Response Auction Mechanism (DRAM)

EXHIBIT C1 - Notice of Demonstrated Capacity (QC)

For use with System and Local Capacity Product

Showing Month: _____
 Seller: _____
 Seller Contact Name: _____
 Seller Contact Phone: _____
 SCID: _____
 Local Capacity Area (LCA): _____

(mark "n/a" if not a Local Capacity product)

Total "Monthly Quantity"^{**} (MW): _____
 Total "Demonstrated Capacity" (MW): 0.00 MW
 Residential Product (Yes/No): _____



PDRs and RDRRs in the DRAM Resource			--- "Demonstrated Capacity" (MW) --- <i>(No Seller's sole discretion as to which Demonstrated Capacity method is used for each Resource)</i>				Joint Resource Adjustment		Prohibited Resources Adjustment		Residential Product Delivery			Local Capacity Product Delivery	
PDR / RDRR Resource Name	CAISO Resource ID	Assigned NQC (MW) 0.00 MW	For each PDR / RDRR Resource (row), chose one demonstration method (column) to establish monthly Demonstrated Capacity			MW Claimed Specify the MW portion used to meet the contract obligation	Default Adjustment Value (DAV) (Mw)	Net MW Claimed	Total Service Accounts**	Residential Customer Service Accounts*	Small Business Customer Service Accounts*	Total Service Accounts**	Customer Service Accounts within specified LCA**		
			Capacity Test Average hourly load reduction across two consecutive hours during capacity test conducted by Seller's SC during Showing Month	Must Offer Obligation (MOO) Average capacity amount Seller bid into CAISO during Showing Month	Dispatch Results! Average hourly load reduction resulting from Dispatch during Showing Month									Raw Demonstrated Capacity	Lesser of Assigned NQC or Raw Demonstrated Capacity
Demonstrated Capacity ==>															
IMPORTANT NOTES:			1) Each capacity test must be at least two (2) consecutive hours long. Only include results during the CAISO Availability Assessment Hours (AAH).			1) An eligible Dispatch requires that the PDR/RDRR provided load reduction in all applicable hours of the CAISO Dispatch Instructions. Only include results during the CAISO AAH.			For PDR/RDRR that are not Joint Resources, MW Claimed = MW Demonstrated (Column F, H or J).			Percent Residential Accounts			
* "Monthly Quantity" is from the quantity & pricing Table in Exhibit E.			2) Should be calculated using the same PDR/RDRR Capacity Baseline used for Month Ahead Supply Plan.			2) PDR must be bid into the Day-Ahead Market; RDRR must be bid into the Real-Time Market.			Per pro-forma Section 7.2(b)(v), provide the DAV adjustment, if any.			Percent Local Accounts			
** In case of a Joint Resource, report full PDR / RDRR-NQC here.			3) Only include bids submitted in compliance with the CAISO AAH.			4) Should be calculated using the same PDR Capacity Baseline used for Month Ahead Supply Plan and CAISO Settlement Baseline.			For Joint Resources, MW Claimed is a portion of MW Demonstrated.						
** If using a Joint Resource, report Service Account information (count) only for the portion used.															

The information provided by Seller in this Notice of Demonstrated Capacity is required by Section 1.6 of the DRAM Resource Purchase Agreement with (insert IOU name).

*A combination of a market dispatch and test could be used to satisfy the August two consecutive hour requirement if the CAISO market dispatch does not cover the two consecutive hours.

EXHIBIT C-2

Form of Notice of Demonstrated Capacity

EXHIBIT C2 - Notice of Demonstrated Capacity (EFC)

Demand Response Auction Mechanism (DRAM)

For use with Flexible Capacity Product

Showing Month: _____
 Seller: _____
 Seller Contact Name: _____
 Seller Contact Phone: _____
 SCID: _____
 Local Capacity Area (LCA): _____ (mark "n/a" if not a Local Capacity product)

Total "Monthly Quantity"* (MW): _____
 Total "Demonstrated Capacity" (MW): 0.00 MW
 Residential Product (Yes/No): _____

PDRs in the DRAM Resource				--- "Demonstrated Capacity" (MW) --- <small>For Seller to use discretion as to which Demonstrated Capacity method is used for each Resource</small>						Joint Resource Adjustment		Prohibited Resources Adjustment		Product Delivery			Local Capacity Product Delivery		
PDR Resource Name	CAISO Resource ID	Assigned EFC (MW)*	Flexible Category (1, 2, or 3)	For each PDR Resource (row), chose <u>one</u> demonstration method (column) to establish monthly Demonstrated Capacity						Complete for all resources		Complete for all resources		Residential Product <small>This section is only required if delivering Residential Customer Product</small>			Local Capacity Product <small>This section is only required if delivering Local Capacity Product</small>		
				Capacity Test <small>Average hourly load reduction across two consecutive hours during capacity test conducted by Seller's SC during Showing Month</small>		Must Offer Obligation (MOO) <small>Average capacity amount Seller bid into CAISO during Showing Month</small>		Dispatch Results! <small>Average hourly load reduction resulting from Dispatch during Showing Month</small>		MW Claimed <small>Specify the MW portion used to meet the contract obligation</small>		Adjusted MW Claimed <small>Specify the MW portion used to meet the contract obligation</small>		Total Service Accounts**	Residential Customer Service Accounts**	Small Business Customer Service Accounts**	Total Service Accounts**	Customer Service Accounts within specified LCA**	
				Row Demonstrated Capacity	Lesser of Assigned EFC or Row Demonstrated Capacity	Row Demonstrated Capacity	Lesser of Assigned EFC or Row Demonstrated Capacity	Row Demonstrated Capacity	Lesser of Assigned EFC or Row Demonstrated Capacity	Joint Resource? (Yes/No)	MW Claimed	Default Adjustment Value (DAV) (MW)	Net MW Claimed						
		0.00 MW			0.00 MW		0.00 MW		0.00 MW										
					0.00 MW		0.00 MW		0.00 MW										
					0.00 MW		0.00 MW		0.00 MW										
					0.00 MW		0.00 MW		0.00 MW										
					0.00 MW		0.00 MW		0.00 MW										
					0.00 MW		0.00 MW		0.00 MW										
					0.00 MW		0.00 MW		0.00 MW										
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					0.00 MW		0.00 MW		0.00 MW										
					0.00 MW		0.00 MW		0.00 MW										
					0.00 MW		0.00 MW		0.00 MW										
					0.00 MW		0.00 MW		0.00 MW										
					0.00 MW		0.00 MW		0.00 MW										
Demonstrated Capacity ==>					0.00 MW		0.00 MW		0.00 MW		0.00 MW		0.00 MW		0	0	0	0	0
IMPORTANT NOTES:				1) Each capacity test must be at least two (2) consecutive hours long Only include results during the CAISO Availability Assessment Hours (AAH).		1) Must be bid into the Day-Ahead and Real-Time Market		1) An eligible Dispatch requires that the PDR provided load reduction in all applicable hours of the CAISO Dispatch Instructions. Only include dispatch results during the CAISO AAH.		For PDRs that are not Joint Resources, MW Claimed = MW Demonstrated (Column F, H or J)		Per proforma Section 7.2(b)(y), provide the DAV adjustment, if any.		Percent Residential Accounts			Percent Local Accounts		
* "Monthly Quantity" is from the quantity & pricing Table in Exhibit E. ** In case of a Joint Resource, report full PDR EFC here. *** If using a Joint Resource, report Service Account information (count) only for the portion used.																			2) Should be calculated using the same PDR Capacity Baseline used for Month Ahead Supply Plan

The information provided by Seller in this Notice of Demonstrated Capacity is required by Section 1.6 of the DRAM Resource Purchase Agreement with (insert IOU name).

* A combination of a market dispatch and test could be used to satisfy the August two consecutive hour requirement if the CAISO market dispatch does not cover the two consecutive hours.

EXHIBIT D

Form of Notice of Showing Month Supply Plan

Sample Counterparty Monthly Supply Plan Template

Contact Information			Supply Plan Information for Resources under DRAM Purchase Agreement to [insert IOU name]												
Contact Person	Phone Number	Email	Seller (or Seller's agent) SCID	Resource ID in CAISO Master File	System RA Capacity (QC) (MW 00.00 No rounding)	Local RA Capacity (QC) (MW 00.00 No rounding)	Flex RA Capacity (EFC) (MW 00.00 No rounding)	Flex RA Category (1, 2, or 3)	System RA Capacity used for Contract (MW 00.00)	If Joint Resource		RA Capacity Effective Start Date (mm/dd/yyyy hh: mm:ss)	RA Capacity Effective End Date (mm/dd/yyyy hh: mm:ss)	Resource Capacity Contract Number	SCID of Load Serving Entity
										Local RA Capacity used for Contract (MW 00.00)	Flex RA Capacity used for Contract (MW 00.00)				

The information provided by Seller in this monthly Supply Plan template is required by Section 1.4 of the DRAM Resource Purchase Agreement with Buyer.



**EXHIBIT E
MONTHLY CONTRACTED QUANTITY
AND
CORRESPONDING CONTRACT PRICE**

Showing Month	Product [Insert]	
	[Year]	
	Monthly Quantity (kW for each day of Showing Month)	Contract Price (\$/kW-month)
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

[Parties to complete one table for each type of Product indicated in Table 1.1(b) and accepted bid information.]

EXHIBIT F
IMPLEMENTATION GUIDELINES FOR QUALIFYING CAPACITY
(D.19-07-009 Appendix A)

- A. Sellers should provide the following details to the Utility for demand response resources being offered, with the auction capacity bid submission no later than 15 calendar days before the year-ahead filings and monthly Supply Plans are due for the Seller:
1. Customer class (or percent of mix): Residential, Non-residential
 2. Nature of load being aggregated: such as, whole house, Air Conditioning load, storage, building load, pumps, Electric Vehicles, or other (describe)
 3. Dispatch method: automated via cloud control, or other (describe)
 4. Projected number of Service Accounts
 5. Projected aggregated load (if storage based, projected aggregated capacity)
 6. Projected percentage of load impact or reduction (if storage based, projected percentage of capacity delivered)
 7. Supporting historical performance data for A.6 (from a prior test or market dispatch for a demand response resource with similar characteristics as A.1, A.2, and A.3). Where historical data is not available, the Provider should reference suitable publicly available performance data that best represents the anticipated performance of the resource. Along with the supporting performance data, the following details for the resource associated with the supporting performance data should be provided to establish similar characteristics:
 - a. Customer class (or percentage mix): Residential, Non-residential
 - b. Nature of load being aggregated: such as, whole house, Air Conditioning load, storage, building load, pumps, Electric Vehicles, or other (describe)
 - c. Dispatch method: automated via cloud control, or other (describe)
 - d. Number of Service Accounts
 - e. Aggregated load (if storage based, aggregated capacity)
 - f. Percentage of load impact or reduction delivered (if storage based, percentage of capacity delivered.)
 8. Estimated Qualifying Capacity = A.5 x A.6
- B. Qualifying Capacity estimates should be provided for the resource adequacy measurement hours and are expected to align with the CAISO Availability Assessment Hours.
- C. The same baseline must be used for estimation of Qualifying Capacity at different stages of the contract.
- D. To the extent the projected percentage load impact for capacity delivered in A.6 deviates from the supporting data in A.7, the Provider should provide supplemental information to explain the reasonableness of the resulting “Estimated Qualifying Capacity” provided in A.8.

EXHIBIT F (Cont'd)

- E. To the extent the contract/ resource consists of heterogenous combination of load types (in terms of A.1 through A.3 characteristics), the Provider could subdivide the contract/resource and provide the above information for each component and apply a weighted average to estimate Qualifying Capacity in A.8.
- F. For auction bid submissions and the year-ahead resource adequacy filing, it is sufficient to provide the above information for the month with the highest megawatts. For monthly resource adequacy Supply Plan submissions, the above information should correspond to the actual delivery month.
- G. At the auction bid submissions and the year-ahead resource adequacy filing, it is sufficient to provide the above information at the contract level. For monthly resource adequacy Supply Plan submissions, the above information must be provided at the resource level.

LONG FORM CONFIRMATION
FOR RESOURCE ADEQUACY CAPACITY PRODUCT

Resource Adequacy Contract Number: _____

This confirmation letter ("Confirmation") confirms the transaction (the "Transaction") between _____ ("Seller") and San Diego Gas & Electric Company ("Buyer"), each individually a "Party" and together the "Parties", dated as of October __, 2019 (the "Confirmation Execution Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Section 3 of this Confirmation. This Transaction shall be deemed to have been entered into pursuant to, and shall supplement, form a part of, and be governed by the terms and conditions of the form of Master Power Purchase and Sale Agreement published by the Edison Electric Institute and the National Energy Marketers Association (version 2.1 dated 4/25/00) (the "EEI Agreement") with a Cover Sheet containing the elections and other changes contained herein as if the Parties have executed the EEI Agreement (with such Cover Sheet the "Master Agreement"). The Parties agree that the only transactions to be concluded pursuant to such Master Agreement shall be the Transaction documented in this Confirmation. The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein). To the extent that this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

Name: Party A / Buyer

All Notices:

< company name >

< street address >

< city/state/zip >

Attn: _____

Telephone: (____) ____ - ____

Facsimile: (____) ____ - ____

Duns: _____

Federal Tax ID Number: _____

Name: Party B / Seller

All Notices:

San Diego Gas & Electric Company

8315 Century Park Court CP 21D

San Diego CA 92123-1593

Attn: Contract Administration

Telephone: (858) 650-6176

Facsimile: (858) 650-6190

Duns: 006911457

Federal Tax ID Number: 95-1184800

Invoices:

< company name >

< street address >

< city/state/zip >

Attn: _____

Telephone: (____) ____ - ____

Facsimile: (____) ____ - ____

Invoices:

San Diego Gas & Electric Company

8315 Century Park Court

San Diego CA 92123-1593

Attn: Energy Accounting Manager

Telephone: (858) 650-6177

Facsimile: (858) 650-6190

Scheduling:

< company name >
< street address >
< city/state/zip >
Attn: _____
Day Ahead: (____) ____ - ____
Real Time: (____) ____ - ____
Facsimile: (____) ____ - ____

Payments:

< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: (____) ____ - ____
Facsimile: (____) ____ - ____

Wire Transfer:

< bank name >
< bank street address >
< bank city/state/zip >
ABA Routing Number: _____
Payee: _____
Account Number: _____
Confirmation: _____
Facsimile: (____) ____ - ____

Credit and Collections:

< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: (____) ____ - ____
Facsimile: (____) ____ - ____

With additional Notices of an Event of Default or Potential Event of Default to:

< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: (____) ____ - ____
Facsimile: (____) ____ - ____

Scheduling:

San Diego Gas & Electric Company
8315 Century Park Court, CP 21D
San Diego, CA 92123-1593
Attn: Transaction Scheduling Manager
Day Ahead: (858) 650-6168
Real Time: (858) 650-6160
Facsimile: (858) 650-6191

Payments:

San Diego Gas & Electric Company
8315 Century Park Court
San Diego CA 92123-1593
Attn: Energy Accounting Manager
Telephone: (858) 650-6177
Facsimile: (858) 650-6190

Wire Transfer:

Union Bank of California
445 South Figueroa Street
Los Angeles CA 90071
ABA Routing Number: 122000496
Payee: San Diego Gas & Electric Company
Account Number: 4430000352
Confirmation: SDG&E – Major Markets
Facsimile: (213) 244-8316

Credit and Collections:

San Diego Gas & Electric Company
555 West Fifth Street, ML 18A3
Los Angeles, CA 90013-1011
Attn: Major Markets – Credit and
Collections Manager
Telephone: (213) 244-4343
Facsimile: (213) 244-8316

With additional Notices of an Event of Default or Potential Event of Default to:

San Diego Gas & Electric Company
8330 Century Park Ct.
San Diego, California 92123
Attn: General Counsel
Telephone: (858) 650-6141
Facsimile: (858) 650-6106

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

Article TwoTransaction Terms
and Conditions

- Optional provision in Section 2.4.
If not checked, inapplicable.

Article FourRemedies for Failure
to Deliver or Receive

- Accelerated Payment of Damages.
If not checked, inapplicable.

Article Five

Events of Default; Remedies

- Cross Default for Party A:
 Party A: _____ Cross Default Amount: _____
 Other Entity: _____ Cross Default Amount: _____
- Cross Default for Party B:
 Party B: N/A Cross Default Amount: N/A
 Other Entity: N/A Cross Default Amount: N/A

5.6 Closeout Setoff

- Option A (Applicable if no other selection is made.)
 Option B – Affiliates shall have the meaning set forth in
the Agreement unless otherwise specified as follows:

 Option C (No Setoff)

Article 8Credit and
Collateral Requirements**8.1 Party A Credit Protection:**

- (a) Financial Information:
 Option A
 Option B Specify: _____
 Option C Specify: _____
- (b) Credit Assurances:
 Not Applicable
 Applicable
- (c) Collateral Threshold:
 Not Applicable
 Applicable
- (d) Downgrade Event:
 Not Applicable
 Applicable
- (e) Guarantor for Party B: None.
Guarantee Amount: N/A

**8.2 Party B Credit Protection: [SDG&E CREDIT
DEPARTMENT TO EVALUATE BASED ON
COUNTERPARTY]**

- (a) Financial Information:
 Option A
 Option B Specify: _____
 Option C Specify: _____
- (b) Credit Assurances:
 Not Applicable
 Applicable
- (c) Collateral Threshold:
 Not Applicable
 Applicable
 If applicable, complete the following:
 Party A Collateral Threshold: \$ _____;
 provided, however, that Party A's Collateral
 Threshold shall be zero if an Event of Default or
 Potential Event of Default with respect to Party A
 has occurred and is continuing.
 Party A Independent Amount: \$ _____
 Party A Rounding Amount: \$ _____
- (d) Downgrade Event:
 Not Applicable
 Applicable
 If applicable, complete the following:
 It shall be a Downgrade Event for Party A if
 Party A 's Credit Rating falls below _____
 from S&P or _____ from Moody's or if Party A
 is not rated by either S&P or Moody's
 Other:
 Specify: _____
- (e) Guarantor for Party A: None
 Guarantee Amount: N/A

Article 10

Confidentiality

 Confidentiality Applicable If not checked, inapplicable.**Schedule M**

- Party A is a Governmental Entity or Public Power System
 Party B is a Governmental Entity or Public Power System
 Add Section 3.6. If not checked, inapplicable
 Add Section 8.4. If not checked, inapplicable

Other Changes

1. The modifications to Section 1.12, 1.50 and 5.2 of the Master Agreement specified in that certain Errata published by the Edison Electric Institute (version 1.1, July 18, 2007) are hereby incorporated herein as if set forth in full.

2. Section 10.2(ii) of the Master Agreement shall be modified by inserting “Except for the approval by the CPUC as stated in Section 2.2 of this Confirmation,” at the beginning of the first sentence in such section.
 3. Section 10.6 of the Master Agreement shall be deleted in its entirety and replaced with the following:

“THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.”
 4. Schedule P: Products and Related Definitions shall be deleted in its entirety.
-

1. Definitions

- 1.1 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.2 “Availability Incentive Payments” has the meaning set forth in the Tariff [and includes any similarly defined payments under the Tariff in respect of Flexible RA Attributes] ***[Comment: Include bracketed language if the Product includes flexible capacity].***
- 1.3 “Availability Standards” has the meaning set forth in the Tariff [and includes any similarly defined standards under the Tariff in respect of Flexible RA Attributes] ***[Comment: Include bracketed language if the Product includes flexible capacity].***
- 1.4 “Buyer” has the meaning specified in the introductory paragraph.
- 1.5 “CAISO” means the California Independent System Operator Corporation, or any successor entity performing the same functions.
- 1.6 “Capacity Attributes” means (a) the Local RA Attributes, (b) the RA Attributes, (c) the Flexible RA Attributes, and (d) any other current or future defined characteristics (including the ability to generate at a given capacity level, provide ancillary services, ramp up or down at a given rate, and flexibility or dispatch-ability attributes), certificates, tags, credits, howsoever entitled, including any accounting construct applied to any Compliance Obligations.
- 1.7 “Capacity Price” means the price specified in the Capacity Price Table in Section 4.1.

- 1.8 “Capacity Replacement Price” means (a) the actual rate per kW-day paid for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) including any penalties, fines, transaction costs and expenses reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of Replacement Capacity, any penalties, fines, transaction costs and expenses plus the per kW-day market price for the Product not delivered by Seller under this Confirmation. Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 1.51 of the Master Agreement, “Capacity Replacement Price” shall be deemed the “Replacement Price” for this Transaction.
- 1.9 “Compliance Obligations” means the RAR, Local RAR, Flexible RAR, and other resource adequacy requirements associated with a generating unit’s Capacity Attributes established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
- 1.10 “Compliance Showing” means one or more of the following: (a) Local RAR Showing, (b) RAR Showing, (c) Flexible RAR Showing, or (d) other Capacity Attributes compliance or advisory filing (or similar or successor showing or filing), in each case, that an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.11 “Confirmation” has the meaning specified in the introductory paragraph.
- 1.12 “Confirmation Effective Date” has the meaning specified in Section 2.2.
- 1.13 “Confirmation Execution Date” has the meaning specified in the introductory paragraph.
- 1.14 “Contract Price” means, for any day in any Monthly Delivery Period, the Capacity Price for such period.
- 1.15 “Contract Quantity” means the quantity of Product (in MW) as set forth in Section 3.5.
- 1.16 “Contract Term” has the meaning set forth in Section 2.1.
- 1.17 “CPUC” means the California Public Utilities Commission.
- 1.18 “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-25, and any other existing or subsequent decisions, resolutions or rulings related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.19 “CPUC Filing Guide” is the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSEs to demonstrate compliance with the CPUC’s resource adequacy program as provided in the CPUC Decisions.
- 1.20 “Credit Rating” means, with respect to any entity, the rating assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Master Agreement, or if such entity does not have a rating for its

senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Moody's or any other rating agency agreed by the Parties as set forth in the Master Agreement.

- 1.21 "Delivery Period" has the meaning specified in Section 3.4.
- 1.22 "Emission Reduction Credits" or "ERC(s)" means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby such district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.
- 1.23 "Environmental Costs" means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product's compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits (including any costs related to greenhouse gas emissions) required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the site, and the decontamination or remediation, on or off the site, necessitated by the introduction of such hazardous substances on the site.
- 1.24 "Flexible RA Attributes" means, with respect to a Unit, any and all flexible resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and Local RA Attributes.
- 1.25 "Flexible RAR" means the flexible capacity requirements, including, without limitation, maximum continuous ramping, load following, and regulation, established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Flexible RAR may also be known as ramping, maximum ramping, maximum continuous ramping, maximum continuous ramping capacity, maximum continuous ramping ramp rate, load following, load following capacity, load following ramp rate, regulation, regulation capacity, regulation ramp rate.
- 1.26 "Flexible RAR Showing" means the Flexible RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.27 "GADS" means the Generating Availability Data System, or its successor.
- 1.28 "Governmental Body" means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative,

executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

- 1.29 “Local Capacity Area” has the meaning set forth in the Tariff.
- 1.30 “Local RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes or other locational attributes for the Unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward a Local RAR, but exclusive of any RA Attributes and Flexible RA Attributes.
- 1.31 “Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.32 “Local RAR Showing” means the Local RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.33 “LSE” means load-serving entity.
- 1.34 “Marketable Emission Trading Credits” means without limitation, emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (see 42 U.S.C. § 7651b.(a) to (f)).
- 1.35 “Master Agreement” has the meaning specified in the introductory paragraph.
- 1.36 “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.37 “Monthly Payment” has the meaning specified in Section 4.1.
- 1.38 “Moody’s” means Moody’s Investors Services, Inc. or its successor.
- 1.39 “NERC” means the North American Electric Reliability Corporation, or its successor.
- 1.40 “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.
- 1.41 “Net Qualifying Capacity” has the meaning set forth in the Tariff.
- 1.42 “Non-Availability Charges” has the meaning set forth in the Tariff [and includes any similarly defined charges under the Tariff in respect of Flexible RA Attributes]

[Comment: Include bracketed language if the Product includes flexible capacity].

- 1.43 “Non-Specified RA Replacement Capacity” has the meaning set forth in the Tariff [and includes any similarly defined capacity under the Tariff in respect of Flexible RA Attributes] ***[Comment: Include bracketed language if the Product includes flexible capacity].***
- 1.44 “Outage” means any disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 1.45 “Outage Schedule” has the meaning specified in Section 3.8.
- 1.46 “Planned Outage” shall have the meaning in CPUC Decisions, and includes a planned, scheduled, or any other Outage approved by the CAISO for the routine repair or maintenance of the Unit, or for the purposes of new construction work, and does not include any Outage designated as either forced or unplanned as defined by the CAISO or NERC/GADS Protocols.
- 1.47 “Product” has the meaning specified in Section 3.1.
- 1.48 “Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix A, of the Unit NQC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.
- 1.49 “Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix A, of the Unit EFC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.
- 1.50 “RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any Local RA Attributes and Flexible RA Attributes.
- 1.51 “RA Substitute Capacity” means capacity that the CAISO permits under the CAISO Tariff to be substituted for a Resource Adequacy Resource that is on Outage.
- 1.52 “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
- 1.53 “RAR Showing” means the RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.54 “Replacement Capacity” means capacity which has equivalent Capacity Attributes as the portion of the Product not provided by the Units committed to Buyer as of the Confirmation Execution Date.

- 1.55 “Replacement Rules” has the meaning set forth in Section 3.9(b).
- 1.56 “Replacement Unit” means a generating unit providing Replacement Capacity.
- 1.57 “Resource Category” shall be as described in the CPUC Filing Guide.
- 1.58 “RMR Contract” has the meaning set forth in the Tariff.
- 1.59 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc. or its successor).
- 1.60 “Scheduling Coordinator” or “SC” has the meaning set forth in the Tariff.
- 1.61 “Seller” has the meaning specified in the introductory paragraph.
- 1.62 “Showing Month” shall be the calendar month that is the subject of the Compliance Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Execution Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.63 “Substitution Rules” has the meaning set forth in Section 3.9(b).
- 1.64 “Supply Plan” has the meaning set forth in the Tariff [and includes any similarly defined plan under the Tariff in respect of Flexible RA Attributes] ***[Comment: Include bracketed language if the Product includes flexible capacity].***
- 1.65 “Tariff” means the tariff and protocol provisions, including any applicable CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended or supplemented from time to time, of the CAISO.
- 1.66 “Transaction” has the meaning specified in the introductory paragraph.
- 1.67 “Unit” or “Units” shall mean the generation assets described in Appendix A (including any Replacement Units), from which Product is provided by Seller to Buyer.
- 1.68 “Unit Contract Quantity” means the amount of Product (in MW) to be delivered by Seller to Buyer by each individual Unit, as specified in Appendix A as of the Confirmation Execution Date.
- 1.69 “Unit EFC” means the effective flexible capacity or capacity that is qualified to provide Flexible RA Attributes established by the CAISO for the applicable Unit.
- 1.70 “Unit NQC” means the Net Qualifying Capacity established by the CAISO for the applicable Unit.
- 1.71 “Unit Delivered Quantity” means the amount of applicable Product (in MW) actually “delivered” by Seller to Buyer by each individual Unit. As used herein, “delivered” shall mean shown in the Supply Plan and, for purposes of Section 4.1, shall include any RA Substitute Capacity under Section 3.9, and in all cases, shall not include (i) any portion of Contract Capacity for which Buyer is required under the Compliance Obligations or the Tariff to procure Replacement Capacity, and (ii) any portion of

Contract Capacity for which Seller is required hereunder, but fails, to provide Replacement Capacity to Buyer.

2. Term

2.1 Contract Term

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

2.2 Conditions Precedent; Binding Nature

This Agreement shall not be effective or binding on either Party until, and it shall become effective and binding on both Parties as of, the date on which the conditions precedent, if any, described below shall have been achieved (or waived in writing by each of the Parties in their sole discretion) (the “Confirmation Effective Date”).

(a) None.

If any of the foregoing conditions precedent are not achieved (or waived in writing by each of the Parties) on or before the deadline dates therefor (without extension for Force Majeure or any other reason), then this Agreement shall automatically terminate. If there are no conditions precedent listed above in this Section 2.2 then the Confirmation Effective Date shall be the Confirmation Execution Date. This Agreement shall be effective and binding as of the Confirmation Effective Date.

3. Early Termination

4. Transaction

4.1 Product

(a) Seller shall sell and Buyer shall receive and purchase, the Capacity Attributes (including all Local RA Attributes [but excluding Flexible RA Attributes (if any)][and Flexible RA Attributes] ***[Comment: Second bracketed language to be used if the Product includes flexible capacity]***) of the Units identified in Appendix A (collectively, the “Product”) and Seller shall deliver the Product as described in Section 3.2 below. Product does not include any right to dispatch or receive the energy or ancillary services from the Unit. Seller retains the right to sell any Product from a Unit in excess of its Unit Contract Quantity.

(b) The Parties agree that (i) the Contract Price for the Product shall not change if the CAISO, CPUC or other Governmental Body (A) defines new or re-defines existing Local Capacity Areas which decreases or increases the amount of Local RA Attributes provided hereunder, or (B) defines new or re-defines existing Local Capacity Areas whereby the Units qualify for a Local Capacity Area and (ii) if the event in Section 3.1(b)(i)(B) occurs then the Product shall include such Local RA Attributes.

- (c) [The Parties agree that (i) the Contract Price for the Product shall not change if the CAISO, CPUC or other Governmental Body defines new or re-defines existing Flexible RAR, Capacity Attributes related to Flexible RAR, or attributes of the Unit related to Flexible RAR, that results in a decrease or increase in the amount of Capacity Attributes related to Flexible RAR provided hereunder, and (ii) if the event in Section 3.1(c)(i) occurs then the Product shall include such Capacity Attributes related to Flexible RAR.]
[Comment: This Section 3.1(c) to be used if the Product includes flexible capacity.]

4.2 Firm Quantity

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

4.3 Reserved.

4.4 Delivery Period

The "Delivery Period" shall be _____ thru _____, inclusive, unless terminated earlier in accordance with the terms of this Agreement.

4.5 Contract Quantity:

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

CONTRACT QUANTITY TABLE

Unit Name	CAISO Resource ID*	Month(s)	Unit Contract Quantity (MW)	
			Capacity Attributes (excluding Flexible RA Attributes)	Flexible RA Attributes
HL Power Company, LP	LASSEN_6_UNITS	[TBD]	[TBD]	[TBD]

* CAISO Resource ID should match a Unit described in Appendix A

4.6 Delivery of Product

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

- (a) Seller shall, on a timely basis, submit, or cause each Unit's SC to submit, Supply Plans to identify and confirm the Unit Delivered Quantity for each Unit provided to Buyer so that the total amount of Unit Delivered Quantity identified and confirmed equals the Unit Contract Quantity for each Unit, unless specifically notified or requested not to do so by the Buyer pursuant to Section 3.9, and;
- (b) Seller shall cause each Unit's SC to submit written notification to Buyer, no later than fifteen (15) Business Days before the relevant deadline for any applicable Compliance Showing, that Buyer will be credited with Unit Delivered Quantity for the applicable portion of the Delivery Period in the Unit's SC Supply Plan so that the total amount of Unit Delivered Quantity for each Unit credited equals the Unit Contract Quantity.

4.7 CAISO/CPUC Offer Requirements

Subject to Buyer's request under Section 3.9(a), Seller shall, or cause the Unit's SC to, bid and/or schedule with, or make available to, the CAISO the Unit Contract Quantity for each Unit in compliance with the Tariff and the CPUC Filing Guide, including any must offer obligation under the Tariff or the CPUC Filing Guide, and shall, or cause the Unit's SC, owner, or operator, as applicable, to perform all obligations under the Tariff and the CPUC Filing Guide that are associated with the sale and delivery of Product hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's SC, owner, or operator to comply with such Tariff and CPUC Filing Guide provisions, including any penalties, charges or fines imposed on Seller or the Unit's SC, owner, or operator for such noncompliance.

4.8 Reserved

4.9 Unit Substitution; RA Replacement Capacity

- (a) RA Replacement Capacity: No later than five (5) Business Days before the relevant deadline for each applicable Compliance Showing, Buyer may (i) request, subject to Seller's reasonable approval, that Seller not, or cause each Unit's SC not to, list a portion or all of a Unit's applicable Unit Contract Quantity on the Supply Plan or (ii) notify Seller that a portion or all of the Unit Contract Quantity of a Unit will be included in an applicable Compliance Showing as RA Substitute Capacity. The amount of Unit Contract Quantity that is the subject of such a request or notice shall be known as "RA Substitute Capacity" and, for purposes of calculating a Monthly Payment pursuant to Section 4.1, to the extent provided, such RA Substitute Capacity shall be deemed Unit Delivered Quantity provided consistent with Section 3.6.
- (b) Seller's Obligations With Respect to RA Substitute Capacity: If Buyer requests RA Substitute Capacity, Seller shall (i) make such RA Substitute Capacity available to Buyer during the applicable Showing Month to allow Buyer to utilize, as applicable, the substitution rules in Sections 9.3.1.3.1, 9.3.1.3.2 and 40.9.4.2.1 of the Tariff [including any similarly defined substitution rules under the Tariff in respect of Flexible RA Attributes] ***[Comment: Include bracketed language if the Product includes flexible***

capacity] (“Substitution Rules”) and (ii) take, or cause each Unit’s SC to take, all action to allow Buyer to utilize, as applicable, the Substitution Rules, including, but not limited to, ensuring that the RA Substitute Capacity will qualify, as applicable, for substitution under the Substitution Rules, and providing Buyer with all information needed to utilize the Substitution Rules.

- (c) Seller agrees that all RA Substitute Capacity utilized by Buyer under the Substitution Rules, as applicable, is subject to the requirements identified in Section 3.7.
- (d) Failure to Provide RA Substitute Capacity: If Seller fails to provide RA Substitute Capacity or Buyer is unable to utilize the RA Substitute Capacity under the Substitution Rules due to Seller’s failure to fulfill its obligations under Section 3.9(b)(ii), then Seller shall reimburse Buyer for any and all Non-Availability Charges incurred by Buyer and shall pay Buyer the CPM revenue the CASIO would have paid the Buyer but for Seller failure, due to such failure or inability to utilize the Substitution Rules; provided, that if Buyer is unable to utilize the Substitution Rules because the RA Substitute Capacity does not qualify for substitution under Section 9.3.1.3.1, 9.3.1.3.2, 40.9.4.2.1(1)(i) or (ii) of the Tariff, then Seller shall not be responsible for any such Non-Availability Charges described in this Section 3.9(d) associated with such inability.

4.10 Buyer’s Re-Sale of Product

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

5. Payment

5.1 Monthly Payment

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

$$\text{Monthly Payment} = \sum_{n=1}^d (A_n * B_n * 1000)$$

where:

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

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

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

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

CAPACITY PRICE TABLE

Contract Month	Capacity Price (\$/kW-day) 2019	Capacity Price (\$/kW-day) 2020	Capacity Price (\$/kW-day) 2021	Capacity Price (\$/kW-day) 2022	Capacity Price (\$/kW-day) 2023	Capacity Price (\$/kW-day) 2024
January						
February						
March						
April						
May						
June						
July						
August						
September						
October						
November						
December						

5.2 Reserved.

5.3 Allocation of Other Payments and Costs

- (a) Seller shall retain any revenues it may receive from and pay all costs charged by, the CAISO or any other third party with respect to any Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, and (iv) any revenues for black start or reactive power services. Seller shall indemnify, defend and hold Buyer harmless from and against all liabilities, damages, claims, losses, costs or expenses (including, without limitation, attorneys' fees) incurred by or brought against Buyer in connection with Environmental Costs.
- (b) Buyer shall be entitled to receive and retain all revenues associated with the Contract Quantity during the Delivery Period including any capacity or availability revenues from RMR Contracts for any Unit, Capacity Procurement Mechanism (CPM) or its successor, and Residual Unit Commitment (RUC) Availability Payments, or its successor but excluding payments described in Section 4.3(a)(i)-(iv).

- (c) In accordance with Section 4.1 of this Confirmation and Article Six of the Master Agreement, all such Buyer revenues described in Section 4.3(b), but received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. In order to verify the accuracy of such revenues, Buyer shall have the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity.
- (d) If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit the Contract Quantity for re-sale in such market, and retain and receive any and all related revenues.
- (e) Subject to the Unit being made available to the CAISO in accordance with Article 3 of this Confirmation, Seller agrees that the Unit is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments under the Tariff. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of Seller and for Seller's account and that any Non-Availability Charges are the responsibility of Seller and for Seller's account.

5.4 Offset Rights

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

6. Seller's Failure to Deliver Contract Quantity

6.1 Seller's Duty to Provide Replacement Capacity

Planned Outage replacement shall be addressed by the Tariff. For all other replacements, if Seller is unable to provide the Contract Quantity from any Unit(s) for any day in any Monthly Delivery Period and Replacement Capacity is required under Section 3.2, then:

- (a) Seller shall notify Buyer of the non-availability of any portion of the Contract Quantity from any Unit(s) and identify Replacement Unit(s), and
- (b) Seller shall, at no additional cost to Buyer, provide Buyer with Replacement Capacity from one or more Replacement Units, such that the total amount of Product provided to Buyer from all Units and Replacement Units equals Contract Quantity.

provided that the designation of any Replacement Unit by Seller shall be subject to Buyer's prior written approval, which shall not be unreasonably withheld. Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 5.1, and Buyer has approved the designation of the Replacement Unit, then any such Replacement Unit shall be deemed a Unit for purposes of this

Confirmation for that day in such Monthly Delivery Period. Notwithstanding anything to the contrary in this Confirmation, Seller's failure to properly provide Replacement Capacity, including Seller's obligation to identify Replacement Units within the notice deadlines specified in this Section 5.1, may result in the calculation of damages payable to Buyer and/or the indemnification of Buyer against any penalties, fines or costs under Section 5 and Section 10.

6.2 Damages for Failure to Provide Replacement Capacity

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

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

6.3 Indemnities for Failure to Deliver Contract Capacity

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

- (a) Seller's failure to provide any portion of the Contract Capacity or any portion of the Replacement Capacity;
- (b) Seller's failure to provide timely notice of the non-availability of any portion of the Contract Capacity;

- (c) A Unit's SC's failure to timely submit Supply Plans that identify Buyer's right to the Unit Contract Quantity purchased hereunder, or;
- (d) any other failure by Seller to perform its obligations under this Confirmation.

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

7. Other Buyer and Seller Covenants

7.1 Seller's and Buyer's Duty to Take Action to Allow the Utilization of the Product

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

7.2 Seller's Represents, Warrants and Covenants

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

- (a) Seller owns or has the exclusive right to the Product sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;
- (c) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
- (d) Seller shall, and each Unit's SC, owner and operator is obligated to, comply with Applicable Laws, including the Tariff, relating to the Product;
- (e) If Seller is the owner of any Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for any Unit does not exceed the Unit NQC or Unit EFC, as applicable, for that Unit;

- (f) Seller has notified the SC of each Unit that Seller has transferred the Unit Contract Quantity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff fully reflecting such transfer;
- (g) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to Buyer, at least fifteen (15) Business Days before the relevant deadline for each Compliance Showing, the Unit Contract Quantity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period;
- (h) Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.3, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues;
- (i) In the event Seller has rights to the energy output of any Unit, and Seller or the Unit's SC schedules energy from the Unit for export from the CAISO Control Area, or commits energy to another entity in a manner that could result in scheduling energy from the Unit for export from the CAISO Control Area, it shall do so only as allowed by, and in accordance with, Applicable Laws and such exports may, if allowed by the Tariff, be curtailed by the CAISO, and;
- (j) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities.

8. Confidentiality

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

9. Counterparts

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Delivery of an executed counterpart of this Agreement by fax will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by facsimile will also deliver an originally executed counterpart, but the

failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

10. Collateral Requirements [NOTE to respondents: Amount to be determined by SDG&E credit department]

On or before the Confirmation Execution Date, to secure its obligations under this Confirmation, Seller agrees to deliver a Letter of Credit or cash in the amount of _____ to Buyer and maintain such security in full force and effect until it is required to be returned in accordance with this Section 9. The security posted under this Section 9 shall not be deemed a limitation of Seller's damages. Buyer shall return to Seller any unused portion of this security after the following have occurred: (i) the Delivery Period has expired or terminated early; and (ii) all payment obligations of the Seller arising under this Confirmation, including compensation for penalties, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

11. Declaration of an Early Termination Date and Calculation of Settlement Amounts

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

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

[Signature page follows]

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

_____ SAN DIEGO GAS & ELECTRIC COMPANY
a _____ a California corporation

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

APPROVED as to legal form _____

APPENDIX A**Unit Information**

Unit Resource Name	
CAISO Resource ID	
Unit SCID	
2016 Unit NQC (MW)	
Prorated Percentage of Unit Factor	
2016 Unit EFC (MW)	<i>[Comment: If the Product does not include flexible capacity, insert "Not Applicable"]</i>
Prorated Percentage of Unit Flexible Factor	
Resource Type	
Resource Category (MMC Bucket 1, 2, 3 or 4)	
Path 26 (North or South)	
Local Capacity Area (if any, as of Confirmation Execution Date)	
Unit Contract Quantity (MW) for Capacity Attributes (excluding Flexible RA Attributes)	
Unit Contract Quantity (MW) for Flexible RA Attributes	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	

LONG FORM CONFIRMATION
FOR RESOURCE ADEQUACY CAPACITY PRODUCT
 Resource Adequacy Contract Number: _____

This confirmation letter ("Confirmation") confirms the transaction (the "Transaction") between _____ ("Seller") and San Diego Gas & Electric Company ("Buyer"), each individually a "Party" and together the "Parties", dated as of October __, 2015 (the "Confirmation Execution Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Section 3 of this Confirmation. This Transaction shall be deemed to have been entered into pursuant to, and shall supplement, form a part of, and be governed by the terms and conditions of the form of Master Power Purchase and Sale Agreement published by the Edison Electric Institute and the National Energy Marketers Association (version 2.1 dated 4/25/00) (the "EEI Agreement") with a Cover Sheet containing the elections and other changes contained herein as if the Parties have executed the EEI Agreement (with such Cover Sheet the "Master Agreement"). The Parties agree that the only transactions to be concluded pursuant to such Master Agreement shall be the Transaction documented in this Confirmation. The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein). To the extent that this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

Name: Party A / Seller

Name: Party B / Buyer

All Notices:

< company name >

< street address >

< city/state/zip >

Attn: _____

Telephone: (____) ____ - ____

Facsimile: (____) ____ - ____

Duns: _____

Federal Tax ID Number: _____

All Notices:

San Diego Gas & Electric Company

8315 Century Park Court CP 21D

San Diego CA 92123-1593

Attn: Contract Administration

Telephone: (858) 650-6176

Facsimile: (858) 650-6190

Duns: 006911457

Federal Tax ID Number: 95-1184800

Invoices:

< company name >

< street address >

< city/state/zip >

Attn: _____

Telephone: (____) ____ - ____

Facsimile: (____) ____ - ____

Invoices:

San Diego Gas & Electric Company

8315 Century Park Court

San Diego CA 92123-1593

Attn: Energy Accounting Manager

Telephone: (858) 650-6177

Facsimile: (858) 650-6190

Scheduling:

< company name >
< street address >
< city/state/zip >
Attn: _____
Day Ahead: (____) ____ - ____
Real Time: (____) ____ - ____
Facsimile: (____) ____ - ____

Payments:

< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: (____) ____ - ____
Facsimile: (____) ____ - ____

Wire Transfer:

< bank name >
< bank street address >
< bank city/state/zip >
ABA Routing Number: _____
Payee: _____
Account Number: _____
Confirmation: _____
Facsimile: (____) ____ - ____

Credit and Collections:

< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: (____) ____ - ____
Facsimile: (____) ____ - ____

With additional Notices of an Event of Default or Potential Event of Default to:

< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: (____) ____ - ____
Facsimile: (____) ____ - ____

Scheduling:

San Diego Gas & Electric Company
8315 Century Park Court, CP 21D
San Diego, CA 92123-1593
Attn: Transaction Scheduling Manager
Day Ahead: (858) 650-6168
Real Time: (858) 650-6160
Facsimile: (858) 650-6191

Payments:

San Diego Gas & Electric Company
8315 Century Park Court
San Diego CA 92123-1593
Attn: Energy Accounting Manager
Telephone: (858) 650-6177
Facsimile: (858) 650-6190

Wire Transfer:

Union Bank of California
445 South Figueroa Street
Los Angeles CA 90071
ABA Routing Number: 122000496
Payee: San Diego Gas & Electric Company
Account Number: 4430000352
Confirmation: SDG&E – Major Markets
Facsimile: (213) 244-8316

Credit and Collections:

San Diego Gas & Electric Company
555 West Fifth Street, ML 18A3
Los Angeles, CA 90013-1011
Attn: Major Markets – Credit and
Collections Manager
Telephone: (213) 244-4343
Facsimile: (213) 244-8316

With additional Notices of an Event of Default or Potential Event of Default to:

San Diego Gas & Electric Company
8330 Century Park Ct.
San Diego, California 92123
Attn: General Counsel
Telephone: (858) 650-6141
Facsimile: (858) 650-6106

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

Article Two

Transaction Terms and Conditions

- Optional provision in Section 2.4. If not checked, inapplicable.

Article Four

Remedies for Failure to Deliver or Receive

- Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default; Remedies

- Cross Default for Party A:
- Party A: _____ Cross Default Amount: _____
- Other Entity: _____ Cross Default Amount: _____

- Cross Default for Party B:
- Party B: N/A Cross Default Amount: N/A
- Other Entity: N/A Cross Default Amount: N/A

5.6 Closeout Setoff

- Option A (Applicable if no other selection is made.)
- Option B – Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows:

- Option C (No Setoff)

Article 8

Credit and Collateral Requirements

8.1 Party A Credit Protection:

- (a) Financial Information:
 - Option A
 - Option B Specify: _____
 - Option C Specify: _____
- (b) Credit Assurances:
 - Not Applicable
 - Applicable
- (c) Collateral Threshold:
 - Not Applicable
 - Applicable
- (d) Downgrade Event:
 - Not Applicable
 - Applicable
- (e) Guarantor for Party B: None.
Guarantee Amount: N/A

8.2 Party B Credit Protection: _____

- (a) Financial Information:
 Option A
 Option B Specify: _____
 Option C Specify: _____
- (b) Credit Assurances:
 Not Applicable
 Applicable
- (c) Collateral Threshold:
 Not Applicable
 Applicable
 If applicable, complete the following:
 Party A Collateral Threshold: \$ _____;
 provided, however, that Party A's Collateral
 Threshold shall be zero if an Event of Default or
 Potential Event of Default with respect to Party A
 has occurred and is continuing.
 Party A Independent Amount: \$ _____
 Party A Rounding Amount: \$ _____
- (d) Downgrade Event:
 Not Applicable
 Applicable
 If applicable, complete the following:
 It shall be a Downgrade Event for Party A if
 Party A's Credit Rating falls below _____
 from S&P or _____ from Moody's or if Party A
 is not rated by either S&P or Moody's
 Other:
 Specify: _____
- (e) Guarantor for Party A: None
 Guarantee Amount: N/A

Article 10

Confidentiality Confidentiality Applicable If not checked, inapplicable.

Schedule M

- Party A is a Governmental Entity or Public Power System
 Party B is a Governmental Entity or Public Power System
 Add Section 3.6. If not checked, inapplicable
 Add Section 8.4. If not checked, inapplicable

Other Changes

1. The modifications to Section 1.12, 1.50 and 5.2 of the Master Agreement specified in that certain Errata published by the Edison Electric Institute (version 1.1, July 18, 2007) are hereby incorporated herein as if set forth in full.

2. Section 10.2(ii) of the Master Agreement shall be modified by inserting “Except for the approval by the CPUC as stated in Section 2.2 of this Confirmation,” at the beginning of the first sentence in such section.
 3. Section 10.6 of the Master Agreement shall be deleted in its entirety and replaced with the following:

“THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW, EACH PARTY WAIVES ITS RESPECTIVE RIGH TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.”
 4. Schedule P: Products and Related Definitions shall be deleted in its entirety.
-

1. Definitions

- 1.1 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.2 “Availability Incentive Payments” has the meaning set forth in the Tariff [and includes any similarly defined payments under the Tariff in respect of Flexible RA Attributes]. [REDACTED]
- 1.3 “Availability Standards” has the meaning set forth in the Tariff [and includes any similarly defined standards under the Tariff in respect of Flexible RA Attributes] [REDACTED]
- 1.4 “Buyer” has the meaning specified in the introductory paragraph.
- 1.5 “CAISO” means the California Independent System Operator Corporation, or any successor entity performing the same functions.
- 1.6 “Capacity Attributes” means (a) the Local RA Attributes, (b) the RA Attributes, (c) the Flexible RA Attributes, and (d) any other current or future defined characteristics (including the ability to generate at a given capacity level, provide ancillary services, ramp up or down at a given rate, and flexibility or dispatch-ability attributes), certificates, tags, credits, howsoever entitled, including any accounting construct applied to any Compliance Obligations.
- 1.7 “Capacity Price” means the price specified in the Capacity Price Table in Section 4.1.

- 1.8 “Capacity Replacement Price” means (a) the actual rate per kW-day paid for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) including any penalties, fines, transaction costs and expenses reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of Replacement Capacity, any penalties, fines, transaction costs and expenses plus the per kW-day market price for the Product not delivered by Seller under this Confirmation. Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 1.51 of the Master Agreement, “Capacity Replacement Price” shall be deemed the “Replacement Price” for this Transaction.
- 1.9 “Compliance Obligations” means the RAR, Local RAR, Flexible RAR, and other resource adequacy requirements associated with a generating unit’s Capacity Attributes established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
- 1.10 “Compliance Showing” means one or more of the following: (a) Local RAR Showing, (b) RAR Showing, (c) Flexible RAR Showing, or (d) other Capacity Attributes compliance or advisory filing (or similar or successor showing or filing), in each case, that an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.11 “Confirmation” has the meaning specified in the introductory paragraph.
- 1.12 “Confirmation Effective Date” has the meaning specified in Section 2.2.
- 1.13 “Confirmation Execution Date” has the meaning specified in the introductory paragraph.
- 1.14 “Contract Price” means, for any day in any Monthly Delivery Period, the Capacity Price for such period.
- 1.15 “Contract Quantity” means the quantity of Product (in MW) as set forth in Section 3.5.
- 1.16 “Contract Term” has the meaning set forth in Section 2.1.
- 1.17 “CPUC” means the California Public Utilities Commission.
- 1.18 “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-25, and any other existing or subsequent decisions, resolutions or rulings related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.19 “CPUC Filing Guide” is the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSEs to demonstrate compliance with the CPUC’s resource adequacy program as provided in the CPUC Decisions.
- 1.20 “Credit Rating” means, with respect to any entity, the rating assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Master Agreement, or if such entity does not have a rating for its

senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Moody's or any other rating agency agreed by the Parties as set forth in the Master Agreement.

- 1.21 "Delivery Period" has the meaning specified in Section 3.4.
- 1.22 "Emission Reduction Credits" or "ERC(s)" means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby such district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.
- 1.23 "Environmental Costs" means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product's compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits (including any costs related to greenhouse gas emissions) required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the site, and the decontamination or remediation, on or off the site, necessitated by the introduction of such hazardous substances on the site.
- 1.24 "Flexible RA Attributes" means, with respect to a Unit, any and all flexible resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and Local RA Attributes.
- 1.25 "Flexible RAR" means the flexible capacity requirements, including, without limitation, maximum continuous ramping, load following, and regulation, established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Flexible RAR may also be known as ramping, maximum ramping, maximum continuous ramping, maximum continuous ramping capacity, maximum continuous ramping ramp rate, load following, load following capacity, load following ramp rate, regulation, regulation capacity, regulation ramp rate.
- 1.26 "Flexible RAR Showing" means the Flexible RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.27 "GADS" means the Generating Availability Data System, or its successor.
- 1.28 "Governmental Body" means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative,

executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

- 1.29 “Local Capacity Area” has the meaning set forth in the Tariff.
- 1.30 “Local RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes or other locational attributes for the Unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward a Local RAR, but exclusive of any RA Attributes and Flexible RA Attributes.
- 1.31 “Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.32 “Local RAR Showing” means the Local RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.33 “LSE” means load-serving entity.
- 1.34 “Marketable Emission Trading Credits” means without limitation, emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (see 42 U.S.C. § 7651b.(a) to (f)).
- 1.35 “Master Agreement” has the meaning specified in the introductory paragraph.
- 1.36 “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.37 “Monthly Payment” has the meaning specified in Section 4.1.
- 1.38 “Moody’s” means Moody’s Investors Services, Inc. or its successor.
- 1.39 “NERC” means the North American Electric Reliability Corporation, or its successor.
- 1.40 “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.
- 1.41 “Net Qualifying Capacity” has the meaning set forth in the Tariff.

- 1.42 “Non-Availability Charges” has the meaning set forth in the Tariff [and includes any similarly defined charges under the Tariff in respect of Flexible RA Attributes] [REDACTED]
- 1.43 “Non-Specified RA Replacement Capacity” has the meaning set forth in the Tariff [and includes any similarly defined capacity under the Tariff in respect of Flexible RA Attributes] [REDACTED]
- 1.44 “Outage” means any disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 1.45 “Outage Schedule” has the meaning specified in Section 3.8.
- 1.46 “Planned Outage” shall have the meaning in CPUC Decisions, and includes a planned, scheduled, or any other Outage approved by the CAISO for the routine repair or maintenance of the Unit, or for the purposes of new construction work, and does not include any Outage designated as either forced or unplanned as defined by the CAISO or NERC/GADS Protocols.
- 1.47 “Product” has the meaning specified in Section 3.1.
- 1.48 “Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix A, of the Unit NQC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.
- 1.49 “Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix A, of the Unit EFC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.
- 1.50 “RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any Local RA Attributes and Flexible RA Attributes.
- 1.51 “RA Substitute Capacity” means capacity that the CAISO permits under the CAISO Tariff to be substituted for a Resource Adequacy Resource that is on Outage.
- 1.52 “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
- 1.53 “RAR Showing” means the RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.

- 1.54 “Replacement Capacity” means capacity which has equivalent Capacity Attributes as the portion of the Product not provided by the Units committed to Buyer as of the Confirmation Execution Date.
- 1.55 “Replacement Rules” has the meaning set forth in Section 3.9(b).
- 1.56 “Replacement Unit” means a generating unit providing Replacement Capacity.
- 1.57 “Resource Category” shall be as described in the CPUC Filing Guide.
- 1.58 “RMR Contract” has the meaning set forth in the Tariff.
- 1.59 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc. or its successor).
- 1.60 “Scheduling Coordinator” or “SC” has the meaning set forth in the Tariff.
- 1.61 “Seller” has the meaning specified in the introductory paragraph.
- 1.62 “Showing Month” shall be the calendar month that is the subject of the Compliance Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Execution Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.63 “Substitution Rules” has the meaning set forth in Section 3.9(b).
- 1.64 “Supply Plan” has the meaning set forth in the Tariff [and includes any similarly defined plan under the Tariff in respect of Flexible RA Attributes].
- 1.65 “Tariff” means the tariff and protocol provisions, including any applicable CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended or supplemented from time to time, of the CAISO.
- 1.66 “Transaction” has the meaning specified in the introductory paragraph.
- 1.67 “Unit” or “Units” shall mean the generation assets described in Appendix A (including any Replacement Units), from which Product is provided by Seller to Buyer.
- 1.68 “Unit Contract Quantity” means the amount of Product (in MW) to be delivered by Seller to Buyer by each individual Unit, as specified in Appendix A as of the Confirmation Execution Date.
- 1.69 “Unit EFC” means the effective flexible capacity or capacity that is qualified to provide Flexible RA Attributes established by the CAISO for the applicable Unit.
- 1.70 “Unit NQC” means the Net Qualifying Capacity established by the CAISO for the applicable Unit.
- 1.71 “Unit Delivered Quantity” means the amount of applicable Product (in MW) actually “delivered” by Seller to Buyer by each individual Unit. As used herein, “delivered” shall mean shown in the Supply Plan and, for purposes of Section 4.1, shall include

any RA Substitute Capacity under Section 3.9, and in all cases, shall not include (i) any portion of Contract Capacity for which Buyer is required under the Compliance Obligations or the Tariff to procure Replacement Capacity, and (ii) any portion of Contract Capacity for which Seller is required hereunder, but fails, to provide Replacement Capacity to Buyer.

2. Term

2.1 Contract Term

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

2.2 Conditions Precedent; Binding Nature

This Agreement shall not be effective or binding on either Party until, and it shall become effective and binding on both Parties as of, the date on which the conditions precedent, if any, described below shall have been achieved (or waived in writing by each of the Parties in their sole discretion) (the "Confirmation Effective Date").

(a) None.

If any of the foregoing conditions precedent are not achieved (or waived in writing by each of the Parties) on or before the deadline dates therefor (without extension for Force Majeure or any other reason), then this Agreement shall automatically terminate. If there are no conditions precedent listed above in this Section 2.2 then the Confirmation Effective Date shall be the Confirmation Execution Date. This Agreement shall be effective and binding as of the Confirmation Effective Date.

3. Transaction

3.1 Product

- (a) Seller shall sell and Buyer shall receive and purchase, the Capacity Attributes (including all Local RA Attributes [but excluding Flexible RA Attributes (if any)][and Flexible RA Attributes] ██████████ of the Units identified in Appendix A (collectively, the "Product") and Seller shall deliver the Product as described in Section 3.2 below. Product does not include any right to dispatch or receive the energy or ancillary services from the Unit. Seller retains the right to sell any Product from a Unit in excess of its Unit Contract Quantity.
- (b) The Parties agree that (i) the Contract Price for the Product shall not change if the CAISO, CPUC or other Governmental Body (A) defines new or re-defines existing Local Capacity Areas which decreases or increases the amount of Local RA Attributes provided hereunder, or (B) defines new or re-defines existing Local Capacity Areas whereby the Units qualify for a Local

Capacity Area and (ii) if the event in Section 3.1(b)(i)(B) occurs then the Product shall include such Local RA Attributes.

- (c) [The Parties agree that (i) the Contract Price for the Product shall not change if the CAISO, CPUC or other Governmental Body defines new or re-defines existing Flexible RAR, Capacity Attributes related to Flexible RAR, or attributes of the Unit related to Flexible RAR, that results in a decrease or increase in the amount of Capacity Attributes related to Flexible RAR provided hereunder, and (ii) if the event in Section 3.1(c)(i) occurs then the Product shall include such Capacity Attributes related to Flexible RAR.]



3.2 Firm Quantity

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

3.3 Delivery Period

The "Delivery Period" shall be _____ thru _____, inclusive, unless terminated earlier in accordance with the terms of this Agreement.

3.4 Contract Quantity:

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

CONTRACT QUANTITY TABLE

Unit Name	CAISO Resource ID*	Month(s)	Unit Contract Quantity (MW)	
			Capacity Attributes (excluding Flexible RA Attributes)	Flexible RA Attributes

Unit Name	CAISO Resource ID*	Month(s)	Unit Contract Quantity (MW)	
			Capacity Attributes (excluding Flexible RA Attributes)	Flexible RA Attributes
* CAISO Resource ID should match a Unit described in Appendix A				

3.5 Delivery of Product

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

- (a) Seller shall, on a timely basis, submit, or cause each Unit's SC to submit, Supply Plans to identify and confirm the Unit Delivered Quantity for each Unit provided to Buyer so that the total amount of Unit Delivered Quantity identified and confirmed equals the Unit Contract Quantity for each Unit, unless specifically notified or requested not to do so by the Buyer pursuant to Section 3.9, and;
- (b) Seller shall cause each Unit's SC to submit written notification to Buyer, no later than fifteen (15) Business Days before the relevant deadline for any applicable Compliance Showing, that Buyer will be credited with Unit Delivered Quantity for the applicable portion of the Delivery Period in the Unit's SC Supply Plan so that the total amount of Unit Delivered Quantity for each Unit credited equals the Unit Contract Quantity.

3.6 CAISO/CPUC Offer Requirements

Subject to Buyer's request under Section 3.9(a), Seller shall, or cause the Unit's SC to, bid and/or schedule with, or make available to, the CAISO the Unit Contract Quantity for each Unit in compliance with the Tariff and the CPUC Filing Guide, including any must offer obligation under the Tariff or the CPUC Filing Guide, and shall, or cause the Unit's SC, owner, or operator, as applicable, to perform all obligations under the Tariff and the CPUC Filing Guide that are associated with the sale and delivery of Product hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's SC, owner, or operator to comply with such Tariff and CPUC Filing Guide provisions, including any penalties, charges or fines imposed on Seller or the Unit's SC, owner, or operator for such noncompliance.

3.7 Reserved

3.8 Unit Substitution; RA Replacement Capacity

- (a) RA Replacement Capacity: No later than five (5) Business Days before the relevant deadline for each applicable Compliance Showing, Buyer may (i) request, subject to Seller's reasonable approval, that Seller not, or cause each Unit's SC not to, list a portion or all of a Unit's applicable Unit Contract Quantity on the Supply Plan or (ii) notify Seller that a portion or all of the Unit Contract Quantity of a Unit will be included in an applicable Compliance Showing as RA Substitute Capacity. The amount of Unit Contract Quantity that is the subject of such a request or notice shall be known as "RA Substitute Capacity" and, for purposes of calculating a Monthly Payment pursuant to Section 4.1, to the extent provided, such RA Substitute Capacity shall be deemed Unit Delivered Quantity provided consistent with Section 3.6.
- (b) Seller's Obligations With Respect to RA Substitute Capacity: If Buyer requests RA Substitute Capacity, Seller shall (i) make such RA Substitute Capacity available to Buyer during the applicable Showing Month to allow Buyer to utilize, as applicable, the substitution rules in Sections 9.3.1.3.1, 9.3.1.3.2 and 40.9.4.2.1 of the Tariff [including any similarly defined substitution rules under the Tariff in respect of Flexible RA Attributes] ██████████ ("Substitution Rules") and (ii) take, or cause each Unit's SC to take, all action to allow Buyer to utilize, as applicable, the Substitution Rules, including, but not limited to, ensuring that the RA Substitute Capacity will qualify, as applicable, for substitution under the Substitution Rules, and providing Buyer with all information needed to utilize the Substitution Rules.
- (c) Seller agrees that all RA Substitute Capacity utilized by Buyer under the Substitution Rules, as applicable, is subject to the requirements identified in Section 3.7.
- (d) Failure to Provide RA Substitute Capacity: If Seller fails to provide RA Substitute Capacity or Buyer is unable to utilize the RA Substitute Capacity under the Substitution Rules due to Seller's failure to fulfill its obligations under Section 3.9(b)(ii), then Seller shall reimburse Buyer for any and all Non-Availability Charges incurred by Buyer and shall pay Buyer the CPM revenue the CASIO would have paid the Buyer but for Seller failure, due to such failure or inability to utilize the Substitution Rules; provided, that if Buyer is unable to utilize the Substitution Rules because the RA Substitute Capacity does not qualify for substitution under Section 9.3.1.3.1, 9.3.1.3.2, 40.9.4.2.1(1)(i) or (ii) of the Tariff, then Seller shall not be responsible for any such Non-Availability Charges described in this Section 3.9(d) associated with such inability.

3.9 Buyer's Re-Sale of Product

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

4. Payment

4.1 Monthly Payment

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

$$\text{Monthly Payment} = \sum_{n=1}^d (A_n * B_n * 1000)$$

where:

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

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

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

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

CAPACITY PRICE TABLE

Contract Month	Capacity Price (\$/kW-day) 2020	Capacity Price (\$/kW-day) 2021
January		
February		
March		
April		
May		
June		

Contract Month	Capacity Price (\$/kW-day) 2020	Capacity Price (\$/kW-day) 2021
July		
August		
September		
October		
November		
December		

4.2 Reserved.

4.3 Allocation of Other Payments and Costs

- (a) Seller shall retain any revenues it may receive from and pay all costs charged by, the CAISO or any other third party with respect to any Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, and (iv) any revenues for black start or reactive power services. Seller shall indemnify, defend and hold Buyer harmless from and against all liabilities, damages, claims, losses, costs or expenses (including, without limitation, attorneys' fees) incurred by or brought against Buyer in connection with Environmental Costs.
- (b) Buyer shall be entitled to receive and retain all revenues associated with the Contract Quantity during the Delivery Period including any capacity or availability revenues from RMR Contracts for any Unit, Capacity Procurement Mechanism (CPM) or its successor, and Residual Unit Commitment (RUC) Availability Payments, or its successor but excluding payments described in Section 4.3(a)(i)-(iv).
- (c) In accordance with Section 4.1 of this Confirmation and Article Six of the Master Agreement, all such Buyer revenues described in Section 4.3(b), but received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. In order to verify the accuracy of such revenues, Buyer shall have the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity.
- (d) If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit the Contract Quantity for re-sale in such market, and retain and receive any and all related revenues.

- (e) Subject to the Unit being made available to the CAISO in accordance with Article 3 of this Confirmation, Seller agrees that the Unit is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments under the Tariff. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of Seller and for Seller's account and that any Non-Availability Charges are the responsibility of Seller and for Seller's account.

4.4 Offset Rights

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

5. Seller's Failure to Deliver Contract Quantity

5.1 Seller's Duty to Provide Replacement Capacity

Planned Outage replacement shall be addressed by the Tariff. For all other replacements, if Seller is unable to provide the Contract Quantity from any Unit(s) for any day in any Monthly Delivery Period and Replacement Capacity is required under Section 3.2, then:

- (a) Seller shall notify Buyer of the non-availability of any portion of the Contract Quantity from any Unit(s) and identify Replacement Unit(s), and
- (b) Seller shall, at no additional cost to Buyer, provide Buyer with Replacement Capacity from one or more Replacement Units, such that the total amount of Product provided to Buyer from all Units and Replacement Units equals Contract Quantity.

provided that the designation of any Replacement Unit by Seller shall be subject to Buyer's prior written approval, which shall not be unreasonably withheld. Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 5.1, and Buyer has approved the designation of the Replacement Unit, then any such Replacement Unit shall be deemed a Unit for purposes of this Confirmation for that day in such Monthly Delivery Period. Notwithstanding anything to the contrary in this Confirmation, Seller's failure to properly provide Replacement Capacity, including Seller's obligation to identify Replacement Units within the notice deadlines specified in this Section 5.1, may result in the calculation of damages payable to Buyer and/or the indemnification of Buyer against any penalties, fines or costs under Section 5 and Section 10.

5.2 Damages for Failure to Provide Replacement Capacity

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

- (a) Buyer may, but shall not be obligated to, obtain Replacement Capacity. Buyer may enter into purchase transactions with one or more parties to

replace the portion of Contract Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver the capacity to another party, and such arrangements shall be considered the procurement of Replacement Capacity. Buyer shall act in a commercially reasonable manner in purchasing any Replacement Capacity, and;

- (b) Seller shall pay to Buyer damages, in accordance with the terms of Section 4.1 of the Master Agreement relating to “Accelerated Payment of Damages,” if applicable, an amount equal to the positive difference, if any, between (i) the sum of (A) the Capacity Replacement Price paid by Buyer for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) for such day, plus (B) the Capacity Replacement Price times the portion of Contract Capacity not provided by Seller nor purchased by Buyer pursuant to Section 5.2(a) for such day times 1,000 kW/MW, and (ii) the portion of Contract Capacity not provided for the applicable day in the applicable Monthly Delivery Period times the Contract Price for that day times 1,000 kW/MW.

5.3 Indemnities for Failure to Deliver Contract Capacity

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

- (a) Seller’s failure to provide any portion of the Contract Capacity or any portion of the Replacement Capacity;
- (b) Seller’s failure to provide timely notice of the non-availability of any portion of the Contract Capacity;
- (c) A Unit’s SC’s failure to timely submit Supply Plans that identify Buyer’s right to the Unit Contract Quantity purchased hereunder, or;
- (d) any other failure by Seller to perform its obligations under this Confirmation.

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

6. Other Buyer and Seller Covenants

6.1 Seller’s and Buyer’s Duty to Take Action to Allow the Utilization of the Product

Buyer and Seller shall, throughout the Delivery Period, take commercially reasonable actions and execute any and all documents or instruments reasonably necessary to

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

6.2 Seller's Represents, Warrants and Covenants

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

- (a) Seller owns or has the exclusive right to the Product sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;
- (c) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
- (d) Seller shall, and each Unit's SC, owner and operator is obligated to, comply with Applicable Laws, including the Tariff, relating to the Product;
- (e) If Seller is the owner of any Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for any Unit does not exceed the Unit NQC or Unit EFC, as applicable, for that Unit;
- (f) Seller has notified the SC of each Unit that Seller has transferred the Unit Contract Quantity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff fully reflecting such transfer;
- (g) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to Buyer, at least fifteen (15) Business Days before the relevant deadline for each Compliance Showing, the Unit Contract Quantity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period;
- (h) Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.3, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues;

- (i) In the event Seller has rights to the energy output of any Unit, and Seller or the Unit's SC schedules energy from the Unit for export from the CAISO Control Area, or commits energy to another entity in a manner that could result in scheduling energy from the Unit for export from the CAISO Control Area, it shall do so only as allowed by, and in accordance with, Applicable Laws and such exports may, if allowed by the Tariff, be curtailed by the CAISO, and;
- (j) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities.

7. Confidentiality

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

8. Counterparts

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

9. Collateral Requirements

On or before the Confirmation Execution Date, to secure its obligations under this Confirmation, Seller agrees to deliver a Letter of Credit or cash in the amount of _____ to Buyer and maintain such security in full force and effect until it is required to be returned in accordance with this Section 9. The security posted under this Section 9 shall not be deemed a limitation of Seller's damages. Buyer shall return to Seller any unused portion of this security after the following have occurred: (i) the Delivery Period has expired or terminated early; and (ii) all payment obligations of the Seller arising under this Confirmation, including compensation for penalties, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

10. Declaration of an Early Termination Date and Calculation of Settlement Amounts

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

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

[Signature page follows]

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

_____ SAN DIEGO GAS & ELECTRIC COMPANY
a _____ a California corporation

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

APPROVED as to legal form _____

APPENDIX A**Unit Information**

Unit Resource Name	
CAISO Resource ID	
Unit SCID	
2019 Unit NQC (MW)	
Prorated Percentage of Unit Factor	
2019 Unit EFC (MW)	<i>[Comment: If the Product does not include flexible capacity, insert "Not Applicable"]</i>
Prorated Percentage of Unit Flexible Factor	
Resource Type	
Resource Category (MMC Bucket 1, 2, 3 or 4)	
Path 26 (North or South)	
Local Capacity Area (if any, as of Confirmation Execution Date)	
Unit Contract Quantity (MW) for Capacity Attributes (excluding Flexible RA Attributes)	
Unit Contract Quantity (MW) for Flexible RA Attributes	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	

LONG FORM CONFIRMATION
FOR RESOURCE ADEQUACY CAPACITY PRODUCT
Resource Adequacy Contract Number: _____

This confirmation letter ("Confirmation") confirms the transaction (the "Transaction") between _____ ("Seller") and San Diego Gas & Electric Company ("Buyer"), each individually a "Party" and together the "Parties", dated as of October __, 2015 (the "Confirmation Execution Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Section 3 of this Confirmation. This Transaction shall be deemed to have been entered into pursuant to, and shall supplement, form a part of, and be governed by the terms and conditions of the form of Master Power Purchase and Sale Agreement published by the Edison Electric Institute and the National Energy Marketers Association (version 2.1 dated 4/25/00) (the "EEI Agreement") with a Cover Sheet containing the elections and other changes contained herein as if the Parties have executed the EEI Agreement (with such Cover Sheet the "Master Agreement"). The Parties agree that the only transactions to be concluded pursuant to such Master Agreement shall be the Transaction documented in this Confirmation. The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein). To the extent that this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

Name: Party A / Seller

All Notices:

< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: (____) ____ - ____
Facsimile: (____) ____ - ____
Duns: _____
Federal Tax ID Number: _____

Invoices:

< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: (____) ____ - ____
Facsimile: (____) ____ - ____

Name: Party B / Buyer

All Notices:

San Diego Gas & Electric Company
8315 Century Park Court CP 21D
San Diego CA 92123-1593
Attn: Contract Administration
Telephone: (858) 650-6176
Facsimile: (858) 650-6190
Duns: 006911457
Federal Tax ID Number: 95-1184800

Invoices:

San Diego Gas & Electric Company
8315 Century Park Court
San Diego CA 92123-1593
Attn: Energy Accounting Manager
Telephone: (858) 650-6177
Facsimile: (858) 650-6190

Scheduling:

< company name >
< street address >
< city/state/zip >
Attn: _____
Day Ahead: () -
Real Time: () -
Facsimile: () -

Scheduling:

San Diego Gas & Electric Company
8315 Century Park Court, CP 21D
San Diego, CA 92123-1593
Attn: Transaction Scheduling Manager
Day Ahead: (858) 650-6168
Real Time: (858) 650-6160
Facsimile: (858) 650-6191

Payments:

< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: () -
Facsimile: () -

Payments:

San Diego Gas & Electric Company
8315 Century Park Court
San Diego CA 92123-1593
Attn: Energy Accounting Manager
Telephone: (858) 650-6177
Facsimile: (858) 650-6190

Wire Transfer:

< bank name >
< bank street address >
< bank city/state/zip >
ABA Routing Number: _____
Payee: _____
Account Number: _____
Confirmation: _____
Facsimile: () -

Wire Transfer:

Union Bank of California
445 South Figueroa Street
Los Angeles CA 90071
ABA Routing Number: 122000496
Payee: San Diego Gas & Electric Company
Account Number: 4430000352
Confirmation: SDG&E – Major Markets
Facsimile: (213) 244-8316

Credit and Collections:

< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: () -
Facsimile: () -

Credit and Collections:

San Diego Gas & Electric Company
555 West Fifth Street, ML 18A3
Los Angeles, CA 90013-1011
Attn: Major Markets – Credit and
Collections Manager
Telephone: (213) 244-4343
Facsimile: (213) 244-8316

With additional Notices of an Event of Default or Potential Event of Default to:

< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: () -
Facsimile: () -

With additional Notices of an Event of Default or Potential Event of Default to:

San Diego Gas & Electric Company
8330 Century Park Ct.
San Diego, California 92123
Attn: General Counsel
Telephone: (858) 650-6141
Facsimile: (858) 650-6106

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

Article TwoTransaction Terms
and Conditions

- Optional provision in Section 2.4.
If not checked, inapplicable.

Article FourRemedies for Failure
to Deliver or Receive

- Accelerated Payment of Damages.
If not checked, inapplicable.

Article Five

Events of Default; Remedies

- Cross Default for Party A:
 Party A: _____ Cross Default Amount: _____
 Other Entity: _____ Cross Default Amount: _____
- Cross Default for Party B:
 Party B: N/A Cross Default Amount: N/A
 Other Entity: N/A Cross Default Amount: N/A

5.6 Closeout Setoff

- Option A (Applicable if no other selection is made.)
 Option B – Affiliates shall have the meaning set forth in
the Agreement unless otherwise specified as follows:

 Option C (No Setoff)

Article 8Credit and
Collateral Requirements**8.1 Party A Credit Protection:**

- (a) Financial Information:
 Option A
 Option B Specify: _____
 Option C Specify: _____
- (b) Credit Assurances:
 Not Applicable
 Applicable
- (c) Collateral Threshold:
 Not Applicable
 Applicable
- (d) Downgrade Event:
 Not Applicable
 Applicable
- (e) Guarantor for Party B: None.
Guarantee Amount: N/A

8.2 Party B Credit Protection:

- (a) Financial Information:
 Option A
 Option B Specify: _____
 Option C Specify: _____
- (b) Credit Assurances:
 Not Applicable
 Applicable
- (c) Collateral Threshold:
 Not Applicable
 Applicable
 If applicable, complete the following:
 Party A Collateral Threshold: \$ _____;
 provided, however, that Party A's Collateral
 Threshold shall be zero if an Event of Default or
 Potential Event of Default with respect to Party A
 has occurred and is continuing.
 Party A Independent Amount: \$ _____
 Party A Rounding Amount: \$ _____
- (d) Downgrade Event:
 Not Applicable
 Applicable
 If applicable, complete the following:
 It shall be a Downgrade Event for Party A if
 Party A 's Credit Rating falls below _____
 from S&P or _____ from Moody's or if Party A
 is not rated by either S&P or Moody's
 Other:
 Specify: _____
- (e) Guarantor for Party A: None
 Guarantee Amount: N/A

Article 10

Confidentiality

 Confidentiality Applicable If not checked, inapplicable.**Schedule M**

- Party A is a Governmental Entity or Public Power System
 Party B is a Governmental Entity or Public Power System
 Add Section 3.6. If not checked, inapplicable
 Add Section 8.4. If not checked, inapplicable

Other Changes

1. The modifications to Section 1.12, 1.50 and 5.2 of the Master Agreement specified in that certain Errata published by the Edison Electric Institute (version 1.1, July 18, 2007) are hereby incorporated herein as if set forth in full.

2. Section 10.2(ii) of the Master Agreement shall be modified by inserting “Except for the approval by the CPUC as stated in Section 2.2 of this Confirmation,” at the beginning of the first sentence in such section.
 3. Section 10.6 of the Master Agreement shall be deleted in its entirety and replaced with the following:

“THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW, EACH PARTY WAIVES ITS RESPECTIVE RIGH TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.”
 4. Schedule P: Products and Related Definitions shall be deleted in its entirety.
-

1. Definitions

- 1.1 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.2 “Availability Incentive Payments” has the meaning set forth in the Tariff [and includes any similarly defined payments under the Tariff in respect of Flexible RA Attributes]. [REDACTED]
- 1.3 “Availability Standards” has the meaning set forth in the Tariff [and includes any similarly defined standards under the Tariff in respect of Flexible RA Attributes] [REDACTED]
- 1.4 “Buyer” has the meaning specified in the introductory paragraph.
- 1.5 “CAISO” means the California Independent System Operator Corporation, or any successor entity performing the same functions.
- 1.6 “Capacity Attributes” means (a) the Local RA Attributes, (b) the RA Attributes, (c) the Flexible RA Attributes, and (d) any other current or future defined characteristics (including the ability to generate at a given capacity level, provide ancillary services, ramp up or down at a given rate, and flexibility or dispatch-ability attributes), certificates, tags, credits, howsoever entitled, including any accounting construct applied to any Compliance Obligations.
- 1.7 “Capacity Price” means the price specified in the Capacity Price Table in Section 4.1.

- 1.8 “Capacity Replacement Price” means (a) the actual rate per kW-day paid for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) including any penalties, fines, transaction costs and expenses reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of Replacement Capacity, any penalties, fines, transaction costs and expenses plus the per kW-day market price for the Product not delivered by Seller under this Confirmation. Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 1.51 of the Master Agreement, “Capacity Replacement Price” shall be deemed the “Replacement Price” for this Transaction.
- 1.9 “Compliance Obligations” means the RAR, Local RAR, Flexible RAR, and other resource adequacy requirements associated with a generating unit’s Capacity Attributes established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
- 1.10 “Compliance Showing” means one or more of the following: (a) Local RAR Showing, (b) RAR Showing, (c) Flexible RAR Showing, or (d) other Capacity Attributes compliance or advisory filing (or similar or successor showing or filing), in each case, that an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.11 “Confirmation” has the meaning specified in the introductory paragraph.
- 1.12 “Confirmation Effective Date” has the meaning specified in Section 2.2.
- 1.13 “Confirmation Execution Date” has the meaning specified in the introductory paragraph.
- 1.14 “Contract Price” means, for any day in any Monthly Delivery Period, the Capacity Price for such period.
- 1.15 “Contract Quantity” means the quantity of Product (in MW) as set forth in Section 3.5.
- 1.16 “Contract Term” has the meaning set forth in Section 2.1.
- 1.17 “CPUC” means the California Public Utilities Commission.
- 1.18 “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-25, and any other existing or subsequent decisions, resolutions or rulings related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.19 “CPUC Filing Guide” is the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSEs to demonstrate compliance with the CPUC’s resource adequacy program as provided in the CPUC Decisions.
- 1.20 “Credit Rating” means, with respect to any entity, the rating assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Master Agreement, or if such entity does not have a rating for its

senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Moody's or any other rating agency agreed by the Parties as set forth in the Master Agreement.

- 1.21 "Delivery Period" has the meaning specified in Section 3.4.
- 1.22 "Emission Reduction Credits" or "ERC(s)" means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby such district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.
- 1.23 "Environmental Costs" means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product's compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits (including any costs related to greenhouse gas emissions) required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the site, and the decontamination or remediation, on or off the site, necessitated by the introduction of such hazardous substances on the site.
- 1.24 "Flexible RA Attributes" means, with respect to a Unit, any and all flexible resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and Local RA Attributes.
- 1.25 "Flexible RAR" means the flexible capacity requirements, including, without limitation, maximum continuous ramping, load following, and regulation, established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Flexible RAR may also be known as ramping, maximum ramping, maximum continuous ramping, maximum continuous ramping capacity, maximum continuous ramping ramp rate, load following, load following capacity, load following ramp rate, regulation, regulation capacity, regulation ramp rate.
- 1.26 "Flexible RAR Showing" means the Flexible RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.27 "GADS" means the Generating Availability Data System, or its successor.
- 1.28 "Governmental Body" means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative,

executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

- 1.29 “Local Capacity Area” has the meaning set forth in the Tariff.
- 1.30 “Local RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes or other locational attributes for the Unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward a Local RAR, but exclusive of any RA Attributes and Flexible RA Attributes.
- 1.31 “Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.32 “Local RAR Showing” means the Local RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.33 “LSE” means load-serving entity.
- 1.34 “Marketable Emission Trading Credits” means without limitation, emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (see 42 U.S.C. § 7651b.(a) to (f)).
- 1.35 “Master Agreement” has the meaning specified in the introductory paragraph.
- 1.36 “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.37 “Monthly Payment” has the meaning specified in Section 4.1.
- 1.38 “Moody’s” means Moody’s Investors Services, Inc. or its successor.
- 1.39 “NERC” means the North American Electric Reliability Corporation, or its successor.
- 1.40 “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.
- 1.41 “Net Qualifying Capacity” has the meaning set forth in the Tariff.

- 1.42 “Non-Availability Charges” has the meaning set forth in the Tariff [and includes any similarly defined charges under the Tariff in respect of Flexible RA Attributes] [REDACTED]
- 1.43 “Non-Specified RA Replacement Capacity” has the meaning set forth in the Tariff [and includes any similarly defined capacity under the Tariff in respect of Flexible RA Attributes] [REDACTED]
- 1.44 “Outage” means any disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 1.45 “Outage Schedule” has the meaning specified in Section 3.8.
- 1.46 “Planned Outage” shall have the meaning in CPUC Decisions, and includes a planned, scheduled, or any other Outage approved by the CAISO for the routine repair or maintenance of the Unit, or for the purposes of new construction work, and does not include any Outage designated as either forced or unplanned as defined by the CAISO or NERC/GADS Protocols.
- 1.47 “Product” has the meaning specified in Section 3.1.
- 1.48 “Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix A, of the Unit NQC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.
- 1.49 “Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix A, of the Unit EFC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.
- 1.50 “RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any Local RA Attributes and Flexible RA Attributes.
- 1.51 “RA Substitute Capacity” means capacity that the CAISO permits under the CAISO Tariff to be substituted for a Resource Adequacy Resource that is on Outage.
- 1.52 “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
- 1.53 “RAR Showing” means the RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.

- 1.54 “Replacement Capacity” means capacity which has equivalent Capacity Attributes as the portion of the Product not provided by the Units committed to Buyer as of the Confirmation Execution Date.
- 1.55 “Replacement Rules” has the meaning set forth in Section 3.9(b).
- 1.56 “Replacement Unit” means a generating unit providing Replacement Capacity.
- 1.57 “Resource Category” shall be as described in the CPUC Filing Guide.
- 1.58 “RMR Contract” has the meaning set forth in the Tariff.
- 1.59 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc. or its successor).
- 1.60 “Scheduling Coordinator” or “SC” has the meaning set forth in the Tariff.
- 1.61 “Seller” has the meaning specified in the introductory paragraph.
- 1.62 “Showing Month” shall be the calendar month that is the subject of the Compliance Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Execution Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.63 “Substitution Rules” has the meaning set forth in Section 3.9(b).
- 1.64 “Supply Plan” has the meaning set forth in the Tariff [and includes any similarly defined plan under the Tariff in respect of Flexible RA Attributes] [REDACTED]
- 1.65 “Tariff” means the tariff and protocol provisions, including any applicable CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended or supplemented from time to time, of the CAISO.
- 1.66 “Transaction” has the meaning specified in the introductory paragraph.
- 1.67 “Unit” or “Units” shall mean the generation assets described in Appendix A (including any Replacement Units), from which Product is provided by Seller to Buyer.
- 1.68 “Unit Contract Quantity” means the amount of Product (in MW) to be delivered by Seller to Buyer by each individual Unit, as specified in Appendix A as of the Confirmation Execution Date.
- 1.69 “Unit EFC” means the effective flexible capacity or capacity that is qualified to provide Flexible RA Attributes established by the CAISO for the applicable Unit.
- 1.70 “Unit NQC” means the Net Qualifying Capacity established by the CAISO for the applicable Unit.
- 1.71 “Unit Delivered Quantity” means the amount of applicable Product (in MW) actually “delivered” by Seller to Buyer by each individual Unit. As used herein, “delivered” shall mean shown in the Supply Plan and, for purposes of Section 4.1, shall include

any RA Substitute Capacity under Section 3.9, and in all cases, shall not include (i) any portion of Contract Capacity for which Buyer is required under the Compliance Obligations or the Tariff to procure Replacement Capacity, and (ii) any portion of Contract Capacity for which Seller is required hereunder, but fails, to provide Replacement Capacity to Buyer.

2. Term

2.1 Contract Term

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

2.2 Conditions Precedent; Binding Nature

This Agreement shall not be effective or binding on either Party until, and it shall become effective and binding on both Parties as of, the date on which the conditions precedent, if any, described below shall have been achieved (or waived in writing by each of the Parties in their sole discretion) (the "Confirmation Effective Date").

(a) None.

If any of the foregoing conditions precedent are not achieved (or waived in writing by each of the Parties) on or before the deadline dates therefor (without extension for Force Majeure or any other reason), then this Agreement shall automatically terminate. If there are no conditions precedent listed above in this Section 2.2 then the Confirmation Effective Date shall be the Confirmation Execution Date. This Agreement shall be effective and binding as of the Confirmation Effective Date.

3. Transaction

3.1 Product

- (a) Seller shall sell and Buyer shall receive and purchase, the Capacity Attributes (including all Local RA Attributes [but excluding Flexible RA Attributes (if any)][and Flexible RA Attributes] ██████████ of the Units identified in Appendix A (collectively, the "Product") and Seller shall deliver the Product as described in Section 3.2 below. Product does not include any right to dispatch or receive the energy or ancillary services from the Unit. Seller retains the right to sell any Product from a Unit in excess of its Unit Contract Quantity.
- (b) The Parties agree that (i) the Contract Price for the Product shall not change if the CAISO, CPUC or other Governmental Body (A) defines new or re-defines existing Local Capacity Areas which decreases or increases the amount of Local RA Attributes provided hereunder, or (B) defines new or re-defines existing Local Capacity Areas whereby the Units qualify for a Local

Capacity Area and (ii) if the event in Section 3.1(b)(i)(B) occurs then the Product shall include such Local RA Attributes.

- (c) [The Parties agree that (i) the Contract Price for the Product shall not change if the CAISO, CPUC or other Governmental Body defines new or re-defines existing Flexible RAR, Capacity Attributes related to Flexible RAR, or attributes of the Unit related to Flexible RAR, that results in a decrease or increase in the amount of Capacity Attributes related to Flexible RAR provided hereunder, and (ii) if the event in Section 3.1(c)(i) occurs then the Product shall include such Capacity Attributes related to Flexible RAR.]



3.2 Firm Quantity

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

3.3 Delivery Period

The "Delivery Period" shall be _____ thru _____, inclusive, unless terminated earlier in accordance with the terms of this Agreement.

3.4 Contract Quantity:

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

CONTRACT QUANTITY TABLE

Unit Name	CAISO Resource ID*	Month(s)	Unit Contract Quantity (MW)	
			Capacity Attributes (excluding Flexible RA Attributes)	Flexible RA Attributes

Unit Name	CAISO Resource ID*	Month(s)	Unit Contract Quantity (MW)	
			Capacity Attributes (excluding Flexible RA Attributes)	Flexible RA Attributes
* CAISO Resource ID should match a Unit described in Appendix A				

3.5 Delivery of Product

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

- (a) Seller shall, on a timely basis, submit, or cause each Unit's SC to submit, Supply Plans to identify and confirm the Unit Delivered Quantity for each Unit provided to Buyer so that the total amount of Unit Delivered Quantity identified and confirmed equals the Unit Contract Quantity for each Unit, unless specifically notified or requested not to do so by the Buyer pursuant to Section 3.9, and;
- (b) Seller shall cause each Unit's SC to submit written notification to Buyer, no later than fifteen (15) Business Days before the relevant deadline for any applicable Compliance Showing, that Buyer will be credited with Unit Delivered Quantity for the applicable portion of the Delivery Period in the Unit's SC Supply Plan so that the total amount of Unit Delivered Quantity for each Unit credited equals the Unit Contract Quantity.

3.6 CAISO/CPUC Offer Requirements

Subject to Buyer's request under Section 3.9(a), Seller shall, or cause the Unit's SC to, bid and/or schedule with, or make available to, the CAISO the Unit Contract Quantity for each Unit in compliance with the Tariff and the CPUC Filing Guide, including any must offer obligation under the Tariff or the CPUC Filing Guide, and shall, or cause the Unit's SC, owner, or operator, as applicable, to perform all obligations under the Tariff and the CPUC Filing Guide that are associated with the sale and delivery of Product hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's SC, owner, or operator to comply with such Tariff and CPUC Filing Guide provisions, including any penalties, charges or fines imposed on Seller or the Unit's SC, owner, or operator for such noncompliance.

3.7 Reserved

3.8 Unit Substitution; RA Replacement Capacity

- (a) RA Replacement Capacity: No later than five (5) Business Days before the relevant deadline for each applicable Compliance Showing, Buyer may (i) request, subject to Seller's reasonable approval, that Seller not, or cause each Unit's SC not to, list a portion or all of a Unit's applicable Unit Contract Quantity on the Supply Plan or (ii) notify Seller that a portion or all of the Unit Contract Quantity of a Unit will be included in an applicable Compliance Showing as RA Substitute Capacity. The amount of Unit Contract Quantity that is the subject of such a request or notice shall be known as "RA Substitute Capacity" and, for purposes of calculating a Monthly Payment pursuant to Section 4.1, to the extent provided, such RA Substitute Capacity shall be deemed Unit Delivered Quantity provided consistent with Section 3.6.
- (b) Seller's Obligations With Respect to RA Substitute Capacity: If Buyer requests RA Substitute Capacity, Seller shall (i) make such RA Substitute Capacity available to Buyer during the applicable Showing Month to allow Buyer to utilize, as applicable, the substitution rules in Sections 9.3.1.3.1, 9.3.1.3.2 and 40.9.4.2.1 of the Tariff [including any similarly defined substitution rules under the Tariff in respect of Flexible RA Attributes] ██████████ ("Substitution Rules") and (ii) take, or cause each Unit's SC to take, all action to allow Buyer to utilize, as applicable, the Substitution Rules, including, but not limited to, ensuring that the RA Substitute Capacity will qualify, as applicable, for substitution under the Substitution Rules, and providing Buyer with all information needed to utilize the Substitution Rules.
- (c) Seller agrees that all RA Substitute Capacity utilized by Buyer under the Substitution Rules, as applicable, is subject to the requirements identified in Section 3.7.
- (d) Failure to Provide RA Substitute Capacity: If Seller fails to provide RA Substitute Capacity or Buyer is unable to utilize the RA Substitute Capacity under the Substitution Rules due to Seller's failure to fulfill its obligations under Section 3.9(b)(ii), then Seller shall reimburse Buyer for any and all Non-Availability Charges incurred by Buyer and shall pay Buyer the CPM revenue the CASIO would have paid the Buyer but for Seller failure, due to such failure or inability to utilize the Substitution Rules; provided, that if Buyer is unable to utilize the Substitution Rules because the RA Substitute Capacity does not qualify for substitution under Section 9.3.1.3.1, 9.3.1.3.2, 40.9.4.2.1(1)(i) or (ii) of the Tariff, then Seller shall not be responsible for any such Non-Availability Charges described in this Section 3.9(d) associated with such inability.

3.9 Buyer's Re-Sale of Product

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

4. Payment

4.1 Monthly Payment

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

$$\text{Monthly Payment} = \sum_{n=1}^d (A_n * B_n * 1000)$$

where:

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

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

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

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

CAPACITY PRICE TABLE

Contract Month	Capacity Price (\$/kW-day) 2020	Capacity Price (\$/kW-day) 2021	Capacity Price (\$/kW-day) 2022
January			
February			
March			
April			
May			
June			

Contract Month	Capacity Price (\$/kW-day) 2020	Capacity Price (\$/kW-day) 2021	Capacity Price (\$/kW-day) 2022
July			
August			
September			
October			
November			
December			

4.2 Reserved.

4.3 Allocation of Other Payments and Costs

- (a) Seller shall retain any revenues it may receive from and pay all costs charged by, the CAISO or any other third party with respect to any Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, and (iv) any revenues for black start or reactive power services. Seller shall indemnify, defend and hold Buyer harmless from and against all liabilities, damages, claims, losses, costs or expenses (including, without limitation, attorneys' fees) incurred by or brought against Buyer in connection with Environmental Costs.
- (b) Buyer shall be entitled to receive and retain all revenues associated with the Contract Quantity during the Delivery Period including any capacity or availability revenues from RMR Contracts for any Unit, Capacity Procurement Mechanism (CPM) or its successor, and Residual Unit Commitment (RUC) Availability Payments, or its successor but excluding payments described in Section 4.3(a)(i)-(iv).
- (c) In accordance with Section 4.1 of this Confirmation and Article Six of the Master Agreement, all such Buyer revenues described in Section 4.3(b), but received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. In order to verify the accuracy of such revenues, Buyer shall have the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity.
- (d) If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit the Contract Quantity for re-sale in such market, and retain and receive any and all related revenues.

- (e) Subject to the Unit being made available to the CAISO in accordance with Article 3 of this Confirmation, Seller agrees that the Unit is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments under the Tariff. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of Seller and for Seller's account and that any Non-Availability Charges are the responsibility of Seller and for Seller's account.

4.4 Offset Rights

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

5. Seller's Failure to Deliver Contract Quantity

5.1 Seller's Duty to Provide Replacement Capacity

Planned Outage replacement shall be addressed by the Tariff. For all other replacements, if Seller is unable to provide the Contract Quantity from any Unit(s) for any day in any Monthly Delivery Period and Replacement Capacity is required under Section 3.2, then:

- (a) Seller shall notify Buyer of the non-availability of any portion of the Contract Quantity from any Unit(s) and identify Replacement Unit(s), and
- (b) Seller shall, at no additional cost to Buyer, provide Buyer with Replacement Capacity from one or more Replacement Units, such that the total amount of Product provided to Buyer from all Units and Replacement Units equals Contract Quantity.

provided that the designation of any Replacement Unit by Seller shall be subject to Buyer's prior written approval, which shall not be unreasonably withheld. Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 5.1, and Buyer has approved the designation of the Replacement Unit, then any such Replacement Unit shall be deemed a Unit for purposes of this Confirmation for that day in such Monthly Delivery Period. Notwithstanding anything to the contrary in this Confirmation, Seller's failure to properly provide Replacement Capacity, including Seller's obligation to identify Replacement Units within the notice deadlines specified in this Section 5.1, may result in the calculation of damages payable to Buyer and/or the indemnification of Buyer against any penalties, fines or costs under Section 5 and Section 10.

5.2 Damages for Failure to Provide Replacement Capacity

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

- (a) Buyer may, but shall not be obligated to, obtain Replacement Capacity. Buyer may enter into purchase transactions with one or more parties to

replace the portion of Contract Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver the capacity to another party, and such arrangements shall be considered the procurement of Replacement Capacity. Buyer shall act in a commercially reasonable manner in purchasing any Replacement Capacity, and;

- (b) Seller shall pay to Buyer damages, in accordance with the terms of Section 4.1 of the Master Agreement relating to “Accelerated Payment of Damages,” if applicable, an amount equal to the positive difference, if any, between (i) the sum of (A) the Capacity Replacement Price paid by Buyer for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) for such day, plus (B) the Capacity Replacement Price times the portion of Contract Capacity not provided by Seller nor purchased by Buyer pursuant to Section 5.2(a) for such day times 1,000 kW/MW, and (ii) the portion of Contract Capacity not provided for the applicable day in the applicable Monthly Delivery Period times the Contract Price for that day times 1,000 kW/MW.

5.3 Indemnities for Failure to Deliver Contract Capacity

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

- (a) Seller’s failure to provide any portion of the Contract Capacity or any portion of the Replacement Capacity;
- (b) Seller’s failure to provide timely notice of the non-availability of any portion of the Contract Capacity;
- (c) A Unit’s SC’s failure to timely submit Supply Plans that identify Buyer’s right to the Unit Contract Quantity purchased hereunder, or;
- (d) any other failure by Seller to perform its obligations under this Confirmation.

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

6. Other Buyer and Seller Covenants

6.1 Seller’s and Buyer’s Duty to Take Action to Allow the Utilization of the Product

Buyer and Seller shall, throughout the Delivery Period, take commercially reasonable actions and execute any and all documents or instruments reasonably necessary to

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

6.2 Seller's Represents, Warrants and Covenants

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

- (a) Seller owns or has the exclusive right to the Product sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;
- (c) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
- (d) Seller shall, and each Unit's SC, owner and operator is obligated to, comply with Applicable Laws, including the Tariff, relating to the Product;
- (e) If Seller is the owner of any Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for any Unit does not exceed the Unit NQC or Unit EFC, as applicable, for that Unit;
- (f) Seller has notified the SC of each Unit that Seller has transferred the Unit Contract Quantity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff fully reflecting such transfer;
- (g) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to Buyer, at least fifteen (15) Business Days before the relevant deadline for each Compliance Showing, the Unit Contract Quantity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period;
- (h) Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.3, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues;

- (i) In the event Seller has rights to the energy output of any Unit, and Seller or the Unit's SC schedules energy from the Unit for export from the CAISO Control Area, or commits energy to another entity in a manner that could result in scheduling energy from the Unit for export from the CAISO Control Area, it shall do so only as allowed by, and in accordance with, Applicable Laws and such exports may, if allowed by the Tariff, be curtailed by the CAISO, and;
- (j) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities.

7. Confidentiality

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

8. Counterparts

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

9. Collateral Requirements

On or before the Confirmation Execution Date, to secure its obligations under this Confirmation, Seller agrees to deliver a Letter of Credit or cash in the amount of _____ to Buyer and maintain such security in full force and effect until it is required to be returned in accordance with this Section 9. The security posted under this Section 9 shall not be deemed a limitation of Seller's damages. Buyer shall return to Seller any unused portion of this security after the following have occurred: (i) the Delivery Period has expired or terminated early; and (ii) all payment obligations of the Seller arising under this Confirmation, including compensation for penalties, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

10. Declaration of an Early Termination Date and Calculation of Settlement Amounts

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

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

[Signature page follows]

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

_____ SAN DIEGO GAS & ELECTRIC COMPANY
a _____ a California corporation

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

APPROVED as to legal form _____

APPENDIX A**Unit Information**

Unit Resource Name	
CAISO Resource ID	
Unit SCID	
2019 Unit NQC (MW)	
Prorated Percentage of Unit Factor	
2019 Unit EFC (MW)	<i>[Comment: If the Product does not include flexible capacity, insert "Not Applicable"]</i>
Prorated Percentage of Unit Flexible Factor	
Resource Type	
Resource Category (MMC Bucket 1, 2, 3 or 4)	
Path 26 (North or South)	
Local Capacity Area (if any, as of Confirmation Execution Date)	
Unit Contract Quantity (MW) for Capacity Attributes (excluding Flexible RA Attributes)	
Unit Contract Quantity (MW) for Flexible RA Attributes	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	

**LONG FORM CONFIRMATION
FOR BILATERAL IMPORT CAPABILITY TRANSFER**

This confirmation letter ("Confirmation") confirms the transaction (the "Transaction") between _____ and San Diego Gas & Electric Company ("Seller"), each individually a "Party" and together the "Parties", dated as of April _____, 2019 (the "Confirmation Execution Date") in which Seller agrees to provide to Buyer the right to the Import Capability Product, as such term is defined in Section 4 of this Confirmation. This Transaction shall be deemed to have been entered into pursuant to, and shall supplement, form a part of, and be governed by the terms and conditions of the form of Master Power Purchase and Sale Agreement published by the Edison Electric Institute and the National Energy Marketers Association (version 2.1 dated 4/25/00) (the "EEI Agreement") with a Cover Sheet containing the elections and other changes contained herein as if the Parties have executed the EEI Agreement (with such Cover Sheet the "Master Agreement"). The Parties agree that the only transactions to be concluded pursuant to such Master Agreement shall be the Transaction documented in this Confirmation. The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the CAISO Tariff (defined herein). To the extent that this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

Name: Party A / Buyer

Name: Party B / Seller

All Notices:

All Notices:

San Diego Gas & Electric Company
8315 Century Park Court CP 21D
San Diego, CA 92123-1593
Attn: Contract Administration
Telephone: (858) 650-6176
Facsimile: (858) 650-6190
Duns: 006911457
Federal Tax ID Number: 95-1184800

Invoices:

Invoices:

San Diego Gas & Electric Company
8315 Century Park Court
San Diego, CA 92123-1593
Attn: Energy Accounting Manager
Telephone: (858) 650-6177
Facsimile: (858) 650-6190

Scheduling:

Scheduling:

San Diego Gas & Electric Company
8315 Century Park Court, CP 21D
San Diego, CA 92123-1593
Attn: Transaction Scheduling Manager
Day Ahead: (858) 650-6168
Real Time: (858) 650-6160
Facsimile: (858) 650-6191

Payments:

Payments:

San Diego Gas & Electric Company
8315 Century Park Court
San Diego, CA 92123-1593
Attn: Energy Accounting Manager
Telephone: (858) 650-6177
Facsimile: (858) 650-6190

Wire Transfer:

Wire Transfer:

Union Bank of California
445 South Figueroa Street
Los Angeles, CA 90071
ABA Routing Number: 122000496
Payee: San Diego Gas & Electric Company
Account Number: 4430000352

Confirmation: SDG&E Major Markets
Facsimile: (213) 244-8316

Credit and Collections:

Credit and Collections:

San Diego Gas & Electric Company
555 West Fifth Street, ML 18A3
Los Angeles, CA 90013-1011
Attn: Major Markets – Credit and
Collections Manager
Telephone: (213) 244-4343
Facsimile: (213) 244-8316

With additional Notices of an Event of Default or Potential Event of Default to:

With additional Notices of an Event of Default or Potential Event of Default to:

San Diego Gas & Electric Company
8330 Century Park Ct.
San Diego, CA 92123
Attn: General Counsel
Telephone: (858) 650-6141
Facsimile: (858) 650-6106

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

Article Two:

Transaction Terms and Conditions

Optional provision in Section 2.4.
If not checked, inapplicable.

Article Four:

Remedies for Failure to Deliver or Receive

Accelerated Payment of Damages.
If not checked, inapplicable.

Article Five:

Events of Default; Remedies

Cross Default for Party A:
 Party A: N/A Cross Default Amount: N/A

- Other Entity: N/A Cross Default Amount: N/A
- Cross Default for Party B:
- Party B: N/A Cross Default Amount: N/A
- Other Entity: N/A Cross Default Amount: N/A

5.6 Closeout Setoff

- Option A (Applicable if no other selection is made.)
- Option B – Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows:

- Option C (No Setoff)

Article 8:
Credit and
Collateral Requirements

8.1 Party A Credit Protection:

- (a) Financial Information:
 - Option A
 - Option B Specify: _____
 - Option C Specify: _____
- (b) Credit Assurances:
 - Not Applicable
 - Applicable
- (c) Collateral Threshold:
 - Not Applicable
 - Applicable
- (d) Downgrade Event:
 - Not Applicable
 - Applicable
- (e) Guarantor for Party B: None.
Guarantee Amount: N/A

8.2 Party B Credit Protection:

- (a) Financial Information:
 - Option A
 - Option B Specify: _____
 - Option C Specify: _____
- (b) Credit Assurances:
 - Not Applicable
 - Applicable
- (c) Collateral Threshold:
 - Not Applicable
 - Applicable

If applicable, complete the following:
Party A Collateral Threshold: \$ _____;
provided, however, that Party A's Collateral
Threshold shall be zero if an Event of Default or

Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: \$ _____

Party A Rounding Amount: \$ _____

(d) Downgrade Event:

Not Applicable

Applicable

If applicable, complete the following:

It shall be a Downgrade Event for Party A if Party A 's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party A is not rated by either S&P or Moody's

Other:

Specify: _____

(e) Guarantor for Party A: Southern Power Company
Guarantee Amount: N/A

Article 10:

Confidentiality

Confidentiality Applicable If not checked, inapplicable.

Schedule M:

Party A is a Governmental Entity or Public Power System

Party B is a Governmental Entity or Public Power System

Add Section 3.6. If not checked, inapplicable

Add Section 8.4. If not checked, inapplicable

Other Changes and Additional Provisions:

1. The modifications to Section 1.12, 1.50 and 5.2 of the Master Agreement specified in that certain Errata published by the Edison Electric Institute (version 1.1, July 18, 2007) are hereby incorporated herein as if set forth in full.

2. Contract Term. The "Contract Term" shall be the period of time commencing upon the Confirmation Execution Date and continuing until the later of (a) the expiration of the Delivery Period or (b) the date the Parties' obligations under this Confirmation have been fulfilled.

3. Delivery Period. The "Delivery Period" shall be July 1, 2018 through November 30, 2018, inclusive, unless terminated earlier in accordance with the terms of this Agreement.

4. Additional Defined Terms. For purposes of this Confirmation, the following terms shall have the following meanings:

"Agreement" has the meaning specified in the introductory paragraph of this Confirmation.

"Bilateral Import Capability Transfer" is the transfer of Remaining Import Capability from one Market Participant to another, as described in the CAISO Tariff.

“Branch Group” means the Branch Group Name or ID used by CAISO to represent an Intertie.

“Buyer” has the meaning specified in the introductory paragraph of this Confirmation.

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

“CAISO Tariff” means the tariff and protocol provisions, including any applicable CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended or supplemented from time to time, of the CAISO.

“Confirmation” has the meaning specified in the introductory paragraph of this Confirmation.

“Confirmation Execution Date” has the meaning specified in the introductory paragraph of this Confirmation.

“Contract Month” shall be each day of each calendar month of the Delivery Period.

“Contract Payment” means, for each Contract Month during the Delivery Period, the payment equal to the product of (a) the applicable Contract Price for that Contract Month (in \$/kW-month), (b) the amount of Contract Quantity of Import Capability Product transferred to Buyer for such Contract Month (in MW), and (c) 1,000 kW/MW, as stated in Section 8 of this Confirmation.

“Contract Price” means, for each Contract Month during the Delivery Period, the capacity price stated in Section 8 of this Confirmation.

“Contract Quantity” means, for each Contract Month during the Delivery Period, the amount of Import Capability Product at the Delivery Point stated in Section 8 of this Confirmation.

“Contract Term” has the meaning set forth in Section 2 of this Confirmation.

“Delivery Period” has the meaning set forth in Section 3 of this Confirmation.

“Import Capability Delivery Point” has the meaning set forth in Section 10 of this Confirmation.

“Import Capability Product” means the Remaining Import Capability at the Import Capability Delivery Point that Seller shall transfer to Buyer in the amount of the Contract Quantity, for the Delivery Period, and at the applicable Contract Price.

“Import Capability Transfer Registration Process” has the meaning set forth in the CAISO Tariff.

“Intertie” has the meaning set forth in the CAISO Tariff.

“kW” shall mean a kilowatt.

“Market Participant” has the meaning set forth in the CAISO Tariff.

“Master Agreement” has the meaning specified in the introductory paragraph of this Confirmation.

“MW” shall mean a megawatt.

“One-Time Payment” has the meaning set forth in Section 12 of this Confirmation.

“Remaining Import Capability” has the meaning set forth in the CAISO Tariff.

“Seller” has the meaning specified in the introductory paragraph of this Confirmation.

“Transaction” has the meaning specified in the introductory paragraph of this Confirmation.

5. Choice of Law; Waiver of Right to Jury. Section 10.6 of the Master Agreement shall be deleted in its entirety and replaced with the following:

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

6. Confidentiality. Section 10.11 of the Master Agreement shall be amended by adding the phrase “employees of Party B and its affiliate who are acting as agents of the Party for purposes of this Agreement,” between “employees” and “lenders” in the fourth line and shall be further amended by adding the following at the end thereof: “It shall not be deemed a breach hereunder if a Party discloses the terms and conditions of a Transaction, including the name or any other identifying information relating to the other Party, provided that such information may be disclosed only to an entity that aggregates and reports such data to the public in the form of an index.” Notwithstanding the foregoing, the Parties may disclose the terms of this Confirmation to the CAISO to effectuate Seller’s performance and the transfer of the Import Capability Product and the CAISO may publicly disclose the transfer of the Import Capability Product from Seller to Buyer as indicated in the CAISO Tariff promptly following Seller’s performance. In addition, in the event Buyer resells all or any portion of the Import Capability Product, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction, other than the Contract Price.

7. Representations and Warranties. In addition to the representations and warranties set forth in the Master Agreement, Seller and Buyer represent and warrant that throughout the Contract Term they shall take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer’s right to the use of the Contract Quantity for the sole benefit of Buyer. Seller represents and warrants that throughout the Delivery Period:

- a) No portion of the Contract Quantity of Import Capability Product has been committed by Seller to any third party; and
- b) Seller shall abide by all applicable CAISO Tariff provisions and procedures approved by the Federal Energy Regulatory Commission (FERC).

8. Contract Quantity; Contract Price; Contract Payment. The Contract Quantity and corresponding Contract Price and Contract Payment for each applicable Contract Month during the Delivery Period are set forth in the table below:

Contract Month	Contract Quantity	Contract Price	Contract Payment

9. Buyer's Re-Sale of Import Capability Product. Buyer may re-sell all or a portion of the Import Capability Product.

10. Import Capability Delivery Point. The Import Capability Delivery Point shall be the CAISO Scheduling Point at [REDACTED] which maps to the CAISO Branch Group [REDACTED]

11. Performance. Within three (3) Business Days of the Confirmation Execution Date, Seller shall transfer to Buyer, in accordance with Appendix A, the Import Capability Product in the amount of the Contract Quantity for each and every Contract Month during the Delivery Period by registering the transfer with the CAISO as a Bilateral Import Capability Transfer, and completing any other action of documentation required by the CAISO to effect such transfer. Upon Seller registering the transfer with the CAISO, Buyer shall confirm the transfer with the CAISO and shall report the transfer to the CAISO through CAISO's Import Capability Transfer Registration Process as indicated in the CAISO Tariff.

12. One-Time Payment. In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a "One-Time Payment" to the Seller for the Import Capability Product equal to the sum of the Contract Payments for each and every Contract Month during the Delivery Period. Buyer shall make the One-Time Payment to the Seller within ten (10) Business Days after the later of (a) completion of Seller's performance, as described in Section 11 of this Confirmation, or (b) Buyer's receipt of Seller's invoice.

13. Counterparts. This Confirmation 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 email or facsimile will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by email or facsimile will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

14. Standard of Review. For purposes of this Transaction, the Parties each agree:

- a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting sua sponte, shall solely be the “public interest” application of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956), and *Fed. Power Comm’n 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 County*, 554 U.S. 527 (2008), and further clarified by *NRG Power Marketing LLC v. Maine Pub. Util. Comm’n*, 558 U.S. 165 (2010) (the “Mobile-Sierra” doctrine).
- b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the “public interest” application of the “just and reasonable” standard of review and otherwise as set forth in the foregoing section (a).”

[Signature page follows]

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

SAN DIEGO GAS & ELECTRIC COMPANY,
a California Corporation

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

APPENDIX A
BILATERAL IMPORT CAPABILITY TRANSFER

Contract Month:

Transferor SC	Transferee SC	Import Group	Term	Quantity

Total: __ MW

Contract Month:

Transferor SC	Transferee SC	Import Group	Term	Quantity

Total: __ MW

Contract Month:

Transferor SC	Transferee SC	Import Group	Term	Quantity

Total: __ MW

Contract Month:

Transferor SC	Transferee SC	Import Group	Term	Quantity

Total: __ MW

Contract Month:

Transferor SC	Transferee SC	Import Group	Term	Quantity

Total: __ MW

Contract Month:

Transferor SC	Transferee SC	Import Group	Term	Quantity

Total: __ MW

Contract Month:

Transferor SC	Transferee SC	Import Group	Term	Quantity

Total: __ MW

LONG FORM CONFIRMATION
FOR RESOURCE ADEQUACY CAPACITY PRODUCT

Resource Adequacy Contract Number: _____

This confirmation letter ("Confirmation") confirms the transaction (the "Transaction") between _____ ("Seller") and San Diego Gas & Electric Company ("Buyer"), each individually a "Party" and together the "Parties", dated as of January __, 2019 (the "Confirmation Execution Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Section 3 of this Confirmation. This Transaction shall be deemed to have been entered into pursuant to, and shall supplement, form a part of, and be governed by the terms and conditions of the form of Master Power Purchase and Sale Agreement published by the Edison Electric Institute and the National Energy Marketers Association (version 2.1 dated 4/25/00) (the "EEI Agreement") with a Cover Sheet containing the elections and other changes contained herein as if the Parties have executed the EEI Agreement (with such Cover Sheet the "Master Agreement"). The Parties agree that the only transactions to be concluded pursuant to such Master Agreement shall be the Transaction documented in this Confirmation. The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein). To the extent that this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

Name: Party A / Seller

All Notices:

< company name >

< street address >

< city/state/zip >

Attn: _____

Telephone: (____) ____ - ____

Facsimile: (____) ____ - ____

Duns: _____

Federal Tax ID Number: _____

Name: Party B / Buyer

All Notices:

San Diego Gas & Electric Company

8315 Century Park Court CP 21D

San Diego CA 92123-1593

Attn: Contract Administration

Telephone: (858) 650-6176

Facsimile: (858) 650-6190

Duns: 006911457

Federal Tax ID Number: 95-1184800

Invoices:

< company name >

< street address >

< city/state/zip >

Attn: _____

Telephone: (____) ____ - ____

Facsimile: (____) ____ - ____

Invoices:

San Diego Gas & Electric Company

8315 Century Park Court

San Diego CA 92123-1593

Attn: Energy Accounting Manager

Telephone: (858) 650-6177

Facsimile: (858) 650-6190

Scheduling:

< company name >
< street address >
< city/state/zip >
Attn: _____
Day Ahead: (____) ____ - ____
Real Time: (____) ____ - ____
Facsimile: (____) ____ - ____

Payments:

< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: (____) ____ - ____
Facsimile: (____) ____ - ____

Wire Transfer:

< bank name >
< bank street address >
< bank city/state/zip >
ABA Routing Number: _____
Payee: _____
Account Number: _____
Confirmation: _____
Facsimile: (____) ____ - ____

Credit and Collections:

< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: (____) ____ - ____
Facsimile: (____) ____ - ____

With additional Notices of an Event of Default or Potential Event of Default to:

< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: (____) ____ - ____
Facsimile: (____) ____ - ____

Scheduling:

San Diego Gas & Electric Company
8315 Century Park Court, CP 21D
San Diego, CA 92123-1593
Attn: Transaction Scheduling Manager
Day Ahead: (858) 650-6168
Real Time: (858) 650-6160
Facsimile: (858) 650-6191

Payments:

San Diego Gas & Electric Company
8315 Century Park Court
San Diego CA 92123-1593
Attn: Energy Accounting Manager
Telephone: (858) 650-6177
Facsimile: (858) 650-6190

Wire Transfer:

Union Bank of California
445 South Figueroa Street
Los Angeles CA 90071
ABA Routing Number: 122000496
Payee: San Diego Gas & Electric Company
Account Number: 4430000352
Confirmation: SDG&E – Major Markets
Facsimile: (213) 244-8316

Credit and Collections:

San Diego Gas & Electric Company
555 West Fifth Street, ML 18A3
Los Angeles, CA 90013-1011
Attn: Major Markets – Credit and
Collections Manager
Telephone: (213) 244-4343
Facsimile: (213) 244-8316

With additional Notices of an Event of Default or Potential Event of Default to:

San Diego Gas & Electric Company
8330 Century Park Ct.
San Diego, California 92123
Attn: General Counsel
Telephone: (858) 650-6141
Facsimile: (858) 650-6106

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

Article TwoTransaction Terms
and Conditions

- Optional provision in Section 2.4.
If not checked, inapplicable.

Article FourRemedies for Failure
to Deliver or Receive

- Accelerated Payment of Damages.
If not checked, inapplicable.

Article Five

Events of Default; Remedies

- Cross Default for Party A:
 Party A: _____ Cross Default Amount: _____
 Other Entity: _____ Cross Default Amount: _____
- Cross Default for Party B:
 Party B: N/A Cross Default Amount: N/A
 Other Entity: N/A Cross Default Amount: N/A

5.6 Closeout Setoff

- Option A (Applicable if no other selection is made.)
 Option B – Affiliates shall have the meaning set forth in
the Agreement unless otherwise specified as follows:

 Option C (No Setoff)

Article 8Credit and
Collateral Requirements**8.1 Party A Credit Protection:**

- (a) Financial Information:
 Option A
 Option B Specify: _____
 Option C Specify: _____
- (b) Credit Assurances:
 Not Applicable
 Applicable
- (c) Collateral Threshold:
 Not Applicable
 Applicable
- (d) Downgrade Event:
 Not Applicable
 Applicable
- (e) Guarantor for Party B: None.
Guarantee Amount: N/A

8.2 Party B Credit Protection: _____

- (a) Financial Information:
 Option A
 Option B Specify: _____
 Option C Specify: _____
- (b) Credit Assurances:
 Not Applicable
 Applicable
- (c) Collateral Threshold:
 Not Applicable
 Applicable
 If applicable, complete the following:
 Party A Collateral Threshold: \$ _____;
 provided, however, that Party A's Collateral
 Threshold shall be zero if an Event of Default or
 Potential Event of Default with respect to Party A
 has occurred and is continuing.
 Party A Independent Amount: \$ _____
 Party A Rounding Amount: \$ _____
- (d) Downgrade Event:
 Not Applicable
 Applicable
 If applicable, complete the following:
 It shall be a Downgrade Event for Party A if
 Party A 's Credit Rating falls below _____
 from S&P or _____ from Moody's or if Party A
 is not rated by either S&P or Moody's
 Other:
 Specify: _____
- (e) Guarantor for Party A: None
 Guarantee Amount: N/A

Article 10

Confidentiality Confidentiality Applicable If not checked, inapplicable.

Schedule M

- Party A is a Governmental Entity or Public Power System
 Party B is a Governmental Entity or Public Power System
 Add Section 3.6. If not checked, inapplicable
 Add Section 8.4. If not checked, inapplicable

Other Changes

1. The modifications to Section 1.12, 1.50 and 5.2 of the Master Agreement specified in that certain Errata published by the Edison Electric Institute (version 1.1, July 18, 2007) are hereby incorporated herein as if set forth in full.

2. Section 10.2(ii) of the Master Agreement shall be modified by inserting “Except for the approval by the CPUC as stated in Section 2.2 of this Confirmation,” at the beginning of the first sentence in such section.
 3. Section 10.6 of the Master Agreement shall be deleted in its entirety and replaced with the following:

“THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW, EACH PARTY WAIVES ITS RESPECTIVE RIGH TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.”
 4. Schedule P: Products and Related Definitions shall be deleted in its entirety.
-

1. Definitions

- 1.1 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.2 “Availability Incentive Payments” has the meaning set forth in the Tariff [and includes any similarly defined payments under the Tariff in respect of Flexible RA Attributes]. [REDACTED]
- 1.3 “Availability Standards” has the meaning set forth in the Tariff [and includes any similarly defined standards under the Tariff in respect of Flexible RA Attributes] [REDACTED]
- 1.4 “Buyer” has the meaning specified in the introductory paragraph.
- 1.5 “CAISO” means the California Independent System Operator Corporation, or any successor entity performing the same functions.
- 1.6 “Capacity Attributes” means (a) the Local RA Attributes, (b) the RA Attributes, (c) the Flexible RA Attributes, and (d) any other current or future defined characteristics (including the ability to generate at a given capacity level, provide ancillary services, ramp up or down at a given rate, and flexibility or dispatch-ability attributes), certificates, tags, credits, howsoever entitled, including any accounting construct applied to any Compliance Obligations.
- 1.7 “Capacity Price” means the price specified in the Capacity Price Table in Section 4.1.

- 1.8 “Capacity Replacement Price” means (a) the actual rate per kW-day paid for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) including any penalties, fines, transaction costs and expenses reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of Replacement Capacity, any penalties, fines, transaction costs and expenses plus the per kW-day market price for the Product not delivered by Seller under this Confirmation. Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 1.51 of the Master Agreement, “Capacity Replacement Price” shall be deemed the “Replacement Price” for this Transaction.
- 1.9 “Compliance Obligations” means the RAR, Local RAR, Flexible RAR, and other resource adequacy requirements associated with a generating unit’s Capacity Attributes established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
- 1.10 “Compliance Showing” means one or more of the following: (a) Local RAR Showing, (b) RAR Showing, (c) Flexible RAR Showing, or (d) other Capacity Attributes compliance or advisory filing (or similar or successor showing or filing), in each case, that an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.11 “Confirmation” has the meaning specified in the introductory paragraph.
- 1.12 “Confirmation Effective Date” has the meaning specified in Section 2.2.
- 1.13 “Confirmation Execution Date” has the meaning specified in the introductory paragraph.
- 1.14 “Contract Price” means, for any day in any Monthly Delivery Period, the Capacity Price for such period.
- 1.15 “Contract Quantity” means the quantity of Product (in MW) as set forth in Section 3.5.
- 1.16 “Contract Term” has the meaning set forth in Section 2.1.
- 1.17 “CPUC” means the California Public Utilities Commission.
- 1.18 “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-25, and any other existing or subsequent decisions, resolutions or rulings related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.19 “CPUC Filing Guide” is the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSEs to demonstrate compliance with the CPUC’s resource adequacy program as provided in the CPUC Decisions.
- 1.20 “Credit Rating” means, with respect to any entity, the rating assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Master Agreement, or if such entity does not have a rating for its

senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Moody's or any other rating agency agreed by the Parties as set forth in the Master Agreement.

- 1.21 "Delivery Period" has the meaning specified in Section 3.4.
- 1.22 "Emission Reduction Credits" or "ERC(s)" means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby such district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.
- 1.23 "Environmental Costs" means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product's compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits (including any costs related to greenhouse gas emissions) required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the site, and the decontamination or remediation, on or off the site, necessitated by the introduction of such hazardous substances on the site.
- 1.24 "Flexible RA Attributes" means, with respect to a Unit, any and all flexible resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and Local RA Attributes.
- 1.25 "Flexible RAR" means the flexible capacity requirements, including, without limitation, maximum continuous ramping, load following, and regulation, established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Flexible RAR may also be known as ramping, maximum ramping, maximum continuous ramping, maximum continuous ramping capacity, maximum continuous ramping ramp rate, load following, load following capacity, load following ramp rate, regulation, regulation capacity, regulation ramp rate.
- 1.26 "Flexible RAR Showing" means the Flexible RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.27 "GADS" means the Generating Availability Data System, or its successor.
- 1.28 "Governmental Body" means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative,

executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

- 1.29 “Local Capacity Area” has the meaning set forth in the Tariff.
- 1.30 “Local RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes or other locational attributes for the Unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward a Local RAR, but exclusive of any RA Attributes and Flexible RA Attributes.
- 1.31 “Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.32 “Local RAR Showing” means the Local RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.33 “LSE” means load-serving entity.
- 1.34 “Marketable Emission Trading Credits” means without limitation, emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (see 42 U.S.C. § 7651b.(a) to (f)).
- 1.35 “Master Agreement” has the meaning specified in the introductory paragraph.
- 1.36 “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.37 “Monthly Payment” has the meaning specified in Section 4.1.
- 1.38 “Moody’s” means Moody’s Investors Services, Inc. or its successor.
- 1.39 “NERC” means the North American Electric Reliability Corporation, or its successor.
- 1.40 “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.
- 1.41 “Net Qualifying Capacity” has the meaning set forth in the Tariff.

- 1.42 “Non-Availability Charges” has the meaning set forth in the Tariff [and includes any similarly defined charges under the Tariff in respect of Flexible RA Attributes]
[REDACTED]
- 1.43 “Non-Specified RA Replacement Capacity” has the meaning set forth in the Tariff [and includes any similarly defined capacity under the Tariff in respect of Flexible RA Attributes]
[REDACTED]
- 1.44 “Outage” means any disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 1.45 “Outage Schedule” has the meaning specified in Section 3.8.
- 1.46 “Planned Outage” shall have the meaning in CPUC Decisions, and includes a planned, scheduled, or any other Outage approved by the CAISO for the routine repair or maintenance of the Unit, or for the purposes of new construction work, and does not include any Outage designated as either forced or unplanned as defined by the CAISO or NERC/GADS Protocols.
- 1.47 “Product” has the meaning specified in Section 3.1.
- 1.48 “Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix A, of the Unit NQC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.
- 1.49 “Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix A, of the Unit EFC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.
- 1.50 “RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any Local RA Attributes and Flexible RA Attributes.
- 1.51 “RA Substitute Capacity” means capacity that the CAISO permits under the CAISO Tariff to be substituted for a Resource Adequacy Resource that is on Outage.
- 1.52 “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
- 1.53 “RAR Showing” means the RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.

- 1.54 “Replacement Capacity” means capacity which has equivalent Capacity Attributes as the portion of the Product not provided by the Units committed to Buyer as of the Confirmation Execution Date.
- 1.55 “Replacement Rules” has the meaning set forth in Section 3.9(b).
- 1.56 “Replacement Unit” means a generating unit providing Replacement Capacity.
- 1.57 “Resource Category” shall be as described in the CPUC Filing Guide.
- 1.58 “RMR Contract” has the meaning set forth in the Tariff.
- 1.59 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc. or its successor).
- 1.60 “Scheduling Coordinator” or “SC” has the meaning set forth in the Tariff.
- 1.61 “Seller” has the meaning specified in the introductory paragraph.
- 1.62 “Showing Month” shall be the calendar month that is the subject of the Compliance Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Execution Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.63 “Substitution Rules” has the meaning set forth in Section 3.9(b).
- 1.64 “Supply Plan” has the meaning set forth in the Tariff [and includes any similarly defined plan under the Tariff in respect of Flexible RA Attributes].
- 1.65 “Tariff” means the tariff and protocol provisions, including any applicable CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended or supplemented from time to time, of the CAISO.
- 1.66 “Transaction” has the meaning specified in the introductory paragraph.
- 1.67 “Unit” or “Units” shall mean the generation assets described in Appendix A (including any Replacement Units), from which Product is provided by Seller to Buyer.
- 1.68 “Unit Contract Quantity” means the amount of Product (in MW) to be delivered by Seller to Buyer by each individual Unit, as specified in Appendix A as of the Confirmation Execution Date.
- 1.69 “Unit EFC” means the effective flexible capacity or capacity that is qualified to provide Flexible RA Attributes established by the CAISO for the applicable Unit.
- 1.70 “Unit NQC” means the Net Qualifying Capacity established by the CAISO for the applicable Unit.
- 1.71 “Unit Delivered Quantity” means the amount of applicable Product (in MW) actually “delivered” by Seller to Buyer by each individual Unit. As used herein, “delivered” shall mean shown in the Supply Plan and, for purposes of Section 4.1, shall include

any RA Substitute Capacity under Section 3.9, and in all cases, shall not include (i) any portion of Contract Capacity for which Buyer is required under the Compliance Obligations or the Tariff to procure Replacement Capacity, and (ii) any portion of Contract Capacity for which Seller is required hereunder, but fails, to provide Replacement Capacity to Buyer.

2. Term

2.1 Contract Term

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

2.2 Conditions Precedent; Binding Nature

This Agreement shall not be effective or binding on either Party until, and it shall become effective and binding on both Parties as of, the date on which the conditions precedent, if any, described below shall have been achieved (or waived in writing by each of the Parties in their sole discretion) (the "Confirmation Effective Date").

(a) None.

If any of the foregoing conditions precedent are not achieved (or waived in writing by each of the Parties) on or before the deadline dates therefor (without extension for Force Majeure or any other reason), then this Agreement shall automatically terminate. If there are no conditions precedent listed above in this Section 2.2 then the Confirmation Effective Date shall be the Confirmation Execution Date. This Agreement shall be effective and binding as of the Confirmation Effective Date.

3. Transaction

3.1 Product

- (a) Seller shall sell and Buyer shall receive and purchase, the Capacity Attributes (including all Local RA Attributes [but excluding Flexible RA Attributes (if any)][and Flexible RA Attributes ██████████] of the Units identified in Appendix A (collectively, the "Product") and Seller shall deliver the Product as described in Section 3.2 below. Product does not include any right to dispatch or receive the energy or ancillary services from the Unit. Seller retains the right to sell any Product from a Unit in excess of its Unit Contract Quantity.
- (b) The Parties agree that (i) the Contract Price for the Product shall not change if the CAISO, CPUC or other Governmental Body (A) defines new or re-defines existing Local Capacity Areas which decreases or increases the amount of Local RA Attributes provided hereunder, or (B) defines new or re-defines existing Local Capacity Areas whereby the Units qualify for a Local

Capacity Area and (ii) if the event in Section 3.1(b)(i)(B) occurs then the Product shall include such Local RA Attributes.

- (c) [The Parties agree that (i) the Contract Price for the Product shall not change if the CAISO, CPUC or other Governmental Body defines new or re-defines existing Flexible RAR, Capacity Attributes related to Flexible RAR, or attributes of the Unit related to Flexible RAR, that results in a decrease or increase in the amount of Capacity Attributes related to Flexible RAR provided hereunder, and (ii) if the event in Section 3.1(c)(i) occurs then the Product shall include such Capacity Attributes related to Flexible RAR.]



3.2 Firm Quantity

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

3.3 Delivery Period

The "Delivery Period" shall be _____ thru _____, inclusive, unless terminated earlier in accordance with the terms of this Agreement.

3.4 Contract Quantity:

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

CONTRACT QUANTITY TABLE

Unit Name	CAISO Resource ID*	Month(s)	Unit Contract Quantity (MW)	
			Capacity Attributes (excluding Flexible RA Attributes)	Flexible RA Attributes

Unit Name	CAISO Resource ID*	Month(s)	Unit Contract Quantity (MW)	
			Capacity Attributes (excluding Flexible RA Attributes)	Flexible RA Attributes
* CAISO Resource ID should match a Unit described in Appendix A				

3.5 Delivery of Product

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

- (a) Seller shall, on a timely basis, submit, or cause each Unit's SC to submit, Supply Plans to identify and confirm the Unit Delivered Quantity for each Unit provided to Buyer so that the total amount of Unit Delivered Quantity identified and confirmed equals the Unit Contract Quantity for each Unit, unless specifically notified or requested not to do so by the Buyer pursuant to Section 3.9, and;
- (b) Seller shall cause each Unit's SC to submit written notification to Buyer, no later than fifteen (15) Business Days before the relevant deadline for any applicable Compliance Showing, that Buyer will be credited with Unit Delivered Quantity for the applicable portion of the Delivery Period in the Unit's SC Supply Plan so that the total amount of Unit Delivered Quantity for each Unit credited equals the Unit Contract Quantity.

3.6 CAISO/CPUC Offer Requirements

Subject to Buyer's request under Section 3.9(a), Seller shall, or cause the Unit's SC to, bid and/or schedule with, or make available to, the CAISO the Unit Contract Quantity for each Unit in compliance with the Tariff and the CPUC Filing Guide, including any must offer obligation under the Tariff or the CPUC Filing Guide, and shall, or cause the Unit's SC, owner, or operator, as applicable, to perform all obligations under the Tariff and the CPUC Filing Guide that are associated with the sale and delivery of Product hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's SC, owner, or operator to comply with such Tariff and CPUC Filing Guide provisions, including any penalties, charges or fines imposed on Seller or the Unit's SC, owner, or operator for such noncompliance.

3.7 Reserved

3.8 Unit Substitution; RA Replacement Capacity

- (a) RA Replacement Capacity: No later than five (5) Business Days before the relevant deadline for each applicable Compliance Showing, Buyer may (i) request, subject to Seller's reasonable approval, that Seller not, or cause each Unit's SC not to, list a portion or all of a Unit's applicable Unit Contract Quantity on the Supply Plan or (ii) notify Seller that a portion or all of the Unit Contract Quantity of a Unit will be included in an applicable Compliance Showing as RA Substitute Capacity. The amount of Unit Contract Quantity that is the subject of such a request or notice shall be known as "RA Substitute Capacity" and, for purposes of calculating a Monthly Payment pursuant to Section 4.1, to the extent provided, such RA Substitute Capacity shall be deemed Unit Delivered Quantity provided consistent with Section 3.6.
- (b) Seller's Obligations With Respect to RA Substitute Capacity: If Buyer requests RA Substitute Capacity, Seller shall (i) make such RA Substitute Capacity available to Buyer during the applicable Showing Month to allow Buyer to utilize, as applicable, the substitution rules in Sections 9.3.1.3.1, 9.3.1.3.2 and 40.9.4.2.1 of the Tariff [including any similarly defined substitution rules under the Tariff in respect of Flexible RA Attributes] [REDACTED] ("Substitution Rules") and (ii) take, or cause each Unit's SC to take, all action to allow Buyer to utilize, as applicable, the Substitution Rules, including, but not limited to, ensuring that the RA Substitute Capacity will qualify, as applicable, for substitution under the Substitution Rules, and providing Buyer with all information needed to utilize the Substitution Rules.
- (c) Seller agrees that all RA Substitute Capacity utilized by Buyer under the Substitution Rules, as applicable, is subject to the requirements identified in Section 3.7.
- (d) Failure to Provide RA Substitute Capacity: If Seller fails to provide RA Substitute Capacity or Buyer is unable to utilize the RA Substitute Capacity under the Substitution Rules due to Seller's failure to fulfill its obligations under Section 3.9(b)(ii), then Seller shall reimburse Buyer for any and all Non-Availability Charges incurred by Buyer and shall pay Buyer the CPM revenue the CASIO would have paid the Buyer but for Seller failure, due to such failure or inability to utilize the Substitution Rules; provided, that if Buyer is unable to utilize the Substitution Rules because the RA Substitute Capacity does not qualify for substitution under Section 9.3.1.3.1, 9.3.1.3.2, 40.9.4.2.1(1)(i) or (ii) of the Tariff, then Seller shall not be responsible for any such Non-Availability Charges described in this Section 3.9(d) associated with such inability.

3.9 Buyer's Re-Sale of Product

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

4. Payment

4.1 Monthly Payment

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

$$\text{Monthly Payment} = \sum_{n=1}^d (A_n * B_n * 1000)$$

where:

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

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

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

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

CAPACITY PRICE TABLE

2019 Contract Month	Capacity Price (\$/kW-day)
January	
February	
March	
April	
May	
June	

2019 Contract Month	Capacity Price (\$/kW-day)
July	
August	
September	
October	
November	
December	

4.2 Reserved.

4.3 Allocation of Other Payments and Costs

- (a) Seller shall retain any revenues it may receive from and pay all costs charged by, the CAISO or any other third party with respect to any Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, and (iv) any revenues for black start or reactive power services. Seller shall indemnify, defend and hold Buyer harmless from and against all liabilities, damages, claims, losses, costs or expenses (including, without limitation, attorneys' fees) incurred by or brought against Buyer in connection with Environmental Costs.
- (b) Buyer shall be entitled to receive and retain all revenues associated with the Contract Quantity during the Delivery Period including any capacity or availability revenues from RMR Contracts for any Unit, Capacity Procurement Mechanism (CPM) or its successor, and Residual Unit Commitment (RUC) Availability Payments, or its successor but excluding payments described in Section 4.3(a)(i)-(iv).
- (c) In accordance with Section 4.1 of this Confirmation and Article Six of the Master Agreement, all such Buyer revenues described in Section 4.3(b), but received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. In order to verify the accuracy of such revenues, Buyer shall have the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity.
- (d) If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit the Contract Quantity for re-sale in such market, and retain and receive any and all related revenues.

- (e) Subject to the Unit being made available to the CAISO in accordance with Article 3 of this Confirmation, Seller agrees that the Unit is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments under the Tariff. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of Seller and for Seller's account and that any Non-Availability Charges are the responsibility of Seller and for Seller's account.

4.4 Offset Rights

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

5. Seller's Failure to Deliver Contract Quantity

5.1 Seller's Duty to Provide Replacement Capacity

Planned Outage replacement shall be addressed by the Tariff. For all other replacements, if Seller is unable to provide the Contract Quantity from any Unit(s) for any day in any Monthly Delivery Period and Replacement Capacity is required under Section 3.2, then:

- (a) Seller shall notify Buyer of the non-availability of any portion of the Contract Quantity from any Unit(s) and identify Replacement Unit(s), and
- (b) Seller shall, at no additional cost to Buyer, provide Buyer with Replacement Capacity from one or more Replacement Units, such that the total amount of Product provided to Buyer from all Units and Replacement Units equals Contract Quantity.

provided that the designation of any Replacement Unit by Seller shall be subject to Buyer's prior written approval, which shall not be unreasonably withheld. Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 5.1, and Buyer has approved the designation of the Replacement Unit, then any such Replacement Unit shall be deemed a Unit for purposes of this Confirmation for that day in such Monthly Delivery Period. Notwithstanding anything to the contrary in this Confirmation, Seller's failure to properly provide Replacement Capacity, including Seller's obligation to identify Replacement Units within the notice deadlines specified in this Section 5.1, may result in the calculation of damages payable to Buyer and/or the indemnification of Buyer against any penalties, fines or costs under Section 5 and Section 10.

5.2 Damages for Failure to Provide Replacement Capacity

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

- (a) Buyer may, but shall not be obligated to, obtain Replacement Capacity. Buyer may enter into purchase transactions with one or more parties to

replace the portion of Contract Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver the capacity to another party, and such arrangements shall be considered the procurement of Replacement Capacity. Buyer shall act in a commercially reasonable manner in purchasing any Replacement Capacity, and;

- (b) Seller shall pay to Buyer damages, in accordance with the terms of Section 4.1 of the Master Agreement relating to “Accelerated Payment of Damages,” if applicable, an amount equal to the positive difference, if any, between (i) the sum of (A) the Capacity Replacement Price paid by Buyer for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) for such day, plus (B) the Capacity Replacement Price times the portion of Contract Capacity not provided by Seller nor purchased by Buyer pursuant to Section 5.2(a) for such day times 1,000 kW/MW, and (ii) the portion of Contract Capacity not provided for the applicable day in the applicable Monthly Delivery Period times the Contract Price for that day times 1,000 kW/MW.

5.3 Indemnities for Failure to Deliver Contract Capacity

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

- (a) Seller’s failure to provide any portion of the Contract Capacity or any portion of the Replacement Capacity;
- (b) Seller’s failure to provide timely notice of the non-availability of any portion of the Contract Capacity;
- (c) A Unit’s SC’s failure to timely submit Supply Plans that identify Buyer’s right to the Unit Contract Quantity purchased hereunder, or;
- (d) any other failure by Seller to perform its obligations under this Confirmation.

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

6. Other Buyer and Seller Covenants

6.1 Seller’s and Buyer’s Duty to Take Action to Allow the Utilization of the Product

Buyer and Seller shall, throughout the Delivery Period, take commercially reasonable actions and execute any and all documents or instruments reasonably necessary to

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

6.2 Seller's Represents, Warrants and Covenants

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

- (a) Seller owns or has the exclusive right to the Product sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;
- (c) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
- (d) Seller shall, and each Unit's SC, owner and operator is obligated to, comply with Applicable Laws, including the Tariff, relating to the Product;
- (e) If Seller is the owner of any Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for any Unit does not exceed the Unit NQC or Unit EFC, as applicable, for that Unit;
- (f) Seller has notified the SC of each Unit that Seller has transferred the Unit Contract Quantity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff fully reflecting such transfer;
- (g) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to Buyer, at least fifteen (15) Business Days before the relevant deadline for each Compliance Showing, the Unit Contract Quantity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period;
- (h) Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.3, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues;

- (i) In the event Seller has rights to the energy output of any Unit, and Seller or the Unit's SC schedules energy from the Unit for export from the CAISO Control Area, or commits energy to another entity in a manner that could result in scheduling energy from the Unit for export from the CAISO Control Area, it shall do so only as allowed by, and in accordance with, Applicable Laws and such exports may, if allowed by the Tariff, be curtailed by the CAISO, and;
- (j) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities.

7. Confidentiality

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

8. Counterparts

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

9. Collateral Requirements

On or before the Confirmation Execution Date, to secure its obligations under this Confirmation, Seller agrees to deliver a Letter of Credit or cash in the amount of _____ to Buyer and maintain such security in full force and effect until it is required to be returned in accordance with this Section 9. The security posted under this Section 9 shall not be deemed a limitation of Seller's damages. Buyer shall return to Seller any unused portion of this security after the following have occurred: (i) the Delivery Period has expired or terminated early; and (ii) all payment obligations of the Seller arising under this Confirmation, including compensation for penalties, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

10. Declaration of an Early Termination Date and Calculation of Settlement Amounts

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

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

[Signature page follows]

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

_____ SAN DIEGO GAS & ELECTRIC COMPANY
a _____ a California corporation

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

APPROVED as to legal form _____

APPENDIX A**Unit Information**

Unit Resource Name	
CAISO Resource ID	
Unit SCID	
2019 Unit NQC (MW)	
Prorated Percentage of Unit Factor	
2019 Unit EFC (MW)	<i>[Comment: If the Product does not include flexible capacity, insert "Not Applicable"]</i>
Prorated Percentage of Unit Flexible Factor	
Resource Type	
Resource Category (MMC Bucket 1, 2, 3 or 4)	
Path 26 (North or South)	
Local Capacity Area (if any, as of Confirmation Execution Date)	
Unit Contract Quantity (MW) for Capacity Attributes (excluding Flexible RA Attributes)	
Unit Contract Quantity (MW) for Flexible RA Attributes	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	

EXHIBIT D

**SDG&E DIRECT TESTIMONY OF SUE E. GARCIA (ELECTRIC AND FUEL
PROCUREMENT) (NOVEMBER 2014) IN THE 2016 GRC PROCEEDING (A.14-11-003)**

Exhibit D
2019 SDG&E ERRRA Duran - Kendall K. Helm's 2019 GRC Testimony

Company: San Diego Gas & Electric Company (U 902 M)
Proceeding: 2019 General Rate Case
Application: A.17-10-_____
Exhibit: SDG&E-12

**SAN DIEGO GAS AND ELECTRIC
DIRECT TESTIMONY OF KENDALL K. HELM
(ELECTRIC AND FUEL PROCUREMENT)**

October 6, 2017

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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SUMMARY

ELECTRIC & FUEL PROCUREMENT (In 2016 \$)			
O&M			
	2016 Adjusted-Recorded (000's)	TY 2019 Estimated (000's)	Change (000's)
Total Non-Shared Services	7,962	8,641	679
Total Shared Services (Incurred)	0	0	0
Total O&M	7,962	8,641	679

Capital	2017 (\$000)	2018 (\$000)	2019 (\$000)
	\$0	\$0	\$0

Summary of Requests

- San Diego Gas & Electric Company (SDG&E) requests that the California Public Utilities Commission (CPUC) adopt its proposal for \$8.7 million of operations and maintenance (O&M) expenses for the function of procuring electricity for SDG&E's 3.6 million customers.
- SDG&E's focus is on aligning and repurposing labor responsibilities in Electric and Fuel Procurement (E&FP) to maintain the required expertise in order to sustain its mission of providing clean, safe, and reliable energy under an evolving technology and regulatory landscape. Accordingly, this request includes an approximate \$700,000 increase in O&M expenses relative to the 2016 adjusted recorded amounts primarily due to vacancies in 2016 that have to be filled and/or repurposed for E&FP to succeed at this mission. The \$8.7 million request is consistent with O&M expenses recorded in prior years.
- Going forward, a five-year historical average was used as the forecast methodology to develop the 2019 cost forecast because, while procurement roles and priorities are evolving, the overall responsibility to procure adequate supplies of power remains consistent over time.

- Also included in this testimony, SDG&E provides a description of the need for certain technology upgrades required to maintain its legal obligation to provide scheduling services within the California Independent System Operator (CAISO) market. The associated capital costs are requested in the Direct Testimony of Chris Olmsted, Chapter SDG&E-24.

1 **SDG&E DIRECT TESTIMONY OF KENDALL K. HELM**
2 **(ELECTRIC AND FUEL PROCUREMENT)**

3 **I. INTRODUCTION**

4 **A. Summary of Electric and Fuel Procurement Costs and Activities**

5 My testimony supports the Test Year (TY) 2019 forecasts for O&M costs for non-shared
6 services and the need for certain CAISO-related technology upgrades associated with the E&FP
7 function for SDG&E. Table KKH-1 summarizes my sponsored costs. The associated capital
8 costs for technology upgrades are included in the Direct Testimony of Chris Olmsted, Chapter
9 SDG&E-24.

10 **Table KKH-1**
11 **Summary of Total Costs**

ELECTRIC & FUEL PROCUREMENT (In 2016 \$)			
Categories of Management	2016 Adjusted- Recorded (000s)	TY 2019 Estimated (000s)	Change (000s)
A. Long Term Procurement	1,762	2,203	441
B. Trading & Scheduling	2,830	2,949	119
C. Mid and Back Office	3,370	3,489	119
Total Non-Shared Services	7,962	8,641	679

12 This testimony requests approval for approximately \$8.7 million of annual O&M costs
13 for E&FP to fulfill its responsibility for planning, procuring, managing, and administering the
14 energy supply resources needed for SDG&E to deliver clean, safe, and reliable electricity to its
15 approximate 3.6 million customers.¹ Since 2013, the value of these supply resources has
16 exceeded \$1.2 billion dollars on an annual basis, and in 2016, 43 percent of the electricity
17 supplied to customers was from renewable sources. E&FP meets customer demand by acquiring
18 both long-term and short-term resources, optimizing those resources in the wholesale energy and
19 ancillary services markets, prudently administering contracts, and accurately settling all energy
20 procurement transactions. To meet state policy goals and comply with legislative and regulatory
21 requirements, E&FP also develops comprehensive procurement strategies and tools to capture
22 the benefits of clean and evolving technologies, such as energy storage, demand response, and

¹ E&FP procures electricity for its bundled customer load, which represents the total demand from those customers that buy the commodity of electricity from SDG&E.

1 distributed energy resources. While costs for electricity supply are forecasted and recorded in
2 SDG&E's Energy Resource Recovery Account (ERRA), E&FP's O&M costs² are part of the
3 General Rate Case (GRC).

4 In addition to sponsoring my own organization's costs, my testimony supports the need
5 for technology upgrades to enable SDG&E to maintain its legal obligation to provide scheduling
6 services within the CAISO market. The associated capital costs are requested in the Direct
7 Testimony of Mr. Olmsted, (Ex. SDG&E-24).

8 **B. Summary of Costs Related to the Voluntary Retirement Enhancement**
9 **Program**

10 Sempra Energy (including SDG&E and SoCalGas) implemented a Voluntary Retirement
11 Enhancement Program (VREP) in 2016, designed to offer savings from operating efficiencies,
12 optimized business processes, and enhanced overall operations. Within E&FP, four people
13 elected to take this program. Across the department, E&FP leveraged existing expertise and
14 process improvements to enable repurposing of their labor responsibilities toward future
15 priorities. In addition, one position was associated with essential hourly resource management
16 activities and had to be backfilled.

17 **C. Organization of Testimony**

18 My testimony is organized as follows:

- 19 • Description of the activities, non-shared cost forecast and cost drivers for:
- 20 ○ Long-Term Procurement
 - 21 ○ Trading and Scheduling
 - 22 ○ Middle-Office and Back-Office
- 23 • Description of required technology upgrades for capital costs referenced by Mr.
24 Olmsted (Ex. SDG&E-24).
- 25 • Conclusion

² Exclusive of applicable software and subscription costs used exclusively for purposes of energy procurement-related requirements, which may be recovered through ERRA (for example, Tullett Prebon pricing subscriptions used exclusively for SRAC price indices).

II. NON-SHARED COSTS

“Non-Shared Services” are activities that are performed by a utility solely for its own benefit. Table KKH-2 summarizes E&FP’s total non-shared O&M forecasts for the listed cost categories.

**Table KKH-2
Non-Shared O&M Summary of Costs**

Labor	2016 Adjusted- Recorded (000s)	2017 Adjusted- Forecast (000s)	2018 Adjusted- Forecast (000s)	2019 Estimated (000s)
Long Term Procurement	1,663	1,955	1,955	1,955
Trading & Scheduling	2,263	2,333	2,333	2,333
Mid and Back Office	2,525	2,429	2,429	2,429
Total	6,451	6,717	6,717	6,717

Non-labor	2016 Adjusted- Recorded (000s)	2017 Adjusted- Forecast (000s)	2018 Adjusted- Forecast (000s)	2019 Estimated (000s)
Long Term Procurement	100	248	248	248
Trading & Scheduling	568	616	616	616
Mid and Back Office	844	1,060	1,060	1,060
Total	1512	1924	1924	1924

FTE	2016 Adjusted- Recorded (000s)	2017 Adjusted- Forecast (000s)	2018 Adjusted- Forecast (000s)	2019 Estimated (000s)
Long Term Procurement	12.6	14.7	14.7	14.7
Trading & Scheduling	19.5	20.4	20.4	20.4
Mid and Back Office	24.3	24.6	24.6	24.6
Total	56.5	59.8	59.8	59.8

1 **A. Long-Term Procurement**

2 Long-Term Procurement functions include the Vice President of Energy Supply and the
3 Origination and Portfolio Design (O&PD) department.

4 **1. Description of Costs and Underlying Activities**

5 The Vice President of Energy Supply provides direction and officer oversight for E&FP,
6 Electric Generation, and Resource Planning. This involves overseeing about 115 employees
7 across eight different departments including O&PD, Trading and Scheduling, and E&FP Back-
8 Office functions. Overall, the Vice President of Energy Supply is responsible for providing
9 strategic direction consistent with and complementary to SDG&E’s wider mission, developing
10 policies to strengthen and enhance energy supply functions and performance, and ensuring that
11 all energy procurement is conducted consistent with internal requirements, Commission rules
12 and decisions, and CAISO tariffs.

13 O&PD is responsible for soliciting energy supplies from independent producers and
14 utility-owned resources to meet SDG&E’s long-term energy and capacity requirements. For
15 supplies from independent producers, O&PD negotiates and executes Power Purchase
16 Agreements (PPAs). At the end of 2016, E&FP’s portfolio included 72 PPAs for 4,774
17 Megawatts (MW) of energy and capacity under contract terms ranging from 1 year to 30 years.³
18 The parties to these contracts include, among others, large independent power suppliers, Diverse
19 Business Enterprises, power marketers, and municipalities. Long-term resources include
20 demand response, solar, wind, biomass, small hydro, combined heat and power, conventional
21 generation, and energy storage.

22 To develop long-term procurement plans and implement legislative mandates, O&PD
23 regularly participates in regulatory proceedings and interfaces with numerous government
24 agencies, including the CPUC, the California Energy Commission, and the California Air
25 Resources Board. As an example, the Long-Term Procurement Plan (LTPP)⁴ is a reoccurring
26 two year CPUC proceeding that integrates all E&FP’s activities in carrying out the CPUC’s
27 preferred loading order for resource additions. Other proceedings where O&PD plays an active
28 role include those for the Renewable Portfolio Standard (RPS), the Integrated Distributed Energy

³ Figures include projects both in construction and operation and reflects data as of December 31, 2016.

⁴ SDG&E’s most recent LTPP (2014 LTPP, Advice Letter 2850-E-A) was approved by the CPUC via disposition letter and became effective February 19, 2016.

1 Resources Program, the Green Tariff Shared Renewables Program, and various other
2 procurement programs targeting energy storage, demand response, biogas, and small scale
3 renewables. O&PD also provides input into long-range resource planning models and regularly
4 administers data requests pertaining to E&FP's resource valuation approach and RPS position.

5 Consistent with approved procurement plans, O&PD then acquires energy resources
6 according to the rules established by the CPUC through competitive solicitations and bilateral
7 negotiations. Competitive solicitations are conducted by issuing a Request for Offers (RFO) to
8 potential parties, developing a valuation model and methodology, evaluating bids submitted, and
9 selecting the most cost-effective resources to meet the RFO objectives. Common to all RFOs,
10 O&PD requests and reviews information on affordability, as well as the presence of safety plans
11 and standards and reliability performance guarantees. Bilateral negotiations are conducted when
12 opportunities and circumstances for acquiring the optimal resources at the optimal time are both
13 unique and fleeting.⁵ To conduct procurement of utility-owned resources, O&PD follows a
14 strict code of conduct that governs communications and defines roles within and outside the
15 team.⁶ For all forms of long-term procurement, O&PD works with an approved Independent
16 Evaluator.

17 Following the activities directly related to a solicitation, O&PD then negotiates with
18 independent suppliers who have winning bids to execute a final contract. Bid evaluation, bid
19 selection, and contract negotiation practices and principles for RFOs are largely similar to those
20 for bilateral negotiations and all PPAs executed by O&PD must be approved by the CPUC as
21 falling within the authorized need identified in the LTPP, RPS procurement plan, and/or other
22 state or CPUC-mandated procurement program. Of note, O&PD must also develop PPA
23 language for new product types that have not been solicited before. For example, in 2016,
24 O&PD had to develop a PPA for demand response products that were bid into an all-source
25 solicitation and, in 2017, O&PD is developing a PPA for distributed resources that will be
26 required to offset traditional distribution system investments.

27 Once PPAs have been executed and approved by the Commission, O&PD is responsible
28 for oversight and contract administration of a project through construction and development.
29 These responsibilities include exercising contractual options in a prudent manner, verifying that

⁵ SDG&E 2014 Long Term Procurement Plan at 32-33, Advice Letter 2850-E-A.

⁶ Decision (D.) 07-12-052 at 206.

1 conditions precedent to the agreement have been satisfied, monitoring project designs, schedules,
2 and milestones so that the project being constructed meets the stated performance in the contract,
3 and coordinating internal SDG&E functions necessary to meet all the terms and conditions of the
4 agreement. Once a project is in operation, contract administration activities are conducted by
5 E&FP's Back-Office functions. However, at all times, O&PD assists with renegotiating contract
6 provisions as necessary due to changed circumstances or conditions and resolving disputes as
7 required.

8 Throughout the process, O&PD, together with the other E&FP departments, meets
9 monthly with its Procurement Review Group (PRG) to address a variety of SDG&E procurement
10 issues and transactions. The PRG consists of "non-market participants" who sign non-disclosure
11 agreements, and includes the CPUC Energy Division, the Office of Ratepayer Advocates, and
12 The Utility Reform Network, among others. The PRG's purpose is to review and assess the
13 details of an Investor Owned Utility's overall procurement strategy and specific proposed
14 procurement contracts and processes prior to submitting filings to the CPUC.⁷

15 To support the company's goals of becoming the cleanest, safest, most reliable energy
16 company in America, Long-Term Procurement seeks to create an optimal energy resource
17 portfolio to meet both state policy objectives and customer interests, while supplying safe and
18 reliable electricity to the grid. Consistent with this mission, SDG&E provided our customers
19 with 43 percent renewable energy in 2016 and added the world's largest lithium-ion energy
20 storage project to our portfolio.

21 **2. Forecast Method**

22 The forecast method developed for this cost category is a five-year historical average.
23 This is most appropriate because, while work priorities can vary from year to year, Long-Term
24 Procurement responsibilities in their entirety remain intact. As described in more detail below,
25 activities associated with monitoring contracts in development have been reduced. However,
26 activities associated with the procurement regulatory landscape and for valuing and negotiating
27 contracts for new resource types has become much more complex. As a result, vacancies in
28 2016 must be backfilled and repurposed to meet these changing needs. Using a five-year cost
29 average allows E&FP to reflect evolving Long-Term Procurement priorities and yields a

⁷ D.02-08-071 at 25.

1 TY 2019 forecast that includes labor costs of \$1,955,000 and non-labor costs of \$248,000, with
2 14.7 full-time equivalent employees (FTEs).

3 **3. Cost Drivers**

4 Cost drivers behind this forecast are related to changes in the electric procurement
5 environment. While annual procurement levels vary, activities requiring Long-Term
6 procurement expertise are growing in number and complexity as California moves to a 50
7 percent RPS goal by 2030 and the CPUC moves toward an integrated resource planning process.
8 Currently, E&FP must comply with between 10 to 15 different procurement mandates. At the
9 same time, the CPUC is seeking in depth data and analysis from SDG&E regarding wholesale
10 changes to the way electric procurement is conducted in the state, including discussion of full
11 retail choice. In addition to regulatory responsibilities, the solicitation process is becoming more
12 varied and complex. Least-cost best-fit valuation methodologies are evolving, transparency rules
13 are being evaluated, and O&PD must assess the role of factors that are difficult to measure, such
14 as societal costs and benefits. In addition, O&PD is charged with designing and implementing
15 an RFO process and PPAs for new product types that support maturation of developing
16 technologies in the marketplace while ensuring risks are mitigated and customers receive a
17 reliable product. Perhaps the most challenging among these activities is the need to develop and
18 implement a PPA for a third-party distributed resource that will displace traditional distribution
19 system investments and guarantee the same level of performance to prevent outages. Along with
20 energy efficiency and demand response, energy storage and distributed resources entail new and
21 different operational issues and risks that must be identified and mitigated by expert negotiators
22 to protect bundled customers' interests. Optimizing E&FP's long-term portfolio is a valued
23 service provided to customers and Long-Term Procurement's cost forecast is designed to
24 maintain SDG&E's required expertise.

25 **B. Trading and Scheduling**

26 Trading and Scheduling refers to activities conducted by the Energy Supply & Dispatch
27 (ES&D) department, which includes Electric Procurement & Trading, Market Analysis, Electric
28 Fuels, and Market Operations.

29 **1. Description of Costs and Underlying Activities**

30 The ES&D department optimizes SDG&E's generation and contracted resources within
31 the CAISO markets to serve bundled customers in a least-cost dispatch manner and consistent

1 with Commission-approved procurement plans. In 2016, ES&D managed electric supply
2 resources to meet a peak load of over 64,000 megawatt hours. To support these activities, ES&D
3 personnel have advanced and specific CAISO market expertise and leverage several information
4 management systems across functions, including Power Costs System Inc. (PCI), YES Energy,
5 and Morningstar.

6 Within ES&D, Electric Procurement & Trading performs short-term planning,
7 procurement, and trading functions for transactions inside of a five-year time horizon. Planning
8 activities include developing short-term forecasting methodologies, performing short-term power
9 planning studies and regulatory analysis, and assessing changes in tariffs and regulations
10 governing least-cost dispatch of electric and gas portfolios. Electric Procurement & Trading is
11 also responsible for all short-term electricity transactions related to dispatchable generation,
12 including executing all trades, purchases, hedges and sales to manage the electricity supply
13 portfolio consistent with SDG&E's LTPP.⁸ In addition, Electric Procurement & Trading is
14 responsible for procuring gas needed for dispatchable generation and for performing gas
15 scheduling on the electronic bulletin boards of the interstate and intrastate pipelines it uses to
16 deliver fuel to its gas-fired resources, including SDG&E-owned resources and contracts for
17 tolling resources.

18 Market Analysis performs day-ahead demand forecasting, conducts analysis of daily
19 portfolio performance, conducts generation outage planning, and seeks to optimize ES&D's
20 scheduling and bidding strategies. Market Analysis must also comply with various reporting
21 requirements related to its least-cost dispatch operations, including the ERRR Compliance
22 regulatory filing and the CPUC quarterly compliance report. Market Analysis is further
23 responsible for SDG&E's greenhouse gas (GHG) compliance activities. To meet GHG
24 compliance requirements, Market Analysis develops and implements policies for procuring GHG
25 allowances and offsets in compliance with the limits established in the LTPP and conducts
26 necessary reporting related to those activities.

27 Electric Fuels oversees the scheduling and dispatch functions. Electric Fuels staffs a
28 Real-Time desk to perform these functions 24 hours a day and has responsibility for scheduling

⁸ Hedging is a risk management strategy used to limit the probability of loss from fluctuations in the prices of commodities. Generally, this involves taking market positions that maintain the price risk exposure associated with E&FP's portfolio within the customer risk tolerance limits set by the CPUC. Limits are set in the LTPP.

1 resources into the CAISO's day-ahead, hour-ahead, and 15-minute markets. In addition to
2 scheduling SDG&E's own generating capacity, Electric Fuels schedules and dispatches most
3 resources contracted under E&FP's 73 PPAs and serves as the point of contact for daily
4 operational administration of those resources. Electric Fuels is responsible for complying with
5 CAISO dispatch instructions in accordance with Federal Energy Regulatory Commission
6 (FERC) approved tariffs and protocols and for ensuring all scheduling and market dispatch
7 functions comply with all rules and regulations.

8 Market Operations manages compliance with annual and monthly Resource Adequacy
9 (RA) requirements, including purchases of short-term resources as needed. To fulfill this
10 responsibility, Market Operations supports RA solicitations, prepares system and local RA
11 filings at the CPUC, and demonstrates that they have procured sufficient capacity resources,
12 including reserves, needed to serve aggregate monthly system load. Market Operations also
13 participates in CAISO-related meetings and working groups to monitor changes at the CAISO
14 and to anticipate associated impacts on SDG&E's operations and portfolio costs.

15 Through effective and efficient management of the daily and short-term electricity needs
16 of customers, ES&D plays a central role in contributing to SDG&E's clean, safe, and reliable
17 energy goals. ES&D provides this essential service 24 hours a day, seven days a week and is the
18 first point of contact for all resources procured on customers' behalf.

19 **2. Forecast Method**

20 The forecast method developed for this cost category is a five-year historical average.
21 This is most appropriate because, while ES&D costs vary from year to year with short-term
22 vacancies and periodic system investments, overall responsibilities remain consistent over time.
23 For example, between 2012 and 2016, E&SD costs exceeded \$3 million in both 2012 and 2014
24 due in part to costs associated with periodic maintenance of data systems used for daily resources
25 scheduling. In 2013 and 2016, however, ES&D costs were below average due in part to
26 temporary vacancies. Using a five-year average reduces variability between years and is
27 consistent with the forecast methodology chosen for the other cost categories in my testimony
28 and throughout most of this GRC application. Using this approach, ES&D's 2019 forecast
29 includes labor costs of \$2,333,000 and non-labor costs of \$616,000, with 20.4 FTEs.

1 **3. Cost Drivers**

2 ES&D must on a daily basis buy all the electricity it needs from the CAISO markets to
3 serve SDG&E’s 3.6 million customers and sell all SDG&E-owned generation and all SDG&E
4 contracted resources to the CAISO markets to offset E&FP’s energy procurement expenses.
5 This daily procurement process of buying and selling electricity must be done per Least-Cost
6 Dispatch requirements set forth by the CPUC and consists of complex energy transactions with
7 large dollar values. ES&D has already leveraged its existing expertise and procurement systems
8 to absorb the increased scheduling activities associated with the two new conventional resources
9 added in 2012 and the approximately 32 renewable generation resources that have come on line
10 since 2012. In 2017, ES&D also began absorbing additional scheduling activities associated
11 with 37.5 MW of energy storage that was added to the portfolio and is developing further
12 expertise to reliably manage a portfolio with rising levels of rooftop solar. Looking ahead, the
13 scope, complexity, and importance of E&SD’s work will continue to require skilled and
14 competent personnel, accurate and efficient information management systems, and regular
15 training.

16 **C. Middle-Office and Back-Office**

17 Middle-Office and Back-Office functions include the Energy Risk Management (Energy
18 Risk) department and the Settlements and Systems (S&S) department.

19 **1. Description of Costs and Underlying Activities**

20 The Energy Risk department is responsible for all Middle-Office functions, including
21 identifying, managing, monitoring, and reporting on market, credit, financial and operational
22 risks associated with E&FP functions. Energy Risk conducts daily reviews of E&FP’s physical
23 and financial positions, including trader authority limits, counterparty credit risk positions, and
24 compliance with financial liquidity and margin requirements. To comply with Commission-
25 approved risk metrics⁹ and internal policies, Energy Risk reviews daily market pricing data,
26 forward price curves, volatilities, and correlations used for the evaluation and measurement of
27 portfolio risk. On an ongoing basis, Energy Risk performs hedging portfolio analysis and
28 supports ES&D in the development of procurement and hedge plans, consistent with the
29 Commission approved LTPP, and monitors ES&D’s compliance with approved plans.

⁹ D.12-01-033 and D.15-10-031.

1 Energy Risk develops, maintains and supports all trading and risk management models
2 and applications, including modeling new technologies and facilities, enforcement of operational
3 risk controls related to the execution, recording, and valuation of trades. Energy Risk is
4 responsible for compliance with Dodd-Frank requirements, Sarbanes-Oxley (SOX) 404
5 compliance, and FERC-required reporting of fixed price transactions to index publishers.

6 Energy Risk also assesses credit exposure for various contracts and transactions,
7 including long-term PPAs, RA transactions, contract amendments, etc. The group works with
8 O&PD in determining credit terms and conditions to protect customer as well as company
9 interests.

10 S&S is responsible for Back-Office financial and accounting activities required to
11 reconcile all energy contracts for E&FP's power procurement, verify CAISO charges and
12 support the primary operational systems (PCI, Allegro and Versify)¹⁰ used in E&FP's operations.
13 In the reconciliation process, S&S validates that all contract and market payments and receipts
14 are in accordance with the terms of the contract or tariff provisions associated with the
15 underlying transactions. This process requires annually verifying and processing over 2,100
16 invoices and billing requests, filing disputes of questionable charges when appropriate, and
17 preparing journal entries for recording expenses and revenues. S&S is also responsible for
18 financial accounting and payment of the commodity, transportation, hedging, and other related
19 transactions associated with the gas burned at the five SDG&E-owned power plants with E&FP
20 tolling agreements.¹¹

21 In addition, S&S must review daily CAISO charges and invoices for accuracy and will
22 enter into disputes with the CAISO as required to correct billing discrepancies. S&S provides
23 guidance and expertise in technical analyses for Market Operations and Origination and Portfolio
24 Design using the CAISO meter data, and tariff and power contract data to support regulatory and
25 legislative policy positions. To support the development of procurement policies and targets,
26 S&S responds to data requests from multiple regulatory agencies, including the CPUC and
27 FERC relating to procurement trends.

¹⁰ These systems are primarily used to schedule and bid power to the CAISO, record gas and power transactions, and manage RA.

¹¹ Miramar Energy Facility I, Miramar Energy Facility II, Palomar Energy Center, Cuyamaca Peak Energy Center and Desert Star Energy Center are further described in Daniel Baerman's Electric Generation & SONGS testimony (Exhibit SDG&E-16).

1 Other S&S responsibilities include the aggregation, tracking, and reporting of energy
2 procurement data, including meter data to regulatory agencies and the CAISO, reviewing,
3 testing, and commenting on proposed CAISO changes to the reconciliation process, and
4 preparing FERC Form 1 sections related to purchased power and sales for resale.¹² S&S is
5 responsible for the energy supply costs for the ERRRA compliance and General Rate Case
6 proceedings and providing corresponding testimony and responses to data requests from
7 regulatory agencies, including the Office of Ratepayer Advocates (ORA) and the CPUC Energy
8 Division.

9 S&S contract administrators are responsible for the 67 operating PPAs within E&FP's
10 portfolio.¹³ Contract administration activities include daily interactions with counterparties,
11 coordinating and resolving disputes, monitoring counterparties safety plans, invoice
12 verifications, contract interpretations and serving as points of contact. Contract administrators
13 work to manage proper distribution of settlement payments and charges and, when discrepancies
14 are found, the two functions work together to resolve them. Contract administrators also monitor
15 and verify various contract terms, including scheduled maintenance, curtailments, insurance and
16 efficiency monitoring. Through 2016, contract administrators, in conjunction with other E&FP
17 teams had already secured an estimated \$6.5 million in customer savings from implementation of
18 economic curtailment amendments to renewable contracts and expects these savings to grow
19 over time. Within E&FP, contract administrators also develop and maintain functional and
20 process flow diagrams for energy procurement, support process improvement initiatives, and
21 develop and document business requirements and processes for quality control.

22 S&S is further responsible for administration of vendor contracts associated with
23 software subscriptions and key software systems, including PCI, Allegro, and Versify, which
24 E&FP uses to record gas and power transactions, manage RA and to schedule and bid power to
25 the CAISO. S&S works closely with internal Information Technology personnel and external
26 contractors to manage the implementation of system upgrades and enhancements providing
27 overall leadership, strategic planning, guidance, and management to meet objectives, milestones,
28 and budgets associated with capital projects and system changes to support E&FP department
29 functions.

¹² CAISO changes may require E&FP to intervene at FERC as well.

¹³ Figure excludes projects in construction and reflects data as of December 31, 2016.

1 Together, the Middle-Office and Back-Office functions within E&FP mitigates risks to
2 SDG&E's customers so that customers incur correct costs and receive correct revenues from the
3 bidding, purchase, and sale of energy and ancillary services into the CAISO markets. The
4 prudent provision of these functions protects the clean, safe and reliable energy portfolio E&FP
5 uses to meet company goals, state mandates, and customer interests.

6 **2. Forecast Method**

7 The forecast method developed for this cost category is a five-year historical average.
8 This is most appropriate because the five-year average is indicative of how we expect Middle-
9 Office and Back-Office functions to operate going forward. The five-year average reflects a
10 small decrease in labor costs that accords with streamlining efforts. Non-labor costs have varied
11 in recent years from over \$1.2 million in 2014 to approximately \$850,000 in 2016. Because
12 S&S may change from year to year on how it manages software subscriptions and leverages
13 technology systems and new offerings to support E&FP operations, reporting, and compliance, a
14 five-year average reduces the associated variability. Using this approach, the TY 2019 forecast
15 for Middle and Back Office includes labor costs of \$2,429,000 and non-labor costs of \$1,060,000
16 with 24.6 FTEs.

17 **3. Cost Drivers**

18 Energy Risk identifies, manages, monitors, and reports on market, credit, financial and
19 operational risks associated with a hedging portfolio of over \$1 billion,¹⁴ and assesses credit and
20 market risks associated with existing and future long-term and short-term transactions. Due to
21 the technical nature of the tasks, Energy Risk requires highly educated and specially trained staff
22 and sophisticated systems to conduct quantitative analysis. Similar to other departments within
23 E&FP, Energy Risk has already leveraged existing resources to tackle additional modeling and
24 risks associated with new technologies and new market products. The functions performed by
25 Energy Risk are critical to protect the interests of the company and its customers.

26 S&S annually validates and processes over \$1.3 billion in annual transactions related to
27 electricity procurement. The S&S function process requires the collection, validation, and
28 analysis of large amounts of price, quantity and operational data. Given the large amount of data
29 involved and the complexity of the underlying transactions, S&S relies on experienced staff,

¹⁴ SDG&E's hedging portfolio is composed of fixed price power contracts and financial natural gas hedges.

1 advanced computer systems and vendor software solutions to accurately complete the overall
2 settlement process.

3 Similar to ES&D, S&S has already leveraged existing labor and non-labor resources to
4 absorb the increased settlement activities associated with the two new conventional resources
5 added in 2012 and the approximately 32 renewable generation resources that have come on line
6 since 2012. Looking ahead, S&S will need to manage settlement activities associated with
7 additional resources, including new energy storage projects, as well as numerous additional
8 economic curtailment amendments and must ensure it continues to have the capacity to perform
9 its functions successfully.

10 **III. SUPPORT FOR IT CAPITAL COSTS**

11 **A. Introduction**

12 To support E&FP activities, SDG&E is seeking capital costs for certain technology
13 upgrades required to maintain its obligation¹⁵ to provide scheduling services within the CAISO
14 market. The associated capital costs are requested in the Direct Testimony of Mr. Olmsted (Ex.
15 SDG&E-24). A description of the needed upgrades is provided below.

16 **B. 2016 CAISO Mandates**

17 These forecasted capital expenditures support the company's goals of remaining a
18 CAISO Scheduling Coordinator (SC), complying with CAISO mandated changes, achieving
19 operational efficiencies, and ensuring that current software capital assets are kept under
20 maintenance levels and fully supported. The CAISO publishes a roadmap of planned initiatives
21 which are implemented and released twice a year, with which SDG&E must comply to remain a
22 SC.¹⁶ The 2016 initiatives will require new software modules and configuration changes in
23 several major software applications utilized to meet these requirements, including: PCI, which is
24 an E&FP system for communication with the CAISO for bidding and scheduling; and Versify,
25 which is an E&FP RA planning, operations, and analytics system. Noncompliance with these
26 required updates would cause SDG&E to lose its ability to be an SC and could also result in

¹⁵ The majority of SDG&E's contracts require SDG&E to provide scheduling services for the generator counterparties.

¹⁶ Scope of 2016 CAISO initiatives: Capacity Procurement Mechanism Replacement; Commitment Cost Enhancements; Post Implementation Open Metering System (OMS) Enhancements; Flexible Ramping Product; Contingency Modeling Enhancements; and Participating Intermittent Resource Program (PIRP) Decommissioning.

1 potential fines and disallowances in ERRA proceedings. It is imperative that E&FP comply with
2 CAISO requirements by making the necessary updates to its PCI, Allegro, and Versify systems.

3 **C. Allegro Technology Upgrade**

4 These forecasted capital expenditures support the company's goals of complying with
5 SOX requirements, maintaining up-to-date systems, enhancing forecast accuracy, and ensuring
6 compatibility between software systems used within E&FP. Allegro is a SOX compliance
7 system primarily used for regulatory reporting,¹⁷ accounting, commodity trading management,
8 and portfolio valuation. It has been used for the Energy Trading Risk Management (ETRM)
9 functions within E&FP since 2007.

10 In 2014 Allegro Development Corp. began implementing a major product technology
11 revamp, called "Allegro Horizon Technology," to incorporate current technology trends. This
12 new platform builds on and supports ETRM features that impact the data models, business
13 processes and functions, and extensions SDG&E has built up over time to support E&FP's
14 unique applications and reporting requirements. It also addresses some long-standing
15 enhancement requests and resolves issues identified by the E&FP and IT teams. The new system
16 will not only improve forecasting and compliance capabilities, but will create efficiencies and
17 allow labor to be re-directed to other tasks.¹⁸ The benefits of these new capabilities cannot be
18 realized without an upgrade to the "Allegro Horizon Technology" version, as Allegro no longer
19 supports functional changes or enhancements to existing software currently used by SDG&E.
20 Allegro performs a critical function at SDG&E by allowing E&FP accounting to interface
21 directly with SAP, and it is crucial that E&FP implement the new Allegro version to maintain
22 efficiencies and to comply with regulatory and market changes.

23 **D. 2017 CAISO Mandates**

24 These forecasted capital expenditures support the company's goals of enhancing accuracy
25 to reduce time spent on manual processes, to reduce the risk of fines, to comply with company
26 information and technology (IT) standards, and to streamline the validation and updating of
27 electric rate characteristics for Transitional Bundled Service pricing. The CAISO has updated its

¹⁷ The Federal Energy Regulatory Commission, CPUC, Commodity Futures Trading Commission, and Securities & Exchange Commission all receive reports that include data from Allegro.

¹⁸ For example, calculating gas losses will allow \$10,000 of unloaded labor costs per year to be reallocated, and the new regulatory reporting capability will allow \$12,000 of unloaded labor costs per year (unloaded) to be reallocated.

1 Operation Meter Analysis & Reporting (OMAR) system, which necessitates a replacement of
2 E&FP's current Electricity Scheduling & Settlement Application (ESSA) product, as it not
3 compatible with the proposed CAISO changes and is no longer supported by SDG&E
4 Information Technology operations personnel. The new Meter Data Processing System (MDPS)
5 will automate current manual operations, compile and submit settlement-quality meter data to the
6 CAISO's new Meter Reporting Interface – Settlement (MRI-S), and provide an opportunity to
7 utilize CAISO actual data for department analytics and reporting to support efficiency and
8 accuracy in E&FP's operations. Without the implementation of MDPS, SDG&E will not be able
9 to meet its meter data reporting requirements as per CAISO Tariff Section 37.5.2.¹⁹

10 **E. 2018 CAISO Mandates**

11 These forecasted capital expenditures support company goals similar to those described
12 above under 2016 CAISO Mandates – remaining a CAISO SC, complying with CAISO
13 mandated changes and CPUC requirements, achieving market and operational efficiencies, and
14 ensuring that current software capital assets are kept under maintenance levels and fully
15 supported. Compliance with the 2018 CAISO Mandates will require further new and updated
16 software components and configuration changes to PCI, Versify, and the Automated Dispatch
17 System. Projects to comply with the 2018 CAISO initiatives require meeting the CAISO
18 published schedule timeline and the use of IT Project Management Office, Vendor, and E&FP
19 resources. The CAISO implementation methodology utilizes a project based approach, and
20 E&FP must plan for market simulation testing several months in advance of the completion date
21 to ensure readiness and account for delays caused by meeting the dependencies from all CAISO
22 stakeholders and decision makers. As explained above, it is imperative that E&FP comply with
23 CAISO requirements by making the necessary updates to its PCI, Allegro, and Versify systems.

24 **IV. CONCLUSION**

25 The E&FP functions that SDG&E will continue to undertake in 2019, as the above
26 testimony demonstrates, exist to ensure clean, safe, and reliable energy is available to serve
27 SDG&E's customers. Associated O&M responsibilities require expertise and advanced
28 technology systems, that are broadly consistent with prior year costs. As such, SDG&E requests
29 that the Commission adopt its proposal for \$8.7 million of O&M expenses in TY 2019 for E&FP

¹⁹ Scheduling Coordinator Metered Entities must provide CAISO with complete and accurate Meter Data, subject to penalties and sanctions.

1 in order to allow SDG&E to meet all of its electric commodity procurement responsibilities
2 through the 2019-2021 rate case cycle.

3 This concludes my prepared direct testimony.

1 **V. WITNESS QUALIFICATIONS**

2 My name is Kendall K. Helm, and since June 2016 I have been the Director of
3 Origination and Portfolio Optimization in the Energy Procurement department at San Diego Gas
4 & Electric. My business address is 8315 Century Park Court, San Diego, California 92123.

5 In my current job, I oversee the procurement of all long-term energy resources. My
6 responsibilities include overseeing the procurement process and managing the review of bids
7 received within solicitations, including the Track IV Decision, Demand Response Auction
8 Mechanism, Resource Adequacy, Renewable Auction Mechanism and Green Tariff Shared
9 Renewables.

10 I have been with the Sempra Energy family of companies since 2012. Prior to taking my
11 current position at SDG&E, I was the Director of Investor Relations at Sempra Energy. I have
12 also worked as Manager of Corporate Economics for Sempra Energy, where I provided research
13 on the company's valuation, capital structure and corporate strategy. Prior to joining the Sempra
14 Energy companies, I was Senior Economist for International Affairs and Trade at the U.S.
15 Government Accountability Office, where I reported to Congress on topics relating to climate
16 change, energy export promotion, and international competitiveness.

17 I received a bachelor's degree in economics and international studies from the University
18 of Denver and a Ph.D. in economics from American University.

19 I have not previously testified before the California Public Utilities Commission.

List of Acronyms

SDG&E	San Diego Gas & Electric Company
CPUC	California Public Utilities Commission
O&M	Operations and Maintenance
E&EP	Electric and Fuel Procurement
CAISO	California Independent System Operator
TY	Test Year
ERRA	Energy Resource Recovery Account
GRC	General Rate Case
VREP	Voluntary Retirement Enhancement Program
O&PD	Origination and Portfolio Design
PPA	Power Purchase Agreements
MW	Megawatts
LTPP	Long-Term Procurement Plan
RPS	Renewable Portfolio Standard
RFO	Request for Offers
D.	Decision
PRG	Procurement Review Group
FTE	Full-Time Equivalent
ES&D	Energy Supply & Dispatch
PCI	Power Costs System Inc.
GHG	Greenhouse Gas
FERC	Federal Energy Regulatory Commission
RA	Resource Adequacy
S&S	Settlements and Systems
SOX	Sarbanes-Oxley
SONGS	San Onofre Nuclear Generating Station
ORA	Office of Ratepayer Advocates
SC	Scheduling Coordinator
OMS	Open Metering System
PIRP	Participating Intermittent Resource Program
ETRM	Energy Trading Risk Management
IT	Information Technology
OMAR	Operation Meter Analysis & Reporting
ESSA	Electricity Scheduling & Settlement Application
MDPS	Meter Data Processing System
MRI-S	Meter Reporting Interface – Settlement

ATTACHMENT 1

Status as of:
December 31, 2019

Commercial Operations		TOTAL PPA'S		
Contract Summary	Number	MW	MWH	
QF/CHP	5	136.4	71,579	
Renewable	41	2,499.5	6,859,288	
Tolling	5	1,053.5	234,012	
Energy Storage - Pumped Hydro	1	40.0	0	
Energy Storage - Battery	0	0.0	0	
WSPP	4	175.0	294,232	
Total	56	3,906.4	7,459,112	
Commercial Operations		TOTAL PPA'S		
Technology Type	Number	MW	MWH	
Bio-Mass	1	24.0	185,059	
Conduit-Hydro	3	2.3	1,132	
Bio-Gas	0	0.0	0	
Digester Gas/Conduit Hydro	0	0.0	0	
Energy Storage - Pumped Hydro	1	40.0	0	
Energy Storage - Battery	0	0.0	0	
Landfill Gas	5	15.9	105,410	
Market	4	175.0	294,232	
Natural Gas	9	1,191.6	305,296	
Solar PV	22	1,326.1	3,596,796	
Wind	11	1,131.6	2,971,187	
Total	56	3,906.4	7,459,112	

Pre-Operational		TOTAL PPA'S		
Contract Summary	Number	MW	MWH	
QF/CHP	0	0.0	0	
Renewable	4	130.4	0	
Tolling	0	0.0	0	
Energy Storage - Pumped Hydro	0	0.0	0	
Energy Storage - Battery	1	6.5	0	
WSPP	0	0.0	0	
Total	5	136.9	0	
Pre-Operational		TOTAL PPA'S		
Technology Type	Number	MW	MWH	
Bio-Mass	0	0.0	0	
Conduit-Hydro	0	0.0	0	
Bio-Gas	1	3.0	0	
Digester Gas/Conduit Hydro	0	0.0	0	
Energy Storage - Pumped Hydro	0	0.0	0	
Energy Storage - Battery	1	6.5	0	
Landfill Gas	0	0.0	0	
Market	0	0.0	0	
Natural Gas	0	0.0	0	
Solar PV	2	22.4	0	
Wind	1	105.0	0	
Total	5	136.9	0	

Expired/Terminated		TOTAL PPA'S		
Contract Summary	Number	MW	MWH	
QF/CHP	0	0.0	0	
Renewable	6	69.0	207,578	
Tolling	1	600.0	491,906	
Energy Storage - Pumped Hydro	0	0.0	0	
Energy Storage - Battery	2	7.0	0	
WSPP	1	68.0	150,144	
Total	10	744.0	849,627	
Expired/Terminated		TOTAL PPA'S		
Technology Type	Number	MW	MWH	
Bio-Mass	0	0.0	0	
Conduit-Hydro	0	0.0	0	
Bio-Gas	1	3.0	0	
Digester Gas/Conduit Hydro	0	0.0	0	
Energy Storage - Pumped Hydro	0	0.0	0	
Energy Storage - Battery	2	7.0	0	
Landfill Gas	4	6.0	35,632	
Market	1	68.0	150,144	
Natural Gas	1	600.0	491,906	
Solar PV	0	0.0	0	
Wind	1	60.0	171,946	
Total	10	744.0	849,627	

Contains confidential/privileged pursuant to applicable provisions of D.06-06-066, D.08-04-023, G.O. 66-C and PUC Code Sec. 583 and Sec. 454.5(g)

OPERATIONAL - LONG-TERM RESOURCE ADEQUACY (1 YEAR OR MORE)

Project Names	Technology	Product	Contract MW	Execution Date	Year Executed	Delivery Period (Years)	CPUC Authorization	Capacity Price	Contract Status @ year end
Otay Mesa Energy Center	Natural Gas	Resource Adequacy	RAR/Local 603.6 MW; Flex RAR (Cat 1) 448.6 MW	10/24/2018	2018		CPUC Resolution E-4981		Active
Sempra Gas & Power Marketing, LLC	Thermoelectric	Resource Adequacy	Local 164 MW;	05/31/2019	2019	Jan 2020 - Dec 2021	CPUC Resolution E-Advice Letter No. 3409-E	2020: \$0.09677-\$0.16667/kW-day 2021: \$0.153-\$0.1694/kW-day	Executed
Calpeak Power, LLC	Natural Gas	Resource Adequacy	2020: RA 65 MW; Flex RA 65 MW 2021: RA 45 MW; Flex RA 45 MW	7/18/19	2019		N/A		Executed
Sonoma Clean Power Authority	Biomass	Resource Adequacy	RA 24 MW	10/07/2019	2019		N/A		Executed
Saavi Energy Solutions, LLC	Combined Cycle	Resource Adequacy	RA 255 MW	10/08/2019	2019		N/A		Executed
Southern California Edison Co. (Swap Buy)	Wind	Resource Adequacy	RA varies	10/30/2019	2019		N/A		Executed
Southern California Edison Co. (Swap Sell)	Wind	Resource Adequacy	RA varies	10/30/2019	2019		N/A		Executed
Kearny Mesa Storage, LLC	Battery, Non-generation	Resource Adequacy	RA 1 MW; Flex RA 1 MW	10/23/2019	2019		N/A		Executed
Calpine Energy Services, L.P. (Swap Buy)	Natural Gas	Resource Adequacy	RA 15 MW	10/28/2019	2019		N/A		Executed
Calpine Energy Services, L.P. (Swap Sell)	Combined Cycle	Resource Adequacy	RA 15 MW	10/28/2019	2019		N/A		Executed

CONTRACTS FOR THE PROCUREMENT OF FUEL SERVICES IN EFFECT OR UNDER NEGOTIATION, INITIATION, REVISION, AMENDMENT, OR TERMINATION

Contract type	Contract Description	Tradebook	Contract class	Product	Status	Effective date	Contract type	Contract Description	Tradebook	Contract class	Product	Status	Effective date
BILATERAL	Anadarko Energy Services Company	UEG	NAESB	NG	ACTIVE	9/1/2003	BILATERAL	Lucid Energy Delaware, LLC	UEG	NAESB	NG	ACTIVE	7/18/2019
BILATERAL	Anahau Energy, LLC - Gas	UEG	NAESB	NG	ACTIVE	2/11/2014	BILATERAL	Macquarie Energy LLC - ISDA	UEG	ISDA	NG	ACTIVE	6/10/1999
BILATERAL	Arizona Public Service Company	UEG	GISB	NG	ACTIVE	3/22/1999	BILATERAL	Macquarie Energy LLC - NAESB	UEG	NAESB	NG	ACTIVE	2/1/2003
BILATERAL	ARM Energy Management LLC	UEG	NAESB	NG	ACTIVE	9/4/2019	BILATERAL	Mercure Energy America, LLC	UEG	NAESB	NG	ACTIVE	12/7/2018
BILATERAL	ATO Power, Inc. - Gas	UEG	NAESB	NG	ACTIVE	2/26/2013	BILATERAL	Meritspan Energy Ca Iornia, LLC	UEG	NAESB	NG	ACTIVE	4/23/2015
BILATERAL	Bank of Montreal	UEG	ISDA	NG	ACTIVE	7/22/2003	BILATERAL	Mieco Inc.	UEG	NAESB	NG	ACTIVE	7/16/2013
BILATERAL	Barclays Bank	UEG	ISDA	NG	ACTIVE	10/13/2005	BILATERAL	Morgan Stanley Cap tal Group, Inc. - Spot	UEG	Spot	NG	ACTIVE	11/20/1995
BILATERAL	BioUrja Trading, LLC	UEG	NAESB	NG	ACTIVE	10/1/2015	BILATERAL	National Fuel Marketing Company, LLC	UEG	NAESB	NG	ACTIVE	8/1/2002
BILATERAL	BNP Paribas Energy Trading GP - ISDA	UEG	ISDA	NG	ACTIVE	10/1/2004	BILATERAL	NDR Energy Group, LLC - Gas	UEG	NAESB	NG	ACTIVE	3/19/2015
BILATERAL	BP Corporation North America Inc	UEG	ISDA	NG	ACTIVE	4/1/2005	BILATERAL	Nevada Power Company dba NV Energy	UEG	NAESB	NG	ACTIVE	8/1/2015
BILATERAL	BP Energy Company	UEG	NAESB	NG	ACTIVE	6/1/2003	BILATERAL	NextEra Energy Marketing, LLC	UEG	NAESB	NG	ACTIVE	7/1/2006
TRANSPORT	California Gas Transmission	UEG	Other	NG	ACTIVE	1/1/1993	BILATERAL	NJR Energy Services Company	UEG	NAESB	NG	ACTIVE	10/1/2009
BILATERAL	Calpine Energy Services, L.P. - NAESB	UEG	NAESB	NG	ACTIVE	7/1/2019	TRANSPORT	North Baja Pipeline, LLC	UEG	Other	NG	ACTIVE	9/12/2011
BILATERAL	Calpine Energy Solutions, LLC	UEG	NAESB	NG	ACTIVE	8/27/2012	TRANSPORT	Nova Gas Transmission	UEG	Other	NG	ACTIVE	1/1/1993
BILATERAL	Canadian Imperial Bank of Commerce	UEG	ERMA	NG	ACTIVE	4/1/1997	BILATERAL	NRG Power Marketing LLC	UEG	NAESB	NG	ACTIVE	10/16/2019
BILATERAL	Cargill, Inc.	UEG	NAESB	NG	ACTIVE	2/1/2003	BILATERAL	Occidental Energy Marketing Inc.	UEG	NAESB	NG	ACTIVE	5/1/2005
BILATERAL	Castleton Commodities Merchant Trading L.P.	UEG	NAESB	NG	ACTIVE	11/1/2004	BILATERAL	One Nation Energy Solutions, LLC	UEG	NAESB	NG	ACTIVE	2/1/2003
BILATERAL	Chevron Natural Gas	UEG	NAESB	NG	ACTIVE	1/1/2003	BILATERAL	Pacific Gas & Electric Company	UEG	NAESB	NG	ACTIVE	5/1/2003
BILATERAL	CIMA ENERGY, LP	UEG	NAESB	NG	ACTIVE	7/1/2006	BILATERAL	Pacific Summit Energy LLC	UEG	NAESB	NG	ACTIVE	10/11/2005
BILATERAL	Citadel Energy Marketing LLC	UEG	NAESB	NG	ACTIVE	11/14/2016	BILATERAL	Patten Energy Enterprises, Inc.	UEG	NAESB	NG	ACTIVE	4/10/2012
BILATERAL	Cit bank, N.A.	UEG	ISDA	NG	ACTIVE	8/1/2001	BILATERAL	PetroChina International (America), Inc.	UEG	NAESB	NG	ACTIVE	11/2/2015
BILATERAL	Citigroup Energy Inc.	UEG	NAESB	NG	ACTIVE	2/27/2007	BILATERAL	Powerex Corporation	UEG	NAESB	NG	ACTIVE	12/1/2005
BILATERAL	Concord Energy LLC	UEG	NAESB	NG	ACTIVE	8/27/2002	BILATERAL	QEP Energy Company	UEG	NAESB	NG	ACTIVE	9/2/2011
BILATERAL	Conexus Energy, LLC	UEG	NAESB	NG	ACTIVE	6/21/2016	BILATERAL	Red Willow Production Company	UEG	GISB	NG	ACTIVE	4/1/2000
BILATERAL	ConocoPhillips Company	UEG	NAESB	NG	ACTIVE	12/1/2002	BILATERAL	Sacramento Municipal Utility District	UEG	NAESB	NG	ACTIVE	4/1/2007
BILATERAL	Continuum Energy Services, LLC	UEG	NAESB	NG	ACTIVE	9/1/2014	BILATERAL	Saja Energy LLC	UEG	NAESB	NG	ACTIVE	8/21/2013
BILATERAL	CRC Marketing, Inc.	UEG	NAESB	NG	ACTIVE	9/1/2015	BILATERAL	Salt River Project	UEG	NAESB	NG	ACTIVE	10/1/2004
BILATERAL	Credit Suisse Energy LLC	UEG	ISDA	NG	ACTIVE	4/1/2008	BILATERAL	Samson Resources Co. - bankrupt ch 11	UEG	NAESB	NG	ACTIVE	8/1/2006
BILATERAL	Cross Timbers Energy Services, Inc.	UEG	NAESB	NG	ACTIVE	6/1/2015	BILATERAL	Sequent Energy Management, L.P.	UEG	NAESB	NG	ACTIVE	5/14/2007
BILATERAL	DCP Midstream Marketing, LLC	UEG	NAESB	NG	ACTIVE	9/1/2009	BILATERAL	Shell Energy North America (US) L.P.	UEG	NAESB	NG	ACTIVE	9/1/2009
BILATERAL	DES Wholesale, LLC dba DES-Gas	UEG	NAESB	NG	ACTIVE	7/15/2011	BILATERAL	Six One Commodities LLC	UEG	NAESB	NG	ACTIVE	7/18/2019
BILATERAL	Deutsche Bank AG	UEG	ISDA	NG	ACTIVE	12/1/2005	TRANSPORT	Southern California Gas Company	UEG	GISB	NG	ACTIVE	7/1/1998
BILATERAL	EDF Trading North America, LLC	UEG	NAESB	NG	ACTIVE	12/12/2008	BILATERAL	Southern California Gas Company Capacity Products	UEG	NAESB	NG	ACTIVE	6/17/2005
TRANSPORT	EI Paso Natural Gas Company	UEG	Other	NG	ACTIVE	1/1/1993	TRANSPORT	Southern Trails Pipeline	UEG	Other	NG	ACTIVE	1/1/1993
BILATERAL	E K Mountain Energy, LLC - Gas	UEG	NAESB	NG	ACTIVE	8/30/2012	BILATERAL	Southwest Gas Corporation	UEG	Spot	NG	ACTIVE	4/1/1999
BILATERAL	Encarnacion Ventures Inc.	UEG	NAESB	NG	ACTIVE	9/13/2018	TRANSPORT	Southwest Gas Corporation	UEG	Other	NG	ACTIVE	10/1/2011
BILATERAL	ENSTOR Energy Services, LLC	UEG	NAESB	NG	ACTIVE	2/1/2003	BILATERAL	Suez Energy Marketing NA, Inc.	UEG	NAESB	NG	ACTIVE	12/10/2002
BILATERAL	Enterprise Products Operating LLC	UEG	NAESB	NG	ACTIVE	4/24/2009	BILATERAL	Susterra Energy, LLC - Gas	UEG	NAESB	NG	ACTIVE	1/16/2013
BILATERAL	ETC Marketing, Ltd.	UEG	NAESB	NG	ACTIVE	1/16/2004	BILATERAL	Talen Energy Marketing, LLC	UEG	NAESB	NG	ACTIVE	2/28/2003
BILATERAL	Euel Energy Resources	UEG	NAESB	NG	ACTIVE	12/1/2007	BILATERAL	Targa Gas Marketing LLC	UEG	NAESB	NG	ACTIVE	5/1/2009
BILATERAL	Exelon Generation Company, LLC	UEG	NAESB	NG	ACTIVE	5/2/2005	BILATERAL	Tenaska Gas Storage, LLC	UEG	NAESB	NG	ACTIVE	1/1/2003
BILATERAL	Freepoint Commodities LLC	UEG	NAESB	NG	ACTIVE	2/6/2012	BILATERAL	Tenaska Marketing Ventures	UEG	NAESB	NG	ACTIVE	1/1/2003
TRANSPORT	Gas Transmission Northwest	UEG	Other	NG	ACTIVE	1/1/1993	BILATERAL	Tiger Natural Gas, Inc.	UEG	NAESB	NG	ACTIVE	5/23/2008
TRANSPORT	Gasoducto Bajarorte	UEG	Other	NG	ACTIVE	9/21/2011	BILATERAL	Total Gas & Power North America Inc.	UEG	NAESB	NG	ACTIVE	4/1/2004
BILATERAL	GearyEnergy, LLC - Gas	UEG	NAESB	NG	ACTIVE	5/23/2008	TRANSPORT	TransCanada Pipe ine Company	UEG	Other	NG	ACTIVE	1/1/1993
BILATERAL	ICC Energy Corporation - Gas	UEG	NAESB	NG	ACTIVE	10/1/2006	TRANSPORT	Transportador de Gas Natura	UEG	Other	NG	ACTIVE	9/21/2011
BILATERAL	ICE NGX Canada Inc.	UEG	Other	NG	ACTIVE	11/11/2009	TRANSPORT	Transwestern Pipe ine Company	UEG	Other	NG	ACTIVE	1/1/1993
BILATERAL	IPC (USA), Inc.	UEG	NAESB	NG	ACTIVE	6/16/2008	BILATERAL	Tristar Producer Services of Texas, L.P.	UEG	Umbrella	NG	ACTIVE	1/16/1996
BILATERAL	J. Aron & Company - ISDA	UEG	ISDA	NG	ACTIVE	4/2/2003	BILATERAL	Twin Eagle Resource Management LLC	UEG	NAESB	NG	ACTIVE	12/4/2012
BILATERAL	J. Aron & Company - NAESB	UEG	NAESB	NG	ACTIVE	6/1/2003	BILATERAL	Twine Gas & Power, Inc.	UEG	GISB	NG	ACTIVE	7/1/2001
BILATERAL	J.P. Morgan Ventures Energy Corporation ISDA	UEG	ISDA	NG	ACTIVE	12/1/2007	BILATERAL	UBS AG - ISDA	UEG	ISDA	NG	ACTIVE	4/1/2008
BILATERAL	J.P. Morgan Ventures Energy Corporation NAESB	UEG	NAESB	NG	ACTIVE	10/14/2008	BILATERAL	Ultra Resources, Inc.	UEG	NAESB	NG	ACTIVE	11/1/2004
BILATERAL	K2 Commodities, LLC	UEG	NAESB	NG	ACTIVE	7/28/2017	BILATERAL	United Energy Trading, LLC	UEG	NAESB	NG	ACTIVE	5/1/2003
TRANSPORT	Kerr River Gas Transmission Company	UEG	Other	NG	ACTIVE	1/1/1993	BILATERAL	Walden Energy LLC	UEG	NAESB	NG	ACTIVE	12/12/2003
BILATERAL	Kerr-McGee Energy Services Corporation	UEG	NAESB	NG	ACTIVE	2/20/2006	BILATERAL	Wells Fargo Commodities, LLC	UEG	NAESB	NG	ACTIVE	1/1/2007
BILATERAL	KM Ventures, LLC dba Freedom Energy	UEG	NAESB	NG	ACTIVE	9/9/2019	BILATERAL	WPX Energy Marketing, LLC	UEG	NAESB	NG	ACTIVE	3/1/2010

2019 QF MONTHLY
PAYMENTS

Confidential/privileged pursuant to applicable provisions of D.06-06-066, G.O. 66-D and PUC Code Section 583 and Section 454.5(g).

Monthly Energy Purchases (MWh)

NOTE: DOES NOT INCLUDED GENERATION FROM, OR PAYMENT TO, COVERED CHP PLANTS

QFID	Technology	Generating Facility	Jan Total MWh	Feb Total MWh	Mar Total MWh	Apr Total MWh	May Total MWh	Jun Total MWh	Jul Total MWh	Aug Total MWh	Sept Total MWh	Oct Total MWh	Nov Total MWh	Dec Total MWh	Total MWh
119	Conduit Hydro	San Francisco Peak Hydro Plant	[REDACTED]												72.10

Monthly Energy Purchases

QFID	Customer Name	Generating Facility	Jan Energy \$	Feb Energy \$	Mar Energy \$	Apr Energy \$	May Energy \$	Jun Energy \$	Jul Energy \$	Aug Energy \$	Sept Energy \$	Oct Energy \$	Nov Energy \$	Dec Energy \$	Total Energy \$
119	Conduit Hydro	San Francisco Peak Hydro Plant	[REDACTED]												\$ 2,759.09

Monthly Capacity Purchases

QFID	Customer Name	Generating Facility	Jan Capacity \$	Feb Capacity \$	Mar Capacity \$	Apr Capacity \$	May Capacity \$	Jun Capacity \$	Jul Capacity \$	Aug Capacity \$	Sept Capacity \$	Oct Capacity \$	Nov Capacity \$	Dec Capacity \$	Total Capacity \$
119	Conduit Hydro	San Francisco Peak Hydro Plant	[REDACTED]												635.21

**BEFORE THE PUBLIC UTILITIES
COMMISSION OF THE STATE OF CALIFORNIA**

**DECLARATION
OF MIGUEL DURAN**

A.20-06-XXX

Application of San Diego Gas & Electric Company (U 902-E) for Approval of: (i) Contract Administration, Least Cost Dispatch and Power Procurement Activities in 2019, (ii) Costs Related to those Activities Recorded to the Energy Resource Recovery Account, Portfolio Allocation Balancing Account, Transition Cost Balancing Account, and Local Generating Balancing Account in 2019, and (iii) Costs Recorded in Related Regulatory Accounts in 2019

I, Miguel Duran, declare as follows:

1. I am the Electric & Fuel Procurement Contracts & Systems Manager for San Diego Gas & Electric Company (“SDG&E”). I have included my Direct Testimony (“Testimony”) in support of SDG&E’s Application for Approval of: (i) Contract Administration, and (ii) Costs Related to those Activities Recorded to the Energy Resource Recovery Account, Incurred During the Record Period January 1, 2019 through December 31, 2019, and (iii) the Entries Recorded in Related Regulatory Accounts. Additionally, I am thoroughly familiar with the facts and representations in this declaration and if called upon to testify I could and would testify to the following based upon personal knowledge.

2. I am providing this Declaration to demonstrate that the confidential information (“Protected Information”) in support of the referenced Application falls within the scope of data provided confidential treatment in the IOU Matrix (“Matrix”) attached to the Commission’s Decision D.06-06-066 (the Phase I Confidentiality

decision). Pursuant to the procedures adopted in D.08-04-023, I am addressing each of the following five features of Ordering Paragraph 2 in D.06-06-066:

- that the material constitutes data listed in the Matrix;
- the category or categories in the Matrix the data correspond to;
- that SDG&E is complying with the limitations on confidentiality specified in the Matrix for that type of data;
- that the information is not already public; and
- that the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.

3. The confidential information contained in my Testimony constitutes material, market sensitive, electric procurement-related information that is within the scope of Section 454.5(g) of the Public Utilities Code.¹ As such, the Protected Information provided by SDG&E is allowed confidential treatment in accordance with Appendix 1 – IOU Matrix in D.06-06-066.

Confidential Information	Matrix Reference	Reason for Confidentiality and Timing
The highlighted areas in Section IV.H.1. entitled “ <u>Payments to QFS/CHP</u> ” <ul style="list-style-type: none"> • Table entitled “<u>2019 QF MONTHLY PAYMENTS</u>” 	VII.B	Pricing terms of the contracts confidential for three years from date contract states deliveries to begin; or until one year following expiration, whichever comes first.
All highlighted areas in the body, tables or footnotes of Section VI.A entitled “ <u>Renewable Resources</u> ” <ol style="list-style-type: none"> 1. Bio-Gas & Bio-Mass 3. Solar 4. Wind 	VII.G	Contract terms; confidential for 3 years
All highlighted areas in the body, tables or footnotes of Section VI.D entitled “ <u>Tolling Agreements</u> ”	VII.B VII.E	Contract terms; confidential for 3 years
All highlighted areas in the body, tables or footnotes of Section VI.F entitled “ <u>Bundled Energy & REC Sales</u> ”	VII.B	Contract terms; confidential for 3 years

¹ In addition to the details addressed herein, SDG&E believes that the information being furnished in my Testimony is governed by Public Utilities Code Section 583 and General Order 66-D. Accordingly, SDG&E seeks confidential treatment of such data under those provisions, as applicable.

Confidential Information	Matrix Reference	Reason for Confidentiality and Timing
All highlighted areas in the body, tables or footnotes of Section VI.G entitled “ <u>Pre-Operational Contracts</u> ” 1. Bio-Gas 2. Solar 3. Wind 4. Energy Storage	VII.B VII.E VII.G	Contract terms; confidential for 3 years
All highlighted areas in the body, tables or footnotes of Section VI.H entitled “ <u>Expired and Terminated PPAs</u> ” 1. Renewable 3. Energy Storage 5. Bundled Energy & REC Sales	VII.B VII.E VII.G	Contract terms; confidential for 1 year following expiration
EXHIBIT B All highlighted areas in ATTACHMENT 1	VII.G XI	Contract terms; confidential for 3 years Detail of monthly variable cost on energy operation; confidential for 3 years

4. I am not aware of any instances where the Protected Information has been disclosed to the public. To my knowledge, no party, including SDG&E, has publicly revealed any of the Protected Information.

5. I will comply with the limitations on confidentiality specified in the Matrix for the type of data that is provided herewith.

6. The Protected Information cannot be provided in a form that is aggregated, partially redacted, or summarized and continue to provide the level of support to the Application as intended; however, SDG&E is certainly willing to work with the Commission regarding possible aggregations if the Commission seeks to make any of the confidential information provided in the Testimony public.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 1st day of June 2020, at San Diego, California.

/S/ Miguel Duran
Miguel Duran
Contracts & Systems Manager
San Diego Gas & Electric Company