Application No.: A.26-06-XXX
Exhibit No.: SDGE-3
Witness: Moriah Saldaña

PREPARED DIRECT TESTIMONY OF

MORIAH SALDAÑA

ON BEHALF OF

SAN DIEGO GAS & ELECTRIC COMPANY

REDACTED, PUBLIC VERSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

JUNE 1, 2026

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PREPARED DIRECT TESTIMONY OF MORIAH SALDAÑA ON BEHALF OF SAN DIEGO GAS & ELECTRIC COMPANY

I. INTRODUCTION

The purpose of my testimony is to describe the expenses for procurement-related activities that are recorded in San Diego Gas & Electric Company's ("SDG&E") Energy Resource Recovery Account ("ERRA"), Portfolio Allocation Balancing Account ("PABA"), Transition Cost Balancing Account ("TCBA"), Local Generation Balancing Account ("LGBA"), Modified Cost Allocation Mechanism ("MCAM"), and Tree Mortality Non-Bypassable Charge Balancing Account ("TMNBCBA") for the record period of January 1, 2025 through December 31, 2025. My testimony will explain SDG&E's contract administration activities during the record period associated with SDG&E's Power Purchase Agreements ("PPA"). Some of the testimony below, and information provided in the attached exhibits and Attachment 1, are confidential and privileged pursuant to applicable provisions of California Public Utilities Commission ("Commission") Decision ("D.") 06-06-066, General Order ("G.O.") 66-D and California Public Utilities Code ("Pub. Util. Code") Section ("§") 583 and § 454.5(g). Confidential provisions are identified by yellow highlights and redacted for public filings.

SDG&E respectfully requests the Commission's approval of SDG&E's contract administration and power procurement-related expenses for 2025, which are identified, explained and supported in this testimony.

II. DESCRIPTION OF EXPENSES

The expenses recorded in ERRA, PABA, TCBA, LGBA, MCAM, and TMNBCBA for the record period are summarized in Attachments A, B, C, D, E, and L respectively of the accompanying prepared direct testimony of SDG&E witness Brenda Hua. These expenses are recorded in compliance with D.02-12-074.

As described in Section III of Brenda Hua's prepared direct testimony, the purpose of the PABA is to record the "above-market" costs and revenues associated with all generation resources that are eligible for cost recovery through the PCIA rates, including SDG&E's Utility-Owned Generation ("UOG").

Also, described in Section IV of Brenda Hua's prepared direct testimony, the purpose of the TCBA is to accrue all Competitive Transition Charge ("CTC") eligible revenues and recover all Qualifying Facility ("QF") generation-costs above a calculated market benchmark. The TCBA was authorized by D.02-12-074 and D.02-11-022.

Also, described in Brenda Hua's prepared direct testimony, the purpose of the LGBA is to record the revenues and costs of generating contracts where the Commission has determined that the resource is subject to a cost allocation mechanism. In the record period, the projects included in SDG&E's LGBA were the contracts for Carlsbad Energy Center, LLC ("CECL"), Escondido Energy Center ("EEC"), Pio Pico Energy Center ("PPEC"), CP Kelco CHP, Grossmont Hospital CHP, Sentinel (RA Only), Gateway (RA Only), Edwards Sanborn (RA Only), and the following utility-owned energy storage systems: El Cajon Energy Storage ("ES"), Escondido ES, Fallbrook ES, Westside Canal ES, Melrose ES 1 & 2, Pala Gomez Creek ES, Boulevard ES, Clairemont ES, Elliott ES, Paradise ES and Miramar Top Gun ES facilities. The LGBA activity is described in more detail in Brenda Hua's prepared direct testimony. The LGBA was authorized by D.13-03-029 and established in Advice Letter ("AL") 2499-E, approved on August 9, 2013 and effective on July 31, 2013.

Also, described in Section VI of Brenda Hua's prepared direct testimony, the purpose of the MCAMBA to record costs for those load-serving entities ("LSEs") that opted out of self-procurement, and backstop procurement-related costs required by D.19-011-016 and/or D.21-006-

035. The MCAMBA was established in D.19-11-016, D.21-06-025, and D.22-05-015, and was approved per AL 4043-E, effective January 12, 2023.

A. CTC Contract Costs

In accordance with D.02-12-074, this category captured expenses recorded in ERRA up to the market benchmark value of the QF and transition Combined Heat & Power ("CHP") PPAs that are non-LGBA. In A. 24-05-010, SDG&E proposed to change the cost recovery methodology to discontinue the market benchmark proxy for SDG&E's CTC-eligible resources. As of 2025, SDG&E proposed to use actual CAISO revenues as the market value of its two remaining CTC contracts for calculating the amount of contract costs to be recovered in ERRA, which may prevent any under/overcollections in ERRA that are resulting from the current CTC cost recovery mechanism. This category also includes indirect Greenhouse Gas ("GHG") costs associated with the PPAs. Any expenses above the benchmark were recorded in the TCBA pursuant to Assembly Bill ("AB") 1890. The 2025 activity in SDG&E's TCBA is described in more detail in Attachment C of Brenda Hua's prepared direct testimony.

B. Contract Costs (non-CTC)

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

C. Generation Fuel & In-Lieu Payments

All monthly recorded fuel and transportation expenses for SDG&E's utility-owned generation, and fuel purchased for SDG&E's tolling agreements, were recorded in PABA and

LGBA. In-Lieu Payments (of franchise fees) were collected for Palomar fuel costs and recorded in PABA.

D. Other CAISO Related Costs

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

E. CAISO Supply & Load Costs

This category captures the CAISO payments and charges to SDG&E as the Scheduling Coordinator ("SC") for its supply resources, including Inter-SC trades ("ISTs"), Day-Ahead and Real-Time Market activities, and their imbalance energy charges and revenues. This category also includes the CAISO payments and charges to SDG&E as the SC for load, GMC, Day-Ahead and Real-Time Market load activities, and load imbalance energy.

F. Hedging Costs & Financial Transactions

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

G. Western Renewable Energy Generation Information System ("WREGIS") Costs

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

H. Congestion Revenue Rights ("CRR") CAISO Costs

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

I. CAISO Convergence Bidding Costs

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

J. GHG & Carrying Costs

This category includes costs and cost adjustments related to SDG&E's procurement of GHG compliance instruments to comply with California Air Resources Board's Cap-and-Trade program pursuant to AB 32. The 2025 GHG compliance activity is described in more detail in the prepared direct testimony of SDG&E witness Stephen Elliott.

III. ELECTRIC & FUEL PROCUREMENT FUNCTIONS

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

A. Long-Term Procurement Functions

Origination, Energy Supply and Dispatch ("OES&D") is comprised of two functional areas: Origination (Origination Analytics & Energy Origination) and Energy Supply & Dispatch ("ES&D"). Origination Analytics supports long-term procurement of energy products such as renewables, conventional generation, ES, demand response, energy efficiency, resource adequacy ("RA") capacity and RECs. To this end, the group designs, implements and manages competitive solicitations in accordance with Commission directives and executes agreements on a bilateral basis to meet energy procurement needs. Furthermore, the group supports Origination with financial and technical modeling for utilization in PUC proceedings or regulatory approval of SDG&E contracts.

Energy Origination negotiates and executes PPA and resource requirements for UOG, to meet SDG&E's long-term energy and capacity requirements and regularly updates the Procurement Review Group. ES&D is described below in the Trading & Scheduling Functions.

B. Resource Planning Section

The Resource Planning ("RP") Section provides support for several regulatory agencies and filings including the ERRA proceeding. They forecast procurement costs for the ERRA, TCBA, LGBA, MCAM, TMNBCBA, and the Power Charge Indifference Adjustment ("PCIA"). SDG&E's witness Brenda Hua uses these forecasts to develop ERRA revenue requirements for each element. The forecasts include expected generation and purchases from SDG&E's resource portfolio including tolling projects, UOG, renewable projects, QFs and market purchases. RP also forecasts the CAISO charges, hedging costs, San Onofre Generating Station Unit 1 Offsite Spent Fuel Storage Costs and a forecast of total GHG costs. RP provides support for the development of the GHG allowance revenue return allocation and the volumetric revenue return for small business and residential customers, as well as rates for the Green Tariff Shared Renewables ("GTSR") program.

C. Trading & Scheduling Functions

ES&D provides trading and scheduling functions in support of UOG, tolling agreements, renewable energy, QFs, demand-side resources and other resources as required. They manage the portfolio of assets consistent with the Commission-approved procurement plans and gas supply plans for UOG. ES&D manages the least-cost dispatch of the UOG and tolling agreements, battery ES, purchases and sales of GHG related products, natural gas and power, and hedges to maintain the portfolio's price risk exposure within the Customer Risk Tolerance limits. They perform all scheduling and interface functions with the CAISO and participate in CAISO-related meetings and working groups. ES&D manages compliance with annual and monthly RA requirements and oversees the real-time scheduling, dispatch, and trading functions. ES&D staffs a real-time desk to

manage real-time energy transactions and scheduling activities and ensures that ES&D complies with various regulatory and financial constraints/requirements. Details of the least-cost dispatch are provided in the prepared direct testimony of SDG&E witness Andrew Scates.

D. Back-Office Functions

Energy Trading Operations & Support (ETO&S), previously Settlements and Systems, provides back-office support for UOG, renewable energy, QFs and other resources as required. ETO&S manages PPAs through construction and development phases, up to the commercial operation date ("COD"), monitors and administers energy supply (*e.g.*, PPAs for QFs, renewable energy resources and tolling agreements) and gas marketing contracts delivering energy and capacity to SDG&E and participates in various regulatory proceedings relating to contract administration. ETO&S also verifies, validates, and processes invoices and billing requests for bilateral transactions, and prepares journal entries to record expenses and revenues. In terms of interaction with CAISO, ETO&S validates and processes settlement statements and invoices from the CAISO, disputes any questionable charges, and reports generation and load meter data. They also coordinate Sarbanes-Oxley ("SOX") 404 compliance and control activities for many E&FP functions.

The Data Science Section, formally the Systems Section, within ETO&S is responsible for system administration for departmental software supported by SDG&E's Information Technology department. The primary applications are a) Power Costs Inc. ("PCI") dispatch program, repository, and payment database, b) Versify Solutions, a MCG Energy Company ("V Performance") for RA requirements and c) the Meter Data Processing System ("MDPS"), which performs the meter reporting and submissions to the CAISO.

E. Mid-Office Functions

SDG&E's Energy Risk Management ("ERM") department, which reports to SDG&E's Vice President – Chief Risk and Compliance Officer, provides mid-office support functions to E&FP by identifying, managing, monitoring and reporting on market, credit, financial and operational risks. The ERM department conducts daily reviews of electric procurement physical and financial positions, including Commission-approved risk metrics, trader authority limits, counterparty credit risk positions and compliance with financial liquidity/collateral limits. ERM also supports the Front Office in the development of hedging plans and monitors compliance with the approved plans.

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

IV. SUPPLY PORTFOLIO ADMINISTRATION IN GENERAL

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

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

SDG&E Power Plants	**MW** [1]
Miramar Energy Facility 1 & 2	96

[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) MWs are not reported to the CAISO.

SDG&E Power Plants	MW [1]
Cuyamaca Energy Center	45
Palomar Energy Center	588.21
Desert Star Energy Center	480
Ramona Solar	4.3
El Cajon Energy Battery Storage	7.5
Escondido Energy Battery Storage	30
Top Gun Storage	30
Kearny Battery Energy Storage	20
Fallbrook Battery Energy Storage	40
Westside Canal Battery Energy Storage	131
Melrose BESS 1	10
Melrose BESS 2	10
Boulevard Energy Storage	10
Clairemont Energy Storage	9
Elliott Energy Storage	10
Paradise Energy Storage	10
Pala Gomez Creek BESS	10
Air Attack Base	.5
Buckman Springs PV	.8
Rooftop Solar (combined)	3.4

SDG&E's PPAs include the following:

Status as of:
December 31, 2025

Commercial Operations	TOTAL PPA'S		
Contract Summary	Number	MW	MWH
QF/CHP	3	5.1	3,303
Renewable	38	2,470.5	5,847,958
Tolling	5	1,054.1	305,906
Energy Storage	8	554.5	510,747
WSPP/EEI	16	0.0	(3,058,813)
Total	**70**	**4,084.2**	**3,609,101**

Pre-Operational	TOTAL PPA'S		
Contract Summary	Number	MW	MWH
QF/CHP	1	17.4	0
Renewable	1	50.0	0
Tolling	0	0.0	0
Energy Storage	4	259.5	90,494
WSPP/EEI	16	0.0	(3,058,813)
Total	**22**	**326.9**	**(2,968,319)**

Expired/Terminated	TOTAL PPA'S		
Contract Summary	Number	MW	MWH
QF/CHP	1	49.9	0.0
Renewable	2	61.2	131,419.9
Tolling	0	0.0	0.0
Energy Storage	0	0.0	0.0
WSPP/EEI	1	0.0	0.0
Total	**4**	**111.1**	**131,420**

Commercial Operations	TOTAL PPA'S		
Technology Type	Number	MW	MWH
Bio-Mass	1	24.0	197,871.4
Conduit-Hydro	4	2.9	3,240.7
Energy Storage - Pumped Hydro	0	0.0	0.0
Energy Storage - Battery	7	441.0	457,055.9
Hybrid - Energy Storage + Solar PV	3	247.0	237,320.7
Landfill Gas	3	7.5	38,840.3
Market	16	0.0	(3,058,813.0)
Natural Gas	6	1,058.2	309,167.0
Solar PV	23	1,346.1	3,149,334.2
Wind	7	957.5	2,275,083.8
Total	**70**	**4,084.2**	**3,609,101**

Pre-Operational	TOTAL PPA'S		
Technology Type	Number	MW	MWH
Bio-Mass	0	0.0	0
Conduit-Hydro	0	0.0	0
Energy Storage - Pumped Hydro	0	0.0	0
Energy Storage - Battery	1	54.0	36,803
Hybrid - Energy Storage + Solar PV	3	180.9	53,691
Landfill Gas	0	0.0	0
Market	16	0.0	(3,058,813)
Natural Gas	0	0.0	0
Solar PV	0	0.0	0
Wind	0	0.0	0
Total	**20**	**234.9**	**(2,968,319)**

Expired/Terminated	TOTAL PPA'S		
Technology Type	Number	MW	MWH
Bio-Mass	0	0.0	0.0
Conduit-Hydro	0	0.0	0.0
Energy Storage - Pumped Hydro	0	0.0	0.0
Energy Storage - Battery	0	0.0	0.0
Hybrid - Energy Storage + Solar PV	0	0.0	0.0
Landfill Gas	0	0.0	0.0
Market	1	0.0	0.0
Natural Gas	1	49.9	0.0
Solar PV	0	0.0	0.0
Wind	2	61.2	131,419.9
Total	**4**	**111.1**	**131,420**

ETO&S performs the following routine tasks to ensure compliance with contract terms and regulatory requirements.

A. Contract Management for New Projects

Before new projects reach COD, ETO&S provides contract management during a project's construction phase ensuring that all conditions precedent and milestones are met. Additionally,

ETO&S manages the transition between construction and commercial operation including multiple meetings with the new counterparty to introduce staff, review the scheduling communication protocols, and discuss the invoicing and settlement procedures. The purpose of these meetings is to ensure a smooth transition from the construction phase to commercial operation.

B. Invoice Verification

For most non-QF contracts, the Sellers issue monthly invoices to SDG&E. For QFs, SDG&E issues monthly invoices to the Seller. Based on contract terms, and the daily communication records, the ETO&S staff prepares, reviews and verifies the details of the invoices, including, but not limited to: prices and quantity of energy delivered or scheduled, verification of excused outages, prices of capacity, TOD factors, index prices, startup payments, economic curtailment compensation, and validity of any adjustments to the invoices. ETO&S staff follow the complete payment process to verify it is done in a timely manner per the contract.

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

C. WREGIS Administration

Starting in 2007, as part of the RPS compliance effort, the California Energy Commission ("CEC"), the Western Governors' Association and Western Electricity Coordinating Council jointly launched the implementation of WREGIS, an online system which tracks renewable energy generation from units that register in the system using verifiable data and creates RECs for this generation. In 2008, SDG&E became an account holder and qualified reporting entity within WREGIS and worked with the renewable counterparties to register each facility into the system. SDG&E started reporting renewable generation from these facilities through WREGIS starting on May 1, 2008.

D. Active Monitoring

The PPAs require Contract Administrators to monitor and track generation to ensure the generator's compliance with the contract terms through the life of the contracts. The scope of this contract monitoring includes, but is not limited to, generation, insurance, credit requirements and status, and compliance with regulatory and reporting requirements. Contract Administrators work closely with the generators to immediately address any contractual issues that may arise.

Particularly for the renewable contracts, D.10-06-004 mandated SDG&E to actively monitor the Seller's compliance with Standard Terms and Conditions 6 ("STC 6"), as defined in the Pub. Util. Code.[2] SDG&E implements the following method of active monitoring:

i. Request the Seller's copy of CEC's certification, both pre-& final;
ii. Request that the Seller register the contracted facility with WREGIS and provide SDG&E their WREGIS ID; and
iii. Request that the Seller certify that the product SDG&E received during the record period was indeed in compliance with STC 6.

For the record period, SDG&E undertook the activities described in (i) and (ii) above to verify compliance with STC 6 for all RPS projects. In addition, SDG&E conducted year-end outreach to all Sellers pursuant to (iii).

E. Contract System Administration

During the record period, E&FP's front, mid and back offices used PCI as its primary contract management trading and tracking system. PCI is a SOX compliance system used for

[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).

regulatory reporting, accounting, commodity trading management, and portfolio valuation. PCI creates an audit trail when changes are made to contracts in the system. During the record period, ETO&S supported SDG&E's goals of complying with SOX requirements, maintaining up-to-date systems, enhancing forecast accuracy, and ensuring compatibility between software systems used within E&FP.

F. Summary of SDG&E's Long-Term Energy Contract Portfolio

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

G. Non-QF Contract Types

There are generally two Non-QF contract types and two subtypes in SDG&E's portfolio that include, among other benefits, the purchase or sale of as-available capacity and energy, RECs and RA benefits. Below is a list defining those contracts:

1. Standard Contracts

Contracts that originate from a Request for Offer ("RFO"), or tariff, or regulatory mandate. The Buyer and Seller agree to standard terms which are non-modifiable. Standard PPAs typically

include the purchase of energy and/or capacity and may be as-available or dispatchable. Standard contracts can be Renewable or Tolling. Some examples of these contracts in our portfolio include RAM, ReMAT and PURPA.

2. Bilateral Contracts

Bilateral Contracts are contracts that originate from a Request for Offer ("RFO") and are not tariff or regulatory mandated. The Buyer and Seller negotiate the terms and are bound by the provisions. Bilateral Contracts typically include the purchase of energy and/or capacity and may be firm or dispatchable. Bilateral Contracts can be Renewable or Tolling.

3. Tolling Contracts (Standard or Bilateral)

These are dispatchable contracts that originate from an RFO, and SDG&E purchases and transports fuel (i.e. natural gas or electricity) to the power plants. SDG&E pays for capacity based on the availability of the plants and the contracts include fixed and variable O&M charges, startup costs, etc. SDG&E economically bids the plants and available ancillary services into the CAISO market.

4. Renewable Contracts (Standard or Bilateral)

Power purchase and sale contracts with power suppliers whose generation fuel (wind, solar, etc.) are certified as renewable.

H. QF/CHP Contract Administration

As of the end of the record period, the following table lists and summarize the names, sizes, energy and capacity prices and quantities of all exporting and non-exporting QF/CHP's 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**	**Notes**
SF Peak Hydro	SO1	0.4	0	SRAC	SRAC	
Goal Line	CHP	49.9	49.9	$6.21/MWh variable O&M	$172/KW-yr. + $23.40-$33.00/kW-yr.	Expired 2/14/2025
Grossmont	CHP	4.1	0	SRAC	SRAC	
Total		134.4	104.9			

The following table lists the percentages of generation (MWh) supplied by QF projects, 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
42.12	1,849,286	0.002%

The following table lists the percentages of QF renewable energy (MWh), but not CHP, 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
42.12	42.12	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
42.12	4,011,299	0.001%

1. Payments to QF/CHP

During the record period, there were no unusual or significant payments to, or claims by, the QFs. The table below shows the QF 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.

2025 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, CONVERTED 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	[redacted]												42.12
Monthly Energy Purchases															
QFID	Technology	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]												$ 2,372.08
Monthly Capacity Purchases															
QFID	Technology	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]												140.39

2. Efficiency Monitoring

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

3. Insurance Monitoring

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

V. EXPIRED AND TERMINATED CONTRACTS

SDG&E normally administers each contract from execution through the end of the contract term, at which point the contract will expire. However, SDG&E can terminate a PPA earlier than the expiration date due to a counterparty event of default. If this occurs, SDG&E will notify the counterparty of the default. If the counterparty fails to cure the default, SDG&E may terminate the contract. Contracts can also be terminated by mutual consent between the counterparties. The expired and terminated contracts are discussed in the relevant sections below and in Attachment 1.

A. Contract Amendments, Modifications and Letter Agreements

During the record period, SDG&E signed no letter agreements and amended three contracts. Attachment 1 of this testimony summarizes the amendment and letter agreement.

B. Contract Administration of Fuel Procurement Contracts

During the record period, SDG&E had fuel procurement contracts in effect or under negotiation, initiation, revision, amendment, or termination. Attachment 1 of this testimony includes a tab entitled "Gas Contracts" that identifies the counterparties, contract types and effective

dates of all active fuel procurement contracts in effect or otherwise acted upon during the record period.

C. Hypothetical Maximum Disallowance for Standard of Conduct 4 Violations

For the record period, SDG&E calculated $18.754 million[3] as the hypothetical Maximum Disallowance for Standard of Conduct 4 Violations which equates to twice the estimated administrative expenses of $9.377 million calculated in the table below. In D.02-12-074, the Commission set "each utility's maximum disallowance risk equal to two times their annual administrative expenses for all procurement functions, including those related to DWR contract administration, utility-retained generation, renewables, QFs, demand-side resources, and any other procurement resources."[4] This hypothetical disallowance cap was established in Ordering Paragraph 25 of D.02-12-074 and modified by Ordering Paragraph 3.a. of D.03-06-067.

The record period falls under the 2024 GRC period which is effective from 2024 through 2027. In the table below, SDG&E provides a hypothetical disallowance cap utilizing the GRC Authorized Revenues for Procurement Expenses and shows how those costs are hypothetically distributed in four major functions: Origination & Portfolio Design, Energy Supply & Dispatch, Back Office and Resource Planning. More information about the test-year ("TY") 2024's O&M costs for non-shared services are summarized in the SDG&E Direct Testimony of Christopher A. Summers (Electric and Fuel Procurement) (May 2022) in the 2024 GRC proceeding (Application ("A.") 22-05-016) and attached Exhibit C is a copy of this testimony.[5]

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[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

SDG&E Hypothetical Desallowance Cap Utiliting the GRC Authorized Revenues for Procurement Expenses $ In Millions				
#	Description	SDGE's Authorized Revenue Requirement for Procurement Expenses (2024$)		Maximum Disallowance
1	Origination & Portfolio Design	$	2,479.00	
2	Energy Supply & Dispatch	$	2,159.00	
3	Back Office	$	3,536.00	
4	Resource Planning	$	1,203.00	
Total		$	9,377.00	$18,754.00

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:

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.

PROCUREMENT- RELATED RESOURCES SOLICITATION IN 2025

2025 RFOs	Date Launched	Description
Year Ahead 2026 RA RFO	8/25/2025	Sought to sell excess RA capacity products: CAISO South System RA, RA w/ Flex, SD-IV Local RA, Local RA w/ Flex, Import Allocation Rights.
Q2-Bal25 RA RFO	2/3/2025	Sought to sell excess RA capacity products: CAISO South System RA, RA w/ Flex, SD-IV Local RA, Local RA w/ Flex.
Q3 RA RFO	4/14/2025	Sought to sell excess RA capacity products: CAISO South System RA, RA w/ Flex, SD-IV Local RA, Local RA w/ Flex.
Q4 RA RFO	7/21/2025	Sought to sell excess RA capacity products: CAISO South System RA, RA w/ Flex, SD-IV Local RA, Local RA w/ Flex, Import Allocation Rights.
2025 GHG-Free RFO	9/2/2025	Pursuant to the California Public Utility Commission's Decision 24-02-047 authorizing clean energy procurement to meet California's targets for Greenhouse Gas ("GHG") emissions reductions as defined in Senate Bill ("SB") 100 and SB 1020, SDG&E issued its 2025 GHG-Free RFO. This RFO sought offers from owners and operators for the purchase of up to 1,600 GWhs annually of bundled energy and Portfolio Content Category 1 renewable energy credits from clean generation resources that meet the California Renewables Portfolio Standard ("RPS") requirements. SDG&E also considered offers for RPS-eligible energy generation from co-located or hybrid with battery energy storage that included capacity attributes.
2027-2032 Reliability RFO	11/24/2025	As authorized by the California Public Utilities Commission ("CPUC") Decisions ("D.") 21-06-035, D.23-02-040, D.24-02-047, and in response to potential procurement targets under CPUC Rulemaking 25-06-019, this RFO sought offers for capacity from owners and operators of non-fossil fueled resources including energy storage systems ("ESS") and California Renewable Portfolio Standard ("RPS")-eligible renewable generation, hybrid and co-located resources to come online by and between June 1, 2027, and June 1, 2032.
2028-2031 Firm, Zero Emitting RFO	3/3/2025	In accordance with the California Public Utilities Commission ("CPUC" or "Commission") Decision ("D.")21-06-035, D.23-02-006 and D.24-02-047, SDG&E issued its 2028-2031 Firm Zero-Emitting Integrated Resource Planning ("IRP") Reliability RFO to solicit offers from owners and operators for the purchase of eligible system-level resource adequacy ("RA") to come online by June 1, 2028, provided that, SDG&E would accept and consider offers for resources that came online by June 1, 2031, pursuant to the qualifications set forth in D.24-02-047.
2025 RPS Bundled REC Sales RFP	2/12/2025	As authorized by D.24-12-035, San Diego Gas & Electric Company (SDG&E) is issuing this Request for Proposal (RFP) to seek offers from third parties interested in purchasing 2025

2025 RFOs	Date Launched	Description
		and 2026 Portfolio Content Category 1, or PCC 1, REC product from eligible renewable resources under contract with SDG&E.
2025 Tree Mortality Renewable Portfolio Standard Energy and Resource Adequacy Sale RFP	8/20/2025	As authorized by D.18-12-003, SDG&E issued the 2025 Tree Mortality Request for Offers seeking proposals from third parties ("Offerors") who are interested in purchasing resource-specific (i) bundled electric energy and renewable energy credits ("Bundled Energy Product"), and/or (ii) resource adequacy ("RA") attributes from HL Power, a Bioenergy Renewable Auction Mechanism ("BioRAM") resource under contract with SDG&E.
2026 RPS Bundled REC Sales RFP	9/3/2025	As authorized by D.24-12-035, San Diego Gas & Electric Company (SDG&E) is issuing this Request for Proposal (RFP) to seek offers from third parties interested in purchasing 2026 Portfolio Content Category 1, or PCC 1, REC product from eligible renewable resources under contract with SDG&E.

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

In addition to the pro forma PPAs listed above, SDG&E had a Bioenergy Market Adjusting Tariff ("Bio-Mat") and Public Utility Regulatory Policies Act ("PURPA") for projects 20 MW or less available during the record period.

A. Renewable Resources (Non QF/CHP)

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

1. BIO-GAS & BIO-MASS

- *HL Power Company, LP*: This five-year Bio-RAM PPA was executed on November 14, 2016, started delivering energy under the PPA in 2017, and amended pursuant to Resolution E-4977 to modify the project's fuel

requirements and extending the term for an additional five years. The PPA was amended for a 2nd time pursuant to Resolution E-5288 and extended the term through January 2032. The PPA price is $109.00/MWh, adjusted by time-of-delivery ("TOD") factors. The bio-mass project size is 30 MW project and SDG&E's contract is for 24 MW, is in Wendel, California ("CA"), and is connected to the Lassen Municipal Utility which delivers their energy to the PG&E system.

- *San Marcos Energy, LLC*: This twenty-year Customer Renewable Energy "CRE" FIT PPA with SDG&E was executed on November 20, 2009. The plant started delivering energy under the PPA in 2011. The PPA has term at price of $117.30/MWh adjusted by TOD factors. The landfill gas plant size is 1.5 MW and is in San Marcos, CA.
- *Sycamore Energy 1, LLC*: This twenty-year CRE FIT PPA was executed on November 20, 2009. The plant started delivering energy under the PPA in 2011. The PPA has a price of $117.30/MWh adjusted by TOD factors. The landfill gas plant size is 1.5 MW and is in Santee, CA.
- *MM San Diego ("Miramar")*: This two-year PURPA PPA was executed on March 18th, 2024 and started delivering energy under the PPA on March 21st, 2024. The Energy price is a product of the Day Ahead Market Price and the unit generation. The Capacity Price is As-Available per the CPUC. The landfill gas project size is 4.5 MW and is in San Diego, CA.

2. HYDRO

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

price is $93.75/MWh adjusted by TOD factors. The conduit hydro project size is 0.45 MW and is in Encinitas, CA.

3. SOLAR

- *Arlington Valley Solar*: This twenty-five-year bilateral PPA was executed on June 3, 2011 and started delivering energy under the PPA in 2013. The PPA price is $107.50/MWh adjusted by TOD factors. The PPA price changed from $107.50/MWh to $110/MWh because the unit had reached its full deliverability Capacity Status in May 2022 as shown in the CAISO NQC listing. SDG&E exercised its curtailment rights during the record period. The solar PV project size is 127 MW and is in Arlington, Arizona ("AZ").
- *Calipatria Solar*: This twenty-year RAM PPA was executed on December 13, 2012 and started delivering energy under the PPA in 2016. The PPA price started at $64.55/MWh in year 1, escalating to $85.65/MWh throughout the term adjusted by TOD factors. SDG&E exercised its curtailment rights during the record period. The solar PV project size is 19.99 MW and is in Imperial Valley, CA. SDG&E exercised its RA purchased options for the record year. This resulted in an additional $3 per MW on the contract price.
- *Campo Verde Solar*: This twenty-year bilateral PPA was executed on October 31, 2006 and started delivering energy under the PPA in 2013. The PPA price started at $112.52/MWh in year 1 and escalates to $135.94/MWh throughout the term adjusted by TOD factors. SDG&E exercised its curtailment rights during the record period. The solar PV project size is 139 MW and is in Imperial Valley, CA.
- *Cascade Solar*: This twenty-year RAM PPA was executed on October 19, 2012. The plant started delivering energy under the PPA in 2013. The PPA price started at $64.81/MWh in year 1 and escalates to $103.61/MWh throughout the term, adjusted by TOD factors. The solar PV project size is 18.5 MW and is in Sun Fair, CA.

- *Catalina Solar*: This twenty-five-year bilateral PPA was executed on June 3, 2011 and started delivering energy under the PPA in 2013. The PPA price started at $112.19/MWh in year 1 and escalates to $142.45/MWh throughout the term adjusted by TOD factors. The solar PV project size is 109.44 MW and is in Kern County, CA. The contract was amended on July 16, 2025 to include economic curtailment provisions. Please refer to the table in Attachment 1 for additional details.
- *Centinela Solar Energy 1 ("CSE 1")*: This is a twenty-year bilateral PPA executed on May 10, 2010 and started delivering energy under the PPA in 2014. The PPA price is $125.00/MWh adjusted by TOD factors. SDG&E exercised its curtailment rights during the record period. The solar PV project size is 125 MW and is in Calexico, CA.
- *Centinela Solar Energy 2 ("CSE -2")*: This twenty-year bilateral PPA was executed on July 29, 2010. This expansion plant started delivering energy under the PPA in 2014. The PPA price is $125.00/MWh adjusted by TOD factors, after meeting full capacity deliverability status in 2020. SDG&E exercised its curtailment rights during the record period. The solar PV project size is 45 MW and is in Calexico, CA.
- *CSolar IV South*: This twenty-five-year bilateral PPA was executed on November 10, 2010 and started delivering energy under the PPA in 2013. The PPA price is $125.85/MWh adjusted by TOD factors. SDG&E exercised its economic curtailment rights during the record period. The solar PV project size is 130 MW and is in Calexico, CA.
- *CSolar IV West*: This twenty-five-year bilateral PPA was executed on March 8, 2011 and started delivering energy under the PPA in 2016. The PPA price is $95.50/MWh adjusted by TOD factors. An Interconnect Adjustment Charge of $4.00/MWh was added to the PPA price from the date of first delivery of energy through the last day of the second contract year and $5.30/MWh thereafter until the end of the contract term. SDG&E exercised its economic curtailment rights during the record

period. The solar PV project size is 150 MW and is in Imperial Valley, CA.

- *Desert Green Solar Farm*: This twenty-five-year bilateral PPA was executed on March 31, 2011 and started delivering energy under the PPA in 2014. The PPA price is $139.50/MWh. The solar PV project size is 6.3 MW and is in Borrego Springs, CA.
- *Imperial Valley Solar 1 (Silver Ridge Mt Signal):* This twenty-five-year bilateral PPA was executed on February 3, 2012 and started delivering energy under the PPA in 2013. The PPA price is $98.59/MWh adjusted by TOD factors. SDG&E exercised its curtailment rights during the record period. The solar PV project size is 200 MW and is in Calexico, CA.
- *Maricopa West Solar PV*: This fifteen-year RAM PPA was executed on April 16, 2013 and started delivering energy under the PPA in 2015. The RAM PPA price is $55.00/MWh adjusted by TOD factors. The solar PV project size is 20 MW and is in Taft, CA.
- *Midway Solar Farm III ("Midway") (a.k.a. 97WI 8ME LLC):* This twenty-year RAM PPA was executed on December 11, 2015 and started delivering energy under the PPA in 2018. The RAM PPA price is $52.98/MWh adjusted by TOD factors. SDG&E exercised its curtailment rights during the record period. The solar plant size is 20 MW and is in Calipatria, CA.
- *NLP Granger A82 Solar*: This twenty-year ReMat PPA was executed on April 3, 2014 and started delivering energy under the PPA in 2016. The solar PV PPA price is $89.23/MWh adjusted by TOD factors. The solar PV project size is 3 MW and is in Valley Center, CA.
- *NLP Valley Center Solar*: This twenty-year ReMat PPA was executed on July 20, 2015 and started delivering energy under the PPA in 2016. The PPA price is $89.23/MWh adjusted by TOD factors. The solar PV project size is 2.33 MW and is in Valley Center, CA.

- *SG2 Imperial Valley*: This twenty-five-year bilateral PPA was executed on June 24, 2011 and started delivering energy under the PPA in 2014. The PPA price started at $90.93/MWh escalated to $129.98/MWh throughout the term adjusted by TOD factors. SDG&E exercised its curtailment rights during the record period. There are three 50 MW solar PV projects for a total project size of 150 MW, all located in the Imperial Valley, CA.
- *Sol Orchard San Diego 20 LLC ("Ramona 1")*: This twenty-five-year bilateral PPA was executed on April 11, 2011 and started delivering energy under the PPA in 2013. The PPA price started at $111.86/MWh escalates to $143.46/MWh throughout the term and adjusted by TOD factors. The solar PV project size is 2 MW and is in Ramona, CA.
- *Sol Orchard San Diego 21 LLC ("Ramona 2")*: This twenty-five-year bilateral PPA was executed on April 11, 2011 and started delivering energy under the PPA in 2013. The PPA price started at $111.86/MWh and escalated to $143.46/MWh and adjusted by TOD factors. The solar PV project size is 5 MW and is in Ramona, CA.
- *Sol Orchard San Diego 22 LLC ("Valley Center 1")*: This twenty-five-year bilateral PPA was executed on April 11, 2011 and started delivering energy under the PPA in 2013. The PPA price started at $111.86/MWh escalates throughout the term to $143.46/MWh and adjusted by TOD factors. The solar PV project size is 2.5 MW and is in Valley Center, CA.
- *Sol Orchard San Diego 23 LLC ("Valley Center 2")*: This twenty-five-year bilateral PPA was executed on April 11, 2011 and started delivering energy under the PPA in 2013. The PPA price started at $111.86/MWh in Year 1 and escalates to $143.46/MWh throughout the term adjusted by TOD factors. The solar PV project size is 5.0 MW and is in Valley Center, CA.
- *Solar Borrego I (formerly NRG Solar Borrego I)*: This twenty-five-year bilateral PPA was executed on January 25, 2011 and started delivering energy under the PPA in 2013. The PPA price is $130.00/MWh adjusted

by TOD factors. SDG&E exercised its economic curtailment rights during the record period. The solar PV project size is 26 MW and is in Borrego Springs, CA.

- *TallBear Seville*: This twenty-year RAM PPA was executed on December 13, 2012. The project started delivering energy under the PPA in 2015. The RAM PPA price is $76.63/MWh adjusted by TOD factors. SDG&E exercised its economic curtailments during the record period. The solar PV project size is 20 MW and is in Imperial County, CA.
- *Wister Solar (ORNI 33):* This twenty-year Green Tariff PPA was executed on April 19, 2018. The plant started delivering energy under the PPA in July 2022. The PPA price is $36/MWh adjusted by TOD factors. This solar PV project is 20 MW and is located in San Bernardino Base and Meridian, in an unincorporated area of Imperial County, CA.

4. WIND

- *Coram Energy, LLC*: This fifteen-year bilateral PPA was executed on July 12, 2010. The plant started delivering energy under the PPA in 2011. The PPA price started at $95.00/MWh and escalates to $109.20/MWh through the term adjusted by TOD factors. The wind project size is 7.5 MW and is in the Tehachapi area of CA.
- *Energía Sierra Juárez*: This twenty-year bilateral PPA with Sempra Infrastructure Partners, LP, a Sempra affiliate, was executed on April 6, 2011 and started delivering energy under the PPA in 2015. The PPA price is $106.50/MWh adjusted by TOD factors. SDG&E exercised its economic curtailment rights during the record period. The wind project size is 155.1 MW and is in Ejido Jacume, Mexico, and it is directly interconnected to SDG&E's East County Substation.
- *Energía Sierra Juárez 2 ("ESJ 2")*: This twenty-year RAM PPA was executed on November 16, 2017 with Sempra Infrastructure Partners, LP, a Sempra affiliate and was submitted to the CPUC in AL-3151-E. The plant began commercial operation on January 15, 2022. The PPA price is $56.00/MWh adjusted by TOD factors. SDG&E exercised its economic

curtailment rights during the record period. The project size is 105 MW and is located in Ejido Jacume, Mexico and interconnected to SDG&E's East County Substation.

- *Manzana Wind (Avangrid Renewables)*: This twenty-year bilateral PPA was executed on February 14, 2012 and started delivering energy under the PPA in 2012. The PPA price is $95.00/MWh minus the average 15 Minute real-time market prices. SDG&E exercised its economic curtailment rights during the record period. SDG&E purchases 53%, or 100 MW of the 189 MW wind project located in Rosamond, CA.
- *Naturener Rim Rock*: This twenty-year bilateral PPA was executed on May 5, 2009 and started delivering energy under the PPA in 2013. The transaction is a combination of two products. SDG&E buys the output at $105.99/MWh which includes the green attributes. Rim Rock buys back the output at $62.00/MWh, excluding green attributes, at the same delivery point. The wind project size is 189 MW and is in Toole and Glacier County, Montana.
- *Ocotillo Express, LLC*: This twenty-year bilateral PPA was executed on February 1, 2011. The project started delivering energy under the PPA in 2013. The PPA price is $105.00/MWh. The wind project size is 265.29 MW and is in Imperial Valley, CA. SDG&E exercised its curtailment rights during the record period.
- *Pacific Wind Lessee, LLC*: This twenty-year bilateral PPA was executed on April 20, 2010. The plant started delivering energy under the PPA in 2012. The PPA price is $115.47/MWh. SDG&E exercised its curtailment rights in the record year. The wind project size is 140 MW and is Rosamond, CA.

5. Hybrid – Energy Storage/Solar PV

- *BCE Los Alamitos, LLC:* This ten-year PPTA was executed on December 23, 2020. The plant reached commercial operation November 12, 2023 [redacted] The Project is comprised of two (2) Project

Systems, each of which consists of a 10 MW solar generating facility and a 5MW / 20 MWh battery energy storage system and is located in Los Alamitos, CA.

- *Luna Valley Solar*: This fifteen-year PPTA was executed April 11, 2023 and forms a contractual hybrid solar/battery energy storage project with Daggett Storage. Luna Valley consists of 113.5 MW solar photovoltaic located in Fresno County, California. [redacted] The project reached commercial operation in [redacted]. [redacted]

  Daggett Storage: This fifteen-year PPTA was executed April 11, 2023 and forms a contractual hybrid solar/battery energy storage project with Luna Valley Solar. Daggett Storage consists of 113.5 MW battery energy storage located in San Bernardino County, California. The reached commercial operation in [redacted]

B. Tolling Agreements–

1. Combined Cycle/Peaking (Natural Gas)

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

- *Carlsbad Energy Center (CEC):* This twenty-year Power Purchase Tolling Agreement ("PPTA") was executed on June 1, 2015. The plant began commercial operations on December 12, 2018. The capacity price starts at $191.54 and escalates to $231.40/kW-year throughout the term and the variable O&M price is $6.00/MWh times a CPIA. The gas turbine quick start plant has two units – one unit consisting of four (4) GE LMS100 PA+ gas turbines and the other unit consisting of one (1) GE LMS100 PA+ gas turbine. The plant is approximately 527 MW and is in Carlsbad, CA.

- *El Cajon Energy Center (ECEC)*: This twenty-five-year Power Purchase & Tolling Agreement ("PPTA") was executed on May 24, 2010 and started commercial operations in 2010. The capacity price started at $105.10/kW-year plus $37.50/kW-year times a CPIA and the variable O&M price started at $7.00/MWh times CPIA. The quick-start peaking plant is approximately 47 MW and is in El Cajon, CA.
- *Escondido Energy Center (EEC)*: This twenty-five-year PPTA was executed on February 25, 2011 and started commercial operations in 2014. The capacity price started at $106.50/kW-year plus $43.50/kW-year times CPIA and the variable O&M price started at $7.00/MWh times a CPIA. The quick-start peaking plant is approximately 47 MW and is in Escondido, CA.
- *Orange Grove Energy Center ("OGEC")*: This twenty-five-year PPTA was executed on July 14, 2009 and started commercial operations in 2010. The capacity price is $172.12/kW-year plus a base rent of $125,000 times a CPIA and the variable O&M price was $5.01/MWh times a CPIA. The two-gas turbine quick-start peaking plant is approximately 99 MW and is in Pala, CA. OGEC leased its property for the plant from SDG&E until the end of the PPTA which ends in 2035 after which the lease will expire and the title to the plant will transfer at no cost to SDG&E. SDG&E may, at its option, request OGE to remove the plant and return the property to SDG&E in its original condition.
- *Pio Pico Energy Center (PPEC)*: This twenty-five-year PPTA plant was executed on February 2, 2011 and started commercial operations for SDG&E on June 1, 2017. The capacity price is $162.15/kW-year plus a fixed O&M price of $35.00/kW-year and the variable O&M price was $4.25/MWh times a CPIA. The quick-start peaking plant is comprised of three GE LMS100 PA+ gas turbines with a total capacity of approximately 336 MW and is in Otay Mesa, San Diego, near the United States/Mexico International Border.

2- Battery Energy Storage Systems (BESS)

- *Johanna Energy Center, LLC:* This ten-year PPTA was executed on November 18, 2020. The plant reached commercial operation in July 2022. The capacity price is $193.80/kW-year and the variable O&M is $17.00/MWh escalated to $8.00/MWh for all Delivered Energy delivered during such subsequent Measurement Period. The battery storage facility is 20 MW/80 MWh and is in Santa Ana, CA.
- *Valley Center Storage II, LLC:* This fifteen-year PPTA was executed on August 31, 2020. The plant began commercial operation on November 29, 2021. The capacity price is $177.80/kW-year and the variable O&M is $1.00/MWh pursuant to Dispatch Notices. The battery storage facility is 54 MW/216 MWh and is in Valley Center, CA.
- *Sagebrush Storage I, LLC:* This ten-year PPTA was executed on October 6, 2021. The project reached commercial operation on May 23, 2023. The capacity price is $175.32/kW-year and the variable O&M is $2.00/MWh pursuant to Dispatch Notices. The project is 80MW / 320 MWh battery energy storage located in Kern County, CA.
- *Bottleneck Energy Storage:* This fifteen-year PPTA was executed November 30, 2022. The plant reached commercial operation on October 26, 2024. The project is 80MW / 320 MWh battery energy storage in Tulare County, CA. [redacted]
- *Cald Energy Storage:* This twelve-year PPTA was executed September 29, 2022. The plant reached commercial operation on August 28, 2024. The project is 100MW / 400 MWh battery energy storage in Los Angeles County, CA. [redacted].
- *EDSAN 1B GROUP 2, LLC:* This fifteen-year PPTA was executed December 11, 2023. This project consists of 47 MW battery energy storage, located in Kern County, California and reached initial delivery on October 16, 2024. [redacted]
- *Nova Power Bank Storage:* This fifteen-year PPTA was executed April 12, 2023. This project consists of 60 MW battery energy storage, located

in Riverside County, California and reached commercial operation July 2, 2025. [redacted]

C. QF/CHP Projects

1. Renewable

- *San Francisco Peak Hydro Plant*: This evergreen SO1 QF PPA was executed on August 29, 1985. The small hydro plant started delivering energy under the PPA effective in December 1985. The energy and capacity prices are SRAC. The conduit hydro plant size is 0.4 MW and is in Oceanside, CA.
- *Badger Filtration Plant (Santa Fe Badger Irrigation District (SFID))* This six-year SO1 QF PPA was executed on October 7, 2019. The small hydro plant started delivering energy under the PPA effective in July 2020; however, it only generates electricity if there is excess water flowing through the plant. Seller is excused from meeting the minimum generation requirement if the shortfall is due to lack of rainfall. The energy and capacity prices are SRAC. The conduit hydro plant size is 0.6 MW and is in Rancho Santa Fe, CA.

2. Conventional

- *Grossmont Hospital*: This ten-year non-dispatchable CHP PPA - less than 5 MW PPA was executed on May 1, 2016. The plant started delivering energy under the PPA in January 2017. The energy and capacity prices are SRAC. The converted cogeneration QF project size is 4.6 MW and is in La Mesa, CA.

D. Market Purchases

During the record period, SDG&E did not have any firm market Edison Electric Institute ("EEI") PPAs.

E. Resource Adequacy

During the record period, SDG&E had nine long-term RA contracts in operation. Please refer to the table in Attachment 1 for additional details.

F. Bundled Energy & REC Sales

During the record period, SDG&E delivered energy plus green attributes pursuant to Edison Electric institute ("EEI") Confirmations and WSPP Confirmations:

Contracts Administered (Project Names)	Execution Date	Contract Start Date	Contract End Date	Delivery Period (Years)
Clean Energy Alliance - L/T Bundled Rec Sales	12/20/2021	01/01/2022	12/31/2042	21
San Diego Community Power ("SDCP") - L/T VA Bundled	12/20/2021	01/01/2022	12/31/2042	21
Clean Energy Alliance - L/T Unbundled Rec Sales	08/03/2022	03/01/2023	10/14/2033	11
Commercial Energy of Montana - L/T Bundled	07/29/2022	03/01/2023	01/14/2042	19
Commercial Energy of Montana - L/T Unbundled	07/29/2022	03/01/2023	10/14/2033	11
Direct Energy Business Marketing, LLC - L/T Bundled	07/28/2022	03/01/2023	01/14/2042	19
Direct Energy Business Marketing, LLC - L/T Unbundled	07/28/2022	03/01/2023	10/14/2033	11
Orange County Power Authority - L/T Bundled	07/28/2022	03/01/2023	01/14/2042	19
Orange County Power Authority - L/T Unbundled	07/28/2022	03/01/2023	10/14/2033	10
San Diego Community Power ("SDCP") - L/T Bundled Market Offer	06/30/2023	01/13/2024	01/14/2042	19
Shell Energy North America (US) - L/T bundled	08/05/2022	03/01/2023	01/14/2042	19

Contracts Administered (Project Names)	Execution Date	Contract Start Date	Contract End Date	Delivery Period (Years)
Shell Energy North America (US) - L/T Unbundled	08/05/2022	03/01/2023	10/14/2033	11
Marin Clean Energy - S/T Bundled	12/02/2025	01/20/2026	12/31/2026	1
Southern California Edison Company - S/T Bundled	12/08/2025	02/09/2026	12/31/2026	1
Southern California Edison Company - HLP REC Sales	12/08/2025	02/16/2026	12/31/2027	2
San Diego Community Power ("SDCP") - HLP REC Sales	12/15/2025	01/01/2028	12/31/2029	2

G. Pre-Commercial Contracts

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

1. Energy Storage

- *Rosamond/Golden Fields Solar VI, LLC – 4-hour BESS:* This fifteen-year PPA was executed on September 22, 2025. The standalone battery energy storage project consists of a 4-hour BESS totaling 44 MW located in Kern, County California. [redacted]
- *Rosamond/Golden Fields Solar VI, LLC – 8-hour BESS:* This fifteen-year PPAs was executed on September 22, 2025. The standalone battery energy storage project consists of an 8-hour BESS totaling 48 MW, located in Kern, County California. [redacted] The project is expected to reach commercial operation in [redacted]
-

2. Hybrid (Solar/Battery)

- *Yellowpine Solar III*: This fifteen-year PPTA was executed January 24, 2023. The hybrid solar/battery energy storage project consists of 50MW of battery capacity and 65 MW of solar, located in Clark County, Nevada. [redacted]. The full, hybrid solar/battery project is expected to reach commercial operation in [redacted]

3. QF

- *Empire II Starlight*: This twelve-year PPTA was executed November 18, 2022. The plant is expected to reach commercial operation [redacted] May 2027. [redacted] The project consists of a

20 MW solar generating facility and a 17.4MWh / 69.6 MWh energy storage system in Boulevard, CA. [redacted]

H. Expired and Terminated PPAs

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

- *San Gorgonio Westwinds II ("SGWII")*: This ten-year RAM PPA was executed on April 16, 2013. The wind plant started delivering energy under the PPA in 2015 and expired on January 19, 2025. The PPA price is $71.00/MWh adjusted by TOD factors. The project size was 11.2 MW and is in Palm Springs, CA.
- *Goal Line, LLP*: This seven-year dispatchable CHP PPA was executed on July 2, 2013. The PPA is a restated QF SO2 PPA. The plant started delivering energy under the CHP PPA in 2015 and expired on February 14, 2025. The firm capacity price is $172.00/kW-yr. plus dispatchable rights from $23.40 - $33.00/kW-yr. over the PPA term. The variable O&M is $5.63/MWh times a Consumer Price Index Adjustment ("CPIA"). The converted cogeneration QF project size is 49.9 MW and is in Escondido, CA.
- *Kumeyaay Wind LLC*: This twenty-year bilateral PPA was executed on May 31, 2004, started delivering energy under the PPA in 2006 and expired on December 22, 2025. The PPA price started at $49.00/MWh and escalated to $51.75/MWh in year five and then levelized through the term. SDG&E exercised its economic curtailment rights during the record period. The wind project size is 50 MWs and is located on the Campo Indian Reservation in eastern San Diego County, CA.
- *San Diego Community Power (WSPP)*: This two-year confirmation was executed July 19, 2022. The delivery period started on January 1, 2023

and expired on December 31, 2025. The product is firm delivery of all Category 1 bundled electric energy and associated Green Attributes from Honeylake Power. [redacted] Additionally, pursuant to D. 21-05-030, during the record year SDG&E managed a total of 22 contracts under Voluntary Allocation and Market Offer ("VAMO") for RPS. The table below provides additional information about these contracts.

- The Following REC Sales Contract expired at the end of 2025:

Contracts Administered (Project Names)	Execution Date	Year Executed & PCIA Vintage	Contract Start Date	Contract End Date	Delivery Period (Years)
San Diego Community Power ("SDCP") - REC sales from HLP	07/19/2022	2022	01/01/2023	12/31/2025	3

VII. CONCLUSION

Based on the foregoing, SDG&E's recorded contract expenses to the ERRA are in conformance with the Public Utilities Code, Commission decisions, and the contract terms for the 2025 record period. SDG&E respectfully requests that the Commission find that SDG&E's contract administration and power procurement-related activities and costs for the record period were reasonable and therefore should be approved.

This concludes my prepared direct testimony.

VIII. QUALIFICATIONS

My name is Moriah Saldaña, and my business address is 8315 Century Park Court, San Diego, CA 92123. I am employed by San Diego Gas & Electric Company (SDG&E) as a Power Marketing Senior II within the Electric & Fuel Procurement Department. My current responsibilities include the administration and oversight of Energy Storage agreements, Tolling agreements, and other procurement-related functions essential to the department's operations. I have been employed by SDG&E since 2023, and I have served in my current position since November 2025. Prior to assuming my present role, I served as the Clean Fuels Business Development Project Manager in SDG&E's Advanced Clean Technology organization, where I supported clean-energy and hydrogen-related initiatives. Before joining SDG&E, I held multiple public-sector roles with the City of San Diego, including Climate Action & Equity Program Manager. I hold a Bachelor of Arts in History from California State Polytechnic University, Pomona, and a Master of Public Administration from San Diego State University.

INDEX OF EXHIBITS & ATTACHMENTS

EXHIBIT A: E&FP Organizational Chart

EXHIBIT B: Pro-Forma Agreements

EXHIBIT C: SDG&E Direct Testimony of Christopher A. Summers (Electric and Fuel Procurement) (May 2022) in the 2024 GRC proceeding (A.22-02-016)

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.

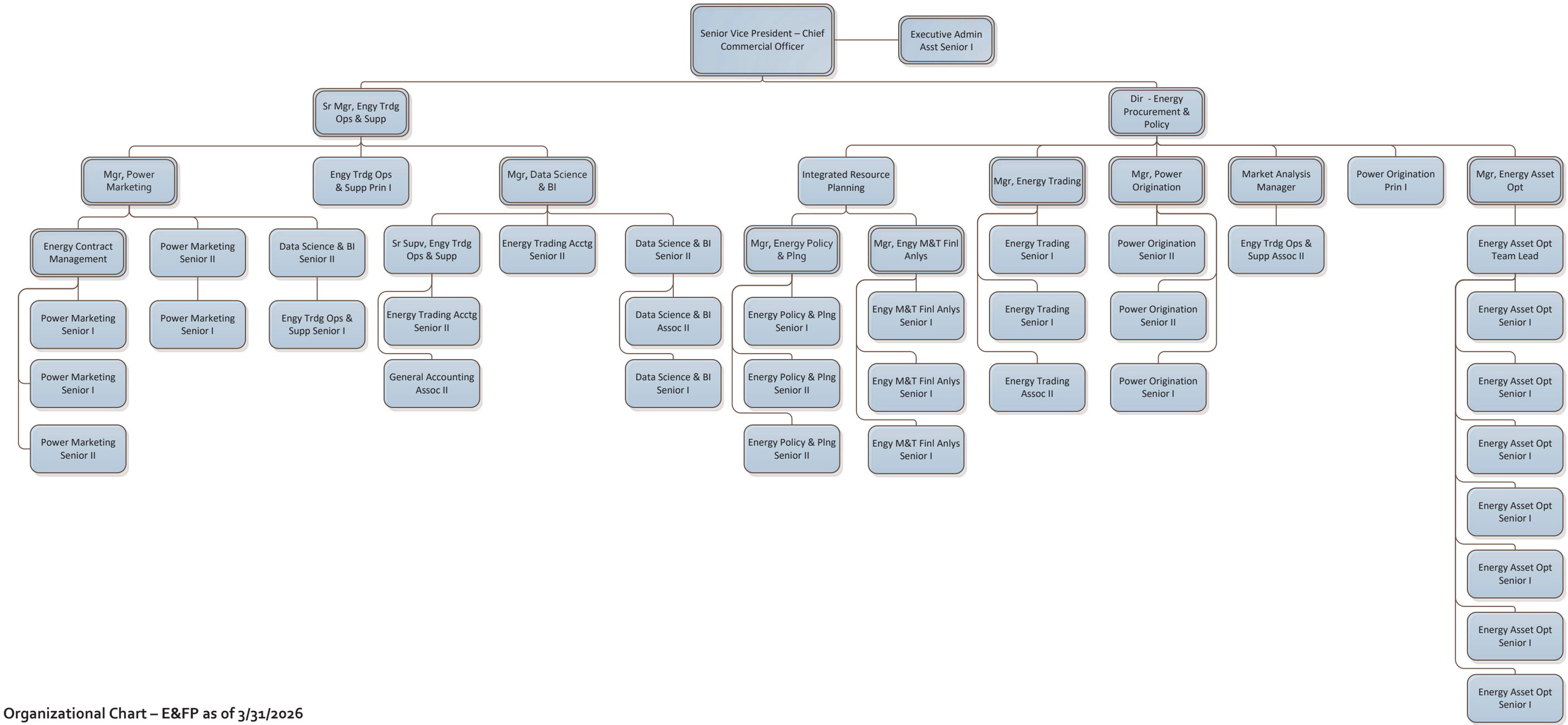
c) Tab GAS CONTRACTS - Contracts for the procurement of fuel services in effect or under negotiation, initiation, revision, amendment, or termination.

d) Tab QF CONTRACTS – Monthly payments to QFs that sold energy to SDG&E during the record period.

ATTACHMENT 2 – CONFIDENTIALITY DECLARATION OF MORIAH SALDAÑA

EXHIBIT A

E&FP ORGANIZATIONAL CHART



Organizational Chart – E&FP as of 3/31/2026

EXHIBIT B

PRO-FORMA AGREEMENTS

RENEWABLE ENERGY AND ENERGY STORAGE

POWER PURCHASE AGREEMENT

between

SAN DIEGO GAS & ELECTRIC COMPANY

as Buyer

and

[INSERT NAME OF SELLER]

as Seller

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RENEWABLE ENERGY AND ENERGY STORAGE POWER PURCHASE AGREEMENT

This Renewable Energy and 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 a [insert type:] (a "Generation Facility") and [insert number] [insert type:] (the "Energy Storage System"). The Project shall 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.]**

C. Seller wishes to sell and deliver to Buyer, and Buyer wishes to purchase from Seller, Contract Capacity, Energy (including Bundled Green Energy), Resource Adequacy Benefits, Green Attributes, Ancillary Services, and all 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 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 Contract Capacity, Capacity Attributes, Delivered Energy (including Bundled Green Energy), Green Attributes, 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. During the Term, Buyer shall have the exclusive right to (i) the Contract Capacity and Capacity Attributes of the Generation Facility, and (ii) Charging Capacity, Discharging Capacity and Capacity Attributes of the Energy Storage System.

(a) Generation Facility Capacity. The Contract Capacity of the Generation Facility shall be the full generation capacity (in MW_{AC} or MW_{DC}) of the Generation Facility as specified in the Commercial Operation Certificate, which Contract Capacity shall be no greater than the Expected Generation Facility Contract Capacity and no less than [[ ] MW_{DC}].

(b) Energy Storage System Capacity. As of the Effective Date, the Contract Capacity of the Energy Storage System shall equal the Expected Energy Storage Contract Capacity of the Energy Storage System, without adjustment for temperature, pressure, humidity or other adjustment factors. The actual Contract Capacity of the Energy Storage System will be determined upon the completion of the Commercial Operation Test and Contract Capacity Test for the Energy Storage System 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 Contract Capacity of the Energy Storage System, which shall be the Contract Capacity for the Energy Storage System from and after such tests; *provided*, that in no event shall the Contract Capacity of the Energy Storage System exceed (i) PMAX for the Energy Storage System (i.e. the Contract Capacity for the Energy Storage System shall be limited to PMAX until such time as Seller gets PMAX increased to the tested Contract Capacity), (ii) the **[NOTE - based on bid: system RA quantity, local RA quantity and flex RA quantity]**, nor (iii) the Energy Storage System's Expected Energy Storage 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. During the Term, Buyer shall have the exclusive right to the Delivered Energy (including Bundled Green Energy) of each Project System.

(a) Bundled Green Energy. The quantity of Bundled Green Energy that Seller expects to be able to deliver to Buyer from the Generation Facility during each Contract Year is **[ ]** MWh ("Contract Quantity"). Throughout the Delivery Period, Seller shall be required to deliver Bundled Green Energy to Buyer from the Project (in the aggregate) no less than the Guaranteed Energy Production (as defined below) in any twenty-four (24) consecutive calendar month period during the Delivery Period ("Performance Measurement Period"). "Guaranteed Energy Production" means, for a Performance Measurement Period, an amount of Bundled Green Energy for the Project, as measured in MWh, equal to [ ].[1] Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Force Majeure events, Buyer's failure to perform, or Dispatch Down Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have produced from the Generation Facility an amount of Generation Facility Bundled Green Energy that it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure events, Buyer's failure to perform, or Dispatch Down Periods.

[1] **NTD**: This should be 70% of the Contract Quantity.

(i) GEP Damages. If Seller actually delivers Generation Facility Bundled Green Energy during a Performance Measurement Period in an amount (together with (A) any deemed amounts set forth in the last sentence of Section 1.1.2(a) above during such Performance Measurement Period, and (B) GEP Damages Credited Amounts associated with the immediately-prior Performance Measurement Period) that is less than the Guaranteed Energy Production applicable to such Performance Measurement Period ("GEP Failure Event"), Seller shall be liable to Buyer for GEP Damages associated with such GEP Failure Event, which GEP Damages shall be paid by Seller no later than thirty (30) days following an invoice therefor by Buyer; provided that Buyer may instead elect to offset GEP Damages payable by Seller against future payments to be made to Seller under this Agreement or draw on Delivery Period Security for the payment thereof.

(b) Energy Storage System Energy. Subject to the terms and conditions of this Agreement, Seller commits to make the Energy Storage System available to accept Charging Energy and to deliver any and all Stored Energy to Buyer, and Buyer shall have the exclusive rights to schedule Charging Energy to the Energy Storage System and receive any and all Stored Energy of the Energy Storage System, 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 Energy Storage System 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 Energy Storage System applicable from and after the completion of such test.

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 (PMIN) to Contract Capacity (PMAX)
Non-Spinning Reserve	Minimum Operating Level (PMIN) to Contract Capacity (PMAX)
Regulation Up	Up to Contract Capacity (PMAX) x 2
Regulation Down	Up to Contract Capacity (PMAX) x 2
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 Contract Capacity and any other Capacity Attributes 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 Benefits 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. Without in any way limiting the foregoing, with respect to Capacity Attributes:

(a) Seller shall, on a timely basis, submit, or cause the Project's SC to submit (if Buyer is not acting as the Project's SC), Annual Supply Plans and Monthly Supply Plans in accordance with the Tariff, and any other decisions or orders of the CPUC associated with providing the Capacity Attributes under this Agreement, to identify and confirm the Expected Capacity Attributes provided to Buyer for each Showing Month.

(b) Seller shall or shall cause the Project's SC to submit (if Buyer is not acting as the Project's SC) written notification to Buyer, no later than fifteen (15) Business Days before the applicable RA Compliance Showing deadlines for each Showing Month, that Buyer will be credited with the Expected Capacity Attributes for each such Showing Month in the Project's Supply Plan.

(c) Seller shall (i) execute all other documents or instruments necessary, and provide all information otherwise needed, for the Product to be shown on Supply Plans and RA Compliance Showings and to be used to satisfy RA Compliance Obligations, including providing information with respect to the amount of Flexible Capacity and Inflexible Capacity available to be included in any applicable Supply Plan and RA Compliance Showing and (ii) execute all documents or instruments necessary and provide any information requested by Buyer related to the Project that is required to be provided to the CAISO or CPUC in order for Buyer to comply with Applicable Laws.

(d) At Buyer's request, the Parties shall execute such documents and instruments, and Seller shall reasonably cooperate and cause the Project's SC to cooperate with Buyer with respect to any testing or measurements that may be reasonably required to effect recognition and transfer of Capacity Attributes, if any, to Buyer.

(e) The Parties shall use commercially reasonable efforts to cause any Resource ID and the benefitting load serving entity SC identification number to be included in all applicable Supply Plans and to communicate changes in such information to each other promptly throughout the Delivery Period.

1.1.5 Change in Electric Market Design.

(a) If a Change in Tariff renders this Agreement or any terms herein incapable of being performed or administered, then either Party, on Notice, may request the other Party to enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens and obligations set forth in this Agreement as of the Effective Date.

(b) Upon receipt of a Notice requesting negotiations, the Parties shall negotiate in good faith.

(c) If the Parties are unable, within sixty (60) days after the sending of the Notice requesting negotiations, either to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then either Party may submit issues pertaining to changes to this Agreement to the dispute resolutions procedures provided in Article 22.

(d) A change in cost will not in itself be deemed to render this Agreement or any terms therein incapable of being performed or administered, or constitute, or form the basis of, a Force Majeure.

1.1.6 Green Attributes. Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Generation Facility to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Generation Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Generation Facility.

(a) WREGIS. Prior to the initial delivery of Energy to Buyer, Seller shall register the Project in WREGIS, execute a CAISO Qualified Reporting Entity Service Agreement to allow CAISO, on the Seller's behalf, to upload generation information directly into WREGIS, and take all other actions necessary to ensure that the Green Attributes produced from the Project in an amount equal to the amount of Delivered Energy are issued and tracked for all regulatory reporting purposes, including (but not limited to) compliance with the requirements of the California Renewable Portfolio Standard and transferred to Buyer, including payment of all fees required to register the facility in WREGIS, issue WREGIS certificates, and transfer such certificates to Buyer. Within seventy-five (75) days after the initial delivery of energy to Buyer, Seller shall provide to Buyer written approval from WREGIS for Seller's generation to be reported to WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under the Agreement.

1.1.7 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.

1.1.8 Multiple-Use Application Compliance. The Parties agree that Applicable Laws includes the CPUC's Decision on Multiple-Use Application Issues, Decision No. 18-01-003 and the rules adopted thereto. In compliance with that decision, Seller acknowledges and represents and warrants that it has not sold, and will not sell during the Delivery Period except as otherwise required by Applicable Laws, any of the Capacity of the Project or any Product from the Project to any other buyer, except as otherwise permitted in this Agreement.

1.2 Project.

1.2.1 Product; Capacity. All Product provided by Seller pursuant to this Agreement shall be supplied from the Project only. Seller shall not make any alteration or modification to the Project, without Buyer's prior written consent, which results in (a) a change to the Contract Capacity of the Generation Facility that exceeds the Expected Generation Facility Contract Capacity, (b) a change to the Contract Capacity of the Energy Storage System that

exceeds the Expected Energy Storage System Contract Capacity; or (c) any other material changes to the Project without Buyer's prior written consent, which may be provided in Buyer's sole and absolute discretion. For the avoidance of doubt, any of the following shall be subject to Buyer's consent: (a) any increase in the nameplate capacity (in kWDC) of the Generation Facility above the maximum amount specified therefor in Appendix 1.2.1, (b) any change in the physical location of the site for the Project specified therefor in Appendix 1.2.1, (c) any change in the technology type of the Generation Facility specified therefor in Appendix 1.2.1, or (d) any change in the technology type of the Energy Storage Facility specified therefor in Appendix 1.2.1.

1.2.2 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.

1.2.3 Generation Facility. The Generation Facility will consist of [insert description of storage system] and additional equipment, as described on Appendix 1.2.1 attached hereto. Any changes to the Project that causes the Generation Facility to be materially different from the description of the Generation Facility as described in Appendix 1.2.1, including any changes that result in the Contract Capacity of the Generation Facility to exceed the Expected Generation Facility Contract Capacity, shall require Buyer's written consent in an amendment to be exercised in Buyer's sole discretion.

1.2.4 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 for the Energy Storage System 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, including any changes that result in the Contract Capacity of the Energy Storage System to exceed the Expected Energy Storage System Contract Capacity, shall require Buyer's written consent in an amendment to be exercised in Buyer's sole discretion.

1.2.5 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.

1.2.6 Charging Energy. During the Delivery Period, Charging Energy for the Energy Storage System may be provided by the Generation Facility or from the CAISO Grid, at Buyer's election.

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, 11, 12, 13, 18, 19, 20, 21, 22, 23, 24 and 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 shall be entitled to recover such liquidated damages owed by Seller from the Pre-Construction Security held by Buyer if Seller has not paid such liquidated damages within five (5) Business Days following receipt of Notice of such Event of Default from Buyer. 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, 11, 12, 13, 18, 19, 20, 21, 22, 23, 24 and 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 [Large/Small] Generator Interconnection Agreement providing for the construction of Interconnection Facilities necessary to maintain the "Full Capacity Deliverability Status" (as defined in the 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 Tariff) of no later than [_____] months after Seller provides the Participating Transmission Owner with the appropriate security and written authorization to proceed under its [Large/Small] Generator Interconnection Agreement for the Project; and

(b) a refundable cost for "Network Upgrades" (as defined in the 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) ***[If Applicable:*** 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 Buyer 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 upon the conclusion of the Delivery Period or upon earlier termination 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, as applicable (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 to Seller (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 [(_____) (__)] anniversary of the Initial Delivery Date occurs. The "Initial Delivery Date" shall be the first day of the first month after 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, including the [Large/Small] Generator Interconnection Agreement, required to enable parallel operation of the Project with the Participating Transmission Owner's electric system and CAISO Grid;

(g) Seller has taken all actions necessary to ensure that the Project is fully deliverable, as determined by the CAISO, for Resource Adequacy Benefits, including establishing the Net Qualifying Capacity of the Project and completing CAISO Certification, and Seller has delivered to Buyer a certification or other documentation from the CAISO that evidences that the Project is fully deliverable for the purposes of providing all such Resource Adequacy Benefits to Buyer;

(h) Seller has delivered to Buyer evidence reasonably satisfactory to Buyer confirming its compliance with the requirements of Article 4;

(i) Seller has provided Buyer Notice at least [x] days before the Initial Delivery Date;

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

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

The Parties agree that, in order for Buyer to dispatch the Project 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 Availability Notices for the Initial Delivery Date as provided Section 15.1, and Buyer's delivering Dispatch Notices 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 Project on 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; *provided*, however, in no event shall the Initial Delivery Date occur any earlier than [_____] 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 the lesser of (a) one hundred twenty (120) calendar days less the number of days of extensions of the Guaranteed Initial Delivery Date due to Force Majeure, or (b) one-hundred (100) calendar days (the "Cure Period"). 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(l).

2.10.2 Excused Delays. For all purposes under this Agreement, the Guaranteed Initial Delivery Date and the deadline to achieve each milestone listed on the Milestone Schedule will be extended on a day for day basis without imposition of any Daily Delay Damages to the extent that Seller is delayed in achieving any such milestone or achieving the Initial Delivery Date by the Guaranteed Initial Delivery Date due to any of the following events:

Force Majeure, provided that all extensions of any deadline listed on the Milestone Schedule or the Guaranteed Initial Delivery Date for the Project due to Force Majeure shall not exceed ninety (90) calendar days in the aggregate ("Maximum Force Majeure Delay") 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.

2.11 CAISO Ancillary Services Certification. Seller shall take all necessary steps within its control to enable CAISO Ancillary Services Certification to occur within thirty (30) days after the Initial Delivery Date. If the CAISO Ancillary Services Certification has not occurred within thirty (30) days after the Initial Delivery Date, Seller shall owe liquidated damages to Buyer of $15,000 per day of delay, provided that such thirty (30)-day deadline shall be extended on a day-for-day basis for reasons of Force Majeure or other events or circumstances outside of Seller's reasonable control. Each Party agrees and acknowledges that (a) the actual damages that Buyer would incur due to a delay in CAISO Ancillary Services Certification 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 Seller's delay in the CAISO Ancillary Services Certification on or before the deadline therefor.

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 ten (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 ten (10) days of receipt of Notice, or such longer period not to exceed sixty (60) days if the failure is not capable of being cured within such ten (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 ten (10) day period and such additional cure period could not reasonably be expected have a material adverse impact upon the non-Defaulting Party;

(d) Such Party becomes Bankrupt; or

(e) Such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 25.5; or

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

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

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 and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of Seller under this Agreement by operation of Law or pursuant to an agreement reasonably satisfactory to Buyer;

(c) Seller fails to comply with its obligations under Article 11, including without limitation failing to post or maintain the 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 fails to deliver or sell the Product from a Generation Facility for a period or a series of periods that is cumulatively longer than thirty (30) days, except to the extent such failure is due to one of the following:

(i) The Generation Facility is unavailable as a result of a Forced Outage that is not the result of Seller's negligence or willful misconduct;

(ii) Force Majeure;

(iii) Buyer's failure to perform;

(iv) The Generation Facility is unavailable as a result of a Scheduled Outage;

(v) A reduction in output as ordered under Dispatch Down Periods; or

(vi) Insufficient solar power for such Generating Facilities to generate energy;

(f) 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 pursuant to CAISO instruction;

(g) Seller delivers or attempts to deliver to the Energy Delivery Point for sale under this Agreement Energy from the CAISO Grid (other than, for the avoidance of doubt, any such Energy that was utilized as Charging Energy);

(h) Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period;

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

(j) During the Delivery Period, the Contract Capacity the Energy Storage System falls below seventy percent (70%) of the Expected Energy Storage Contract Capacity on average for a rolling period of twelve (12) consecutive months;

(k) During the Delivery Period, the Round-Trip Efficiency Rate Factor of the Energy Storage System is below 0.90 for more than six (6) months during any rolling period of twelve (12) consecutive months (for the avoidance of doubt, such six (6) months need not be continuous);

(l) Seller fails to achieve the Initial Delivery Date for the Project within the Cure Period following the Guaranteed Initial Delivery Date, as extended under Section 2.10.2;

(m) 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;

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

(o) 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;

(p) 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 One Billion Dollars ($1,000,000,000);

(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

(q) 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 twenty (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. 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. 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 Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute.

3.7 Suspension of Performance. Further to Section 3.3(d), 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 and in compliance with all Applicable Laws and Permit Requirements, 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;

(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 reasonable 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 thirty (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 thirty (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 meet the construction milestones set forth on Appendix 6.1(a) ("Milestone Schedule"), subject to Section 6.2. 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; *provided*, however, that Seller may redact such documents as necessary to comply with third-party confidentiality obligations. 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. Within seven (7) days after completion of each milestone in the Milestone Schedule, Seller shall provide Buyer with Notice along with accompanying documentation (including reasonably redacted copies of applicable agreements, Required Permits, and certificates) to reasonably demonstrate the achievement of such construction milestone.

6.2 Milestone Delay Damages and Recovery Plan. If Seller fails to achieve any milestone listed on the Milestone Schedule on or before the applicable deadline listed therein (prior to giving to any extension thereof by the payment of Daily Delay Damages pursuant to Section 2.10.1), Seller may cure such failure; provided, that:

6.2.1 Within five (5) Business Days prior to any such failure, Seller submits to Buyer (i) a written description of the reason for the anticipated failure, (ii) the date Seller expects it will achieve completion of the applicable milestone ("Milestone Extension Date"), (iii) a written recovery plan for completing all necessary work to achieve completion of the missed milestone, the remaining milestones, and the Initial Delivery Date by the Guaranteed Initial Delivery Date (including plans for accelerating the work, for example, by using additional shifts, overtime, additional crews or resequencing of the work, as applicable) (the "Recovery Plan") and (iv) any required Daily Delay Damages in accordance with Section 2.10.1. The Recovery Plan shall also include an updated Milestone Schedule with revised dates for each of the remaining milestones, which updated Milestone Schedule shall reflect the payment of any Daily Delay Damages in accordance with Section 2.10.1. Any such Recovery Plan shall be subject to the approval of Buyer, such approval not to be unreasonably withheld or delayed.

6.2.2 Seller shall commence the work contemplated by the Recovery Plan after approval thereof by Buyer.

6.2.3 Seller shall be solely responsible for any costs or expenses incurred by Seller as a result of the formulation and implementation of the Recovery Plan.

6.2.4 If Seller fails in any material respect, as reasonably determined by Buyer, to: (i) meet the requirements of the Recovery Plan; (ii) make sufficient progress in effecting the Recovery Plan; or (iii) achieve completion of the missed milestone by the Milestone Extension Date, such failure shall be subject to a further attempt to cure only if, in Buyer's reasonable judgment, the Initial Delivery Date can still be achieved within the Cure Period.

6.3 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 and the terms of this Agreement. While on the Site, Buyer shall be responsible for compliance with all applicable safety and security protocols established by Seller, and Buyer shall not interfere with the normal operation of the Project.

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 and each of the Generation Facility and the Energy Storage System is functioning properly and 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 provide (and 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. For the avoidance of doubt, for any Buyer Cost Test Buyer be entitled to all CAISO revenues and other revenues associated with the Energy delivered from the Energy Storage System during such test. 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; *provided*, that at Buyer's election, Buyer may provide the Charging Energy necessary for such testing, in which case, Buyer 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 Project (the "Commercial Operation Test"). Such Commercial Operation Test shall be scheduled and conducted in accordance with Appendix 7 hereto and shall be deemed a Seller Cost Test. Seller shall 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 of Energy Storage System. At least once per Contract Year after the initial Contract Year, upon no less than twenty-four (24) hours prior Notice to Seller from Buyer (or any shorter period reasonably acceptable to Buyer consistent with Accepted Electrical Practices), subject to Article 17 and the Availability Notices delivered by Seller hereunder, Seller shall schedule and complete a Contract Capacity Test for the Energy Storage System in accordance with Appendix 7. Such Contract Capacity Test shall be deemed 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 twenty-four (24 hours prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Accepted Electrical Practices) and such retest shall be a Seller Cost Test. For all purposes of this Agreement, including Section 1.1.1 and Appendix 9.2, the Contract Capacity for the Energy Storage System determined pursuant to a Contract Capacity Test shall become the new Contract Capacity for the Energy Storage System 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 of Energy Storage System. From time to time during the Delivery Period, upon no less than forty-eight (48) hours prior Notice to Seller (or any shorter period reasonably acceptable to Buyer consistent with Accepted Electrical Practices), 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). 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.

7.5 Additional Required Testing. From time to time during the Delivery Period, upon no less than twenty-four (24) hours prior Notice to Seller, Buyer, the CPUC, the CAISO or other Governmental Authority having jurisdiction may require additional tests to be performed from time to time (including tests of the Generation Facility's or Energy Storage System's Capacity for Resource Adequacy capacity requirements). Such tests 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 such additional test at any time upon twenty-four (24) hours prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Accepted Electrical Practices), and such Seller-requested retest shall be a Seller Cost Test.

7.6 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 or the Generation Facility, as applicable), that Seller deems necessary for purposes of reliably operating the Project, the Energy Storage System, or the Generation Facility, 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. 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 twenty-four (24) hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Accepted Electrical Practices).

7.7 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.

7.8 Test Results. Seller will provide all CAISO certifications (including Commercial Operation, CAISO Certification, and CAISO Ancillary Services Certification) test results for the Project, the Generating Facility, or the Energy Storage System within five (5) 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 tests required under Article 7 above, 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. 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. Seller shall ensure that any contractor or subcontractor performing maintenance, repair, inspection or other work on the Project 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.

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 Monthly Energy Payment calculated in accordance with Section 9.3. The Monthly Capacity Payment and Monthly Energy Payment 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 determined in accordance with the calculation set forth in Appendix 9.2 (the "Monthly Capacity Payment"); *provided*, that Buyer shall not be required to pay the Monthly Capacity Payment for any month in which the Equivalent Availability Factor for the Energy Storage System is less than 0.90 or the Round-Trip Efficiency Rate Factor for the Energy Storage System is less than 0.90. [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 Monthly Energy Payment. Once the Project has achieved its Initial Delivery Date, Buyer shall pay Seller a monthly energy payment determined in accordance with the calculations set forth in Appendix 9.3 (the "Monthly Energy Payment").

9.4 Additional Compensation. Except with respect to revenue derived from a Seller Cost Test as set forth in Article 7 or Availability Incentive Payments as contemplated by Section 14.4, in the event that Seller is compensated by a third party for any Product produced by the Project, including, but not limited to, compensation for Resource Adequacy or Green Attributes, Seller shall remit all such compensation directly to Buyer.

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 three (3) 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 three (3) 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 and are unpaid. 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 as required under this Agreement, and (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 One Billion Dollars ($1,000,000,000).

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 if amounts due and owing by Seller remain unpaid:

(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.

Buyer does not have and will not 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. Seller agrees that it shall not have any grounds for insecurity with respect to the creditworthiness of Buyer, and hereby waives all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines.

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. In connection with any such collateral assignment, Seller shall enter into a consent to collateral assignment of this Agreement ("Collateral Assignment Agreement") in in form and substance customary in the industry and reasonably agreed to by Buyer, Seller and Lender. Any requests for a Collateral Assignment Agreement must be received by Buyer at least forty-five (45) days in advance of the anticipated closing date for the transaction in question. Seller shall also be responsible for Buyer's reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any such assignment, including attorneys' fees.

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. 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 14.4.

13.2 Compliance with Laws and Indemnification. 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 VER Forecasting Program Requirements. Seller shall cause the Generation Facility to become a Participating Intermittent Resource, including by executing all necessary documents to become a Participating Intermittent Resource. Seller shall be responsible for all CAISO forecasting fees and related charges associated with the Generation Facility becoming a Participating Intermittent Resource and participating in the VER Forecasting Program. Seller and Buyer shall comply with the VER Forecasting Program, and all additional protocols issued by the CAISO relating to Participating Intermittent Resources, including the VER Forecasting Program, for the Delivery Period. Seller shall provide Buyer with a copy of the notice from the CAISO certifying the Generation Facility as a Participating Intermittent Resource prior to the Commercial Operation Date. In the event that the VER Forecasting Program or the Tariff and/or any protocols relating thereto are changed, amended, modified replaced or terminated, Seller and Buyer agree to comply with such revisions and, to the extent practical, to implement such revisions in a manner that maintains the relative economic positions of the Parties as of the date of this Agreement.

14.2 Buyer Scheduling Coordinator. At least thirty (30) days prior to the beginning of testing of the Generation Facility or Energy Storage System, 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 Generation Facility or Energy Storage System (as appliable) effective as of the start-up, testing and commissioning thereof. 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 may withhold all Monthly Capacity Payments and Monthly Energy Payments that would otherwise be due to Seller until Buyer is fully authorized as the Scheduling Coordinator for the Generation Facility or Energy Storage System (as appliable). Upon Buyer's reasonable determination that it is fully authorized to act as Scheduling Coordinator for the Project, Buyer shall pay all withheld Monthly Capacity Payments or Monthly Energy Payments on the next applicable payment date therefor.**[NOTE to Bidders: parties to discuss SC duties during pre-commercial operation testing.]**

14.3 Notices. Buyer shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the Tariff regarding the Project's status, including, but not limited to, all Outage Management System Outage Requests, OMS Forced Outages, or CAISO Forced Outage Reports (in each case, as defined in the Tariff). In accordance with this Article and Article 18, Buyer will cooperate with Seller to provide such notices and updates. If the web based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, or facsimile transmission to the personnel designated to receive such information.

14.4 CAISO Costs and Revenues. Except as otherwise set forth below or elsewhere 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 transmitting Charging Energy to the Energy Delivery Point and receiving Delivered Energy at the Energy Delivery Point. Except as otherwise set forth below or elsewhere in this Agreement, Buyer shall be responsible for CAISO costs (including penalties and other charges (including Negative Imbalance Energy costs or revenues)) and receive all CAISO revenues (including credits and other payments (including Positive Imbalance Energy revenues or costs)) 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 (a) Non-Availability Charges, (b) Uninstructed Imbalance Energy charges and Uninstructed Deviation Penalties, (c) Ancillary Services No-Pay charges, and (d) all CAISO charges or payments incurred as a consequence of Seller either failing to notify Buyer of outages in a timely manner as set forth in Article 17 or failing to abide by the Tariff (including deviations from Scheduled Energy that are attributable to Seller's failure to abide by the Tariff). 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.

14.4.1 Generation Facility Imbalance Energy. Seller shall use commercially reasonable efforts to deliver Energy in accordance with the Generation Facility Scheduled Energy. Buyer and Seller recognize that from time to time the amount of Generation Facility Grid Delivered Energy will deviate from the amount of Generation Facility Scheduled Energy. When Generation Facility Grid Delivered Energy minus Generation Facility Scheduled Energy is a positive amount, it shall be considered "Positive Imbalance Energy;" when Generation Facility Grid Delivered Energy minus Generation Facility Scheduled Energy is a negative amount, the absolute (i.e., positive) value of that amount shall be considered the "Negative Imbalance Energy." Buyer shall receive all Green Attributes for the Positive Imbalance Energy in all settlement intervals.

14.5 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.

14.6 Terminating Buyer's Designation as Scheduling Coordinator. The Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for each of the Generation Facility and the Energy Storage System 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 therefor 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 therefor effective as of the SC Replacement Date. Seller bears sole responsibility for locating, selecting and reaching agreement about terms with any replacement Scheduling Coordinator.

14.7 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, the Generation Facility or Energy Storage System 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.

14.8 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 the Generation Facility and the Energy Storage System. Buyer, as Scheduling Coordinator, shall not change such data without Seller's prior written consent.

ARTICLE 15
SCHEDULING, DISPATCH NOTICES and OPERATING RESTRICTIONS

15.1 Scheduling Generally. Buyer shall submit schedules to the CAISO for each of the Generation Facility and the Energy Storage System in accordance with Tariff protocols for Day-Ahead and Hour-Ahead Schedules and Supplemental Energy and Ancillary Services bids as applicable and in accordance with the Operating Procedures, 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 Energy Storage System as specified in Appendix 1.1.

15.2 System Requirements. For the Generation Facility and Energy Storage System, Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary (a) for Seller to respond and follow instructions, including an electronic signal conveying real time instructions, to operate the

Generation Facility and Energy Storage System as directed by the Buyer and/or the CAISO (including to implement a System Dispatch Down or an Economic Dispatch Down) in accordance with the then-current methodology used to transmit such instructions as it may change from time to time, and (b) for Buyer and/or the CAISO to control the quantity of Product generated or delivered by the Generation Facility and Energy Storage System, in each case, in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. As of the Effective Date, the systems required to comply with clause (a) include at a minimum the CAISO's Automatic Dispatch System (as described in the CAISO website) and the systems required to comply with clause (b) include at a minimum the CAISO'S Application Programming Interfaces (as described in the CAISO website). If at any time during the Delivery Period Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take all commercially reasonable steps necessary to become compliant as soon as possible. Seller shall be liable pursuant to Section 15.6 for failure to comply with a Dispatch Notice during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, a Dispatch Notice (including an order directing a Dispatch Down Period) provided via such systems and facilities shall have the same force and effect on Seller as any other form of communication. If an electronic submittal is not possible, Buyer and/or the CAISO may provide 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 and Seller shall maintain communications systems necessary to permit such transmittal of Dispatch Notices.

15.3 Generation Facility Scheduling and Dispatch Down. The following provisions of this Section 15.3 shall apply to the Generation Facility:

15.3.1 VER Forecasting Program Requirements. For the Generation Facility, consistent with the requirements of Section 15.1, Buyer's Schedules and any updates to such Schedules to the CAISO shall be based on the most current forecast of Generation Facility Delivered Energy consistent with the VER Forecasting Program whenever the VER Forecasting Program is available, and consistent with Buyers' best estimate based on the information reasonably available to Buyer including Buyer's forecast whenever the VER Forecasting Program is not available. In all cases, consistent with its Economic Dispatch Down curtailment rights, Buyer (as the Scheduling Coordinator) may submit a self-schedule or an economic bid in the applicable CAISO market in order to Schedule a Generation Facility's Product with the CAISO.

15.3.2 Annual Delivery Schedules. No later than forty-five (45) days before (a) the first day of the first Contract Year of the Delivery Period and (b) the beginning of each calendar year for every subsequent Contract Year during the Delivery Period, Seller shall provide a non-binding forecast of each month's average-day expected Generation Facility Delivered Energy for each Project System, by hour, for the following calendar year.

15.3.3 Monthly Delivery Schedules. No later than ten (10) Business Days before the beginning of each month during the Delivery Period, Seller shall provide a non-binding forecast of each day's average expected Generation Facility Delivered Energy for each Project System, by hour, for the following month ("Monthly Delivery Forecast").

15.3.4 Daily Delivery Schedules. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, for the Generation Facility, Seller shall provide Buyer with a non-binding forecast of the Generation Facility's Available Generation Capacity (or if the VER Forecasting Program is not available for any reason, the expected Generation Facility Delivered Energy) for each hour of the immediately succeeding day ("Day-Ahead Forecast"), it being understood that, consistent with its Economic Dispatch Down curtailment rights, Buyer (as the Scheduling Coordinator) may submit a self-schedule or an economic bid in the applicable CAISO market in order to Schedule the Generation Facility's Product with the CAISO. A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include Schedules for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of the Generation Facility's Available Generation Capacity (or if the VER Forecasting Program is not available for any reason, the expected Generation Facility Delivered Energy). Seller may not change such Schedule past the deadlines provided in this section except in the event of a Forced Outage or Schedule change imposed by Buyer or the CAISO, in which case Seller shall promptly provide Buyer with a copy of any and all updates to such Schedule indicating changes from the then-current Schedule. These notices and changes to the Schedules shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein, then for such unscheduled delivery period only Buyer shall rely on the delivery Schedule provided in the Monthly Delivery Forecast or Buyer's best estimate based on information reasonably available to Buyer and Seller shall be liable for Scheduling and delivery based on such Monthly Delivery Forecast or Buyer's best estimate.

15.3.5 Real Time Delivery Schedules. Notwithstanding anything to the contrary herein, in the event Seller makes a change to its Generation Facility Schedule on the actual date of delivery for any reason including Forced Outages (other than a scheduling change imposed by Buyer or CAISO) which results in a change to its deliveries (whether in part or in whole) from a Generation Facility, Seller shall notify Buyer immediately by calling Buyer's on-duty Scheduling Coordinator. Seller shall notify Buyer and the CAISO of Forced Outages in accordance with Article 17. Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Generation Facility during or after the end of the outage.

15.3.6 Dispatch Down Periods.

(a) Generally. Seller shall reduce delivery amounts from a Generation Facility as directed by the CAISO, the Participating Transmission Owner, Buyer, or a Transmission Provider during any Dispatch Down Period for the Generation Facility. Buyer shall have no obligation to pay Seller for any Product delivered from the Generation Facility in violation of this Section 15.3.6(a) or for any Product from the Generation Facility that Seller would have been able to deliver but for the fact of a curtailment of the Generation Facility (other than a curtailment that is the result of an Economic Dispatch Down as provided in Section 15.3.6(b) below).

(b) Economic Dispatch Down. Each of Buyer and the CAISO has the right to order Seller to curtail deliveries of Energy from a Generation Facility to the Energy Delivery Point for Economic Dispatch Down purposes, seven days per week and 24 hours per day

(including holidays), by providing Dispatch Notices and Updated Dispatch Notices to Seller electronically via the communications systems described in Section 15.2, subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each such Dispatch Notice will be effective unless and until Buyer (or the CAISO) modifies such Dispatch Notice by providing Seller with an Updated Dispatch Notice. 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 the timelines as specified in the Tariff. Seller agrees to adjust the Generation Facility Delivered Energy as set forth in a Dispatch Notice that meets the requirements of Economic Dispatch Down.

(i) Buyer Payments. Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which any such Economic Dispatch Down occurred, an amount equal to the product of (A) the amount of Deemed Generation Facility Bundled Green Energy resulting from such Economic Dispatch Down, multiplied by (B) the Energy Price, except to the extent Seller received a Sales Price for such Deemed Generation Facility Bundled Green Energy, in which case clause (B) above shall be the amount that the Energy Price exceeds such Sales Price for such Deemed Generation Facility Bundled Green Energy.

(ii) Additional Provisions. The Parties shall describe with more specificity the Economic Dispatch Down and Charging Energy process (including the automated communication process for Dispatch Notices) in the Operating Procedures.

15.4 Energy Storage System Scheduling and Dispatch. The following provisions of this Section 15.4 shall apply to the Energy Storage System:

15.4.1 Availability Notices. Subject to Section 15.7, 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 Storage Capacity that the Energy Storage System is expected to have for each hour of such schedule day (the "Availability Notice"). Seller will notify Buyer immediately if the Available Storage 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.

15.4.2 Charging Energy Responsibilities. Except as expressly set forth in this Agreement, during the Delivery Period, Seller shall be responsible, at Seller's sole cost and expense, for delivering all of the Charging Energy from the Generation Facility to the Energy Storage System in accordance with Section 15.4.3.

15.4.3 Dispatch Notices. Subject to the Availability Notices delivered by Seller hereunder, Buyer and CAISO will each have the right to dispatch the Energy Storage System for charging or discharging seven (7) days per week and twenty-four (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 15.4.3 or such other form as may be agreed to by the Parties in the Operating Procedures), and subject to the requirements and limitations set forth in this Agreement and the Operating Restrictions. Subject to Section 15.7, 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 Energy Storage System, Buyer, as Scheduling Coordinator for the Energy Storage System, shall assume a Round-Trip Efficiency Rate equal to the then most-recent Tested Round-Trip Efficiency Rate. During the Term, Seller shall not operate an Energy Storage System (including the charging and discharging of Energy) other than (a) as dispatched by Buyer or CAISO or (b) for testing of the Energy Storage System in accordance with Article 7.

15.5 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 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.

15.6 Failure to Comply with Dispatch Notices. If Seller fails to comply with a Dispatch Notice (or Updated Dispatch Notice) that is in compliance with this Agreement, then, to the extent of the deviation resulting from such failure, Seller shall pay Buyer an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for any excess Delivered Energy caused by such failure to comply (for example, the Energy Price), and (B) is all Imbalance Energy costs or charges (excluding any revenues or credits) associated therewith, and (C) is any penalties, charges, or other direct economic losses resulting from Seller's failure to comply with the Dispatch Notice.

15.7 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.

15.8 Daily Operating Report. Seller shall provide Buyer the Daily Operating Report, as attached in Appendix 15.8, the day immediately after each operating day, for the Generation Facility and Energy Storage System.

15.9 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.

15.10 Communication Protocols. Parties shall agree to the communication protocols outlined in Appendix 15.10 to facilitate exchange of information between the parties.

15.11 Operating Procedures. No later than forty-five (45) days before the Initial Delivery Date of the Project, and from time to time thereafter as reasonably determined necessary by the Parties, the Parties shall meet to address how each Party will perform its respective obligations under this Agreement, including, but not limited to: (1) the method of day-to-day communications; (2) key personnel lists for each Party; (3) procedures for Forced Outage and Scheduled Outage reporting; (4) procedures for delivery forecasting; (5) charging and discharging procedures; (6) procedures for record keeping; (7) Scheduling procedures; and (8) invoicing and payment procedures; *provided*, that the failure to agree on these operating procedures ("Operating Procedures") will not relieve the Parties of their respective obligations under this Agreement, and any failure to agree shall be resolved in accordance with the dispute resolution procedures in Article 22.

15.12 Standards of Care.

15.12.1 CAISO and WECC Standards. Each Party shall perform all generation, scheduling and transmission services in compliance with all applicable (a) operating policies, criteria, rules, guidelines, tariffs and protocols of the CAISO, (b) WECC scheduling practices and (c) Accepted Electrical Practices.

15.12.2. Reliability Standard. Seller agrees to abide by all (a) NERC, WECC and CAISO reliability requirements, including all such reliability requirements for generator owners and generator operators, and, if applicable, CPUC General Order No.167, "Enforcement of Maintenance and Operation Standards for Electrical Generating Facilities," and (ii) all applicable requirements regarding interconnection of the Project, including the requirements of the interconnected Transmission Provider.

15.13 Co-Located Projects. The Parties acknowledge that this Agreement, including Articles 15 and 16, anticipate that the Generation Facility and Energy Storage System will be "co-located" with separate resource IDs for the Generation Facility and Energy Storage System.

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 meters as necessary to ensure a separate resource ID with the CAISO for the Generation Facility and Energy Storage System, separate communication equipment for the Generation Facility and Energy Storage System, and other requirements as may be necessary to permit separate dispatch and identification of costs for the Generation Facility and Energy Storage System. 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 is increased or decreased, the revised Delivered Energy 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, they shall be recalculated using the revised amount of Delivered Energy. 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 Real-Time Telemetry. Seller shall install, activate and maintain metering, communication and telemetry equipment for the Generation Facility and Energy Storage System in a centralized system to which Buyer shall have real time access. Seller shall link its system to Buyer via an approved Buyer communication network, utilizing existing industry standard network protocol, as reasonably approved by Buyer. Seller shall correct any problems with such equipment as soon as practicable.

16.3 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. **[*Parties to discuss Station Use*]**

ARTICLE 17
OUTAGES

17.1 Scheduled Outages.

17.1.1 No later than July 1 of each calendar 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 Generation Facility and Energy Storage System 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 fifteen (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, 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 Generation Facility or Energy Storage System, as applicable, 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 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 of the Generation Facility or Energy Storage System, or if Seller has knowledge that an Unscheduled Outage thereof 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 Tariff. Seller will communicate to Buyer the estimated time of return of the Generation Facility or Energy Storage System, as applicable, 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 (but in no event more than five (5) Business Days after the occurrence of such Force Majeure), shall give the other Party written Notice describing the particulars of the occurrence; *provided*, that the failure to timely provide such Notice as required pursuant to this Section 18.2(a) shall constitute an irrevocable waiver of the right of the Claiming Party to declare a Force Majeure under this Section 18.2 with respect to any such Force Majeure for which notice is not timely provided pursuant to this Section 18.2(a);

(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 18.3, 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 and an "eligible contract participant" within the meaning of the Commodity Exchange Act;

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; and

19.1.11 As of the Effective Date, it is not subject to an event of Force Majeure.

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 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;

19.2.4 Throughout the Delivery Period that: (a) the Generation Facility and Energy Storage System 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

(b) the output of the Generation Facility and Energy Storage System delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard;

19.2.5 Throughout the Delivery Period 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 CPUC Decision 08-08-028, and as may be modified by subsequent decision of the CPUC or by subsequent legislation; and

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

19.2.7 Seller has considered long-term climate risks to the Project as required by Ordering Paragraph 14 of CPUC decision D.20-08-046.

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 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 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. 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.

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

19.5.3 Seller will not use, grant, pledge, assign or otherwise commit to deliver during the Delivery Period any Contract Capacity of the Project to meet the Resource Adequacy requirement of, or confer Resource Adequacy Benefits upon, any entity other than Buyer.

19.5.4 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 not permitted in this Agreement.

19.6.4 Buyer, in its role as Scheduling Coordinator, 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 two (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").

22.3.2 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.

22.3.3 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.

22.3.4 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.

22.3.5 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.

22.3.6 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.

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

22.3.8 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.

22.3.9 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.

22.3.10 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.

22.3.11 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") to the extent resulting from, or arising out of (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, (vi) any liens, security interests, encumbrances, or other adverse claims against the Product delivered hereunder made by, under, or through Seller, and (vii) the Project serving Station Use, 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 if 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; (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, 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, 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 Pacific Prevailing Time 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. Except as provided in Article 12 above and Sections 25.5.1 and 25.5.2 below, 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. Any assignment in violation of this Section 25.5 shall be null and void.

25.6 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.

25.7 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.

25.8 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.

25.9 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).

25.10 Entire Agreement. Except for the Security Documents, 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.

25.11 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.

25.12 Forward Contract. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code.

25.13 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).

25.14 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.

25.15 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.

25.16 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.

25.17 No Agency. This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any Agreement, or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

(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.

"Accepted Expenditures" has the meaning set forth in Section 1.5.1.

"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%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

"Agreement" means this Renewable Energy and 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, frequency regulation, 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.

"Annual Supply Plan" has the meaning set forth in the Tariff.

"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 Contract 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 Storage 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 Generation Capacity" means the capacity of the Generation Facility, expressed in MWs, that is available to generate Energy.

"Available Storage Capacity" means the amount of Charging Capacity and Discharging Capacity that is available to Buyer under this Agreement from the Energy Storage System 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 and such petition is not stayed or dismissed within 90 days thereafter, (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.

"Bundled Green Energy" means, with respect to each Project System, the Generation Facility Bundled Green Energy and Energy Storage System Bundled Green Energy for such Project System, without duplication.

"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" has the meaning set forth in the introductory paragraph hereto.

"Buyer Cost Test" means any test requested by Buyer hereunder.

"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 Certification" means the certification and testing requirements for a generating unit set forth in the Tariff, including certification and testing for all Ancillary Services (included in this Agreement) and PMAX and PMIN.

"CAISO Charges Invoice" has the meaning set forth in Section 14.4.

"CAISO Grid" means the system of transmission lines, distribution equipment and associated facilities of the Participating Transmission Owners that are within the CAISO's balancing authority.

"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) or its successor agency.

"Capacity Attributes" means any current or future defined characteristic, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific as to the location or any other attribute of the Project intended to value any aspect of the capacity of a Project System to produce or deliver Energy or ancillary services, including but not limited to any accounting construct so that the Energy Storage Capacity of the Energy Storage System or capacity of the Generation Facility may be counted toward a Resource Adequacy obligation or similar measure in respect to the capacity of the Generation Facility or Energy Storage System to generate or deliver Energy by the CPUC, the CAISO, the FERC, or any other entity vested with the authority under federal or state Law, to require Buyer to procure, or to procure at Buyer's expense, Resource Adequacy or other similar products.

"Charging Capacity" means the maximum dependable operating capability of the Energy Storage System, measured in MW_{DC}, to charge electric energy into a partially or fully discharged storage device. Charging Capacity shall be determined from information obtained from the Energy Storage System's SCADA as to whether and to the extent that the Energy Storage System is (a) in an emergency, stop, service mode or pause state; (b) in "run" status and faulted; (c) incapable of being controlled or (d) otherwise not fully operational.

"Charging Energy" means, in respect of the Energy Storage System, for a given period of time, the amount of Energy (in MWh_{DC}) used to charge (or recharge) the Energy Storage System during the period as measured by the Metering Equipment at the Charging Energy Delivery Point.

"Charging Energy Capacity" means the maximum amount of energy, in MWh_{DC}, that the Energy Storage System is capable of being charged (assuming the Energy Storage System is fully discharged).

"Charging Energy Delivery Point" means the electrical point between the Generation Facility or the CAISO Grid, as applicable, and Energy Storage System at which the Charging Energy is measured.

"Claiming Party" means the Party claiming a Force Majeure under Article 18.

"Claims" has the meaning set forth in Section 23.1(a).

"Collateral Assignment Agreement" has the meaning set forth in Section 12.1.

"Commencement of Construction" means the day on which all of the following conditions have been satisfied: (a) Seller 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; (b) Seller has issued a notification to the EPC Contractor to commence work under the EPC Contract, and the EPC Contractor has acknowledged receipt of such notification ("Notice to Proceed"); and (c) Seller has begun, or cause to begin, as part of a continuous program, either the placement, assembly, or installation of facilities or equipment comprising the Project or the conduct of significant site preparation work on the Site, including clearing excavation necessary for the placement, assembly or installation of facilities or equipment comprising the Project.

"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, (b) the Project shall have successfully passed all Commercial Operation Tests at a level that demonstrates Contract Capacity of the Generation Facility of at least the Expected Generation Facility Contract Capacity, Contract Capacity of the Energy Storage System of at least the Expected Energy Storage Contract Capacity, and a Tested Round-Trip Efficiency Rate of the Energy Storage System of at least the Guaranteed Round-Trip Efficiency Rate, and complete test reports have been submitted to Buyer, and (c) Seller shall have delivered a true, correct, and complete Commercial Operation Certificate from Seller, the EPC Contractor, and a Licensed Professional Engineer, 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, and including such executed Commercial Operation Certificate; *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.

"Commercial Operation Certificate" means the certificate of Commercial Operation of the Project to be executed by Seller, the EPC Contractor, and a Licensed Professional Engineer in the form of Appendix B.[2]

"Commercial Operation Test" has the meaning set forth in Section 7.2.

"Compliance Actions" has the meaning se forth in Section 1.5.

"Compliance Deadline" has the meaning se forth in Section 1.5.

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[2] **Note to Draft**: Buyer to provide form of certificate.

"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.

"Contract Capacity" means (a) with respect to the Generation Facility, the full generation capacity of the Generation Facility, and (b) with respect to the Energy Storage System, Charging Capacity and Discharging Capacity of the Energy Storage System, each as determined pursuant to Section 1.1.1.

"Contract Capacity Tests" means the periodic testing of the Contract Capacity of the Energy Storage System pursuant to 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 [___]°C and [___]°C during charging, and between [___]°C and [___]°C during a discharging, and (b) during the storage of Energy, between [___]°C and [___]°C.

"Contract Quantity" has the meaning set forth in Section 1.1.2(a).

"Contract Year" means a period of twelve (12) consecutive months (except in the case of the first Contract Year which may be longer) with (a) the first Contract Year commencing on the Initial Delivery Date and ending on the last day of the month that is twelve (12) months after the Initial Delivery Date, and (b) each subsequent Contract Year commencing on the anniversary of the first day of the month following the Initial Delivery Date.

"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.

"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.

"Deemed Delivery Forecast" means either (a) in the case of an Economic Dispatch Down of the type described in clause (a) of the definition of "Economic Dispatch Down", the VER Forecast amount during such Economic Dispatch Down Period (or if there is no such VER Forecast available during such Economic Dispatch Down Period, the amount of Generation Facility Bundled Green Energy that Seller could reasonably have delivered to Buyer, but was prevented as a result of Economic Dispatch Down as determined by Buyer in a commercially reasonable manner), or (b) in the case of an Economic Dispatch Down of the type described in clause (b) of the definition of "Economic Dispatch Down", the Real-Time Forecast during such Economic Dispatch Down Period.

"Deemed Generation Facility Bundled Green Energy" means, with respect to the Generation Facility, the amount of Generation Facility Bundled Green Energy that Seller could reasonably have delivered to Buyer at the Energy Delivery Point or to the Project System's Energy Storage System as Charging Energy, as applicable, but was prevented from so delivering by reason of Economic Dispatch Down during the applicable Economic Dispatch Down Period, the quantity of which shall be equal to (a) the Deemed Delivery Forecast of Energy corresponding to such Economic Dispatch Down period, less (b) any amount of Generation Facility Scheduled Energy

during such Economic Dispatch Down Period, less (c) any amount of Energy that was not delivered during such Economic Dispatch Down Period associated with any concurrent Scheduled Outage, Forced Outage, Force Majeure, System Dispatch Down, and/or CAISO fault but only to the extent the Deemed Delivery Forecast does not already reflect the foregoing amount of Energy; *provided that*, if the applicable amount calculated pursuant to the clause above for Deemed Generation Facility Bundled Green Energy is negative is negative, then such Deemed Generation Facility Bundled Green Energy amount shall be zero (0).

"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%), 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 Delivery Point Metering Equipment, expressed in MWh_{AC}. Delivered Energy shall be comprised only of Generation Facility Grid Delivered Energy and Energy Storage System Delivered Energy.

"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 Energy Storage 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 Energy Storage System, measured in MW_{AC}, to discharge energy from a partially or fully-charged storage device to the CAISO Grid.

"Discharging Energy" means the amount of energy, in MWh_{AC}, that is discharged from the Energy Storage System as measured at the Energy Storage Metering Equipment.

"Discharging Energy Capacity" means the maximum amount of energy, in MWh_{AC}, that is capable of being discharged from the Energy Storage System (assuming the Energy Storage System is Fully Charged).

"Disclosure Order" has the meaning set forth in Section 24.1.1.

"Disclosure Party" has the meaning set forth in Section 24.1.1.

"Dispatch Down Period" means, for the Generation Facility, the period of curtailment of delivery of Product from the Generation Facility resulting from System Dispatch Down or Economic Dispatch Down.

"Dispatch Notice" means the operating instruction, and any subsequent updates (an "Updated Dispatch Notice"), given by Buyer or CAISO to Seller, directing the Generation Facility or the Energy Storage System to deliver Delivered Energy at a specified megawatt output at the Energy Delivery Point or, in the case of an Energy Storage System, receive Charging Energy, in accordance with the procedures set forth in Section 15.3.

"Early Termination Date" has the meaning set forth in Section 3.3.

"Economic Dispatch Down" means curtailment of delivery of Product from the Generation Facility that is the result of any of the following:

(a) Curtailment of the Generation Facility where Buyer either (a) submits (i) a self-schedule of the Generation Facility with a binding Product quantity or (ii) an economic bid in the applicable CAISO market for either the Generation Facility or the Energy Storage System (including in order to charge the Energy Storage System or in order to deliver Ancillary Services from the Energy Storage System), or (b) fails to submit any such schedule or bid for the Generation Facility, for each of (i) and (ii) that when implemented by the CAISO results in an otherwise available Product quantity not scheduled or awarded by the CAISO, except to the extent such curtailment is concurrently the result of a System Dispatch Down, Scheduled Outage, Forced Outage, or Force Majeure, and for the avoidance of doubt Economic Dispatch Down shall include such curtailments that are the result of a Buyer Event of Default or failure by Buyer in performing a material obligation hereunder; or

(b) Curtailment of the Generation Facility resulting from Buyer bidding the delivery of Ancillary Services from the Energy Storage System and, as a result of such Ancillary Services bidding, the Generation Facility receives an order or notification from CAISO to follow the Generation Facility Scheduled Energy but does not otherwise receive a negative SUPP from the CAISO.

"Economic Dispatch Down Period" means the period of time during which there is an Economic Dispatch Down; provided, the duration of any Economic Dispatch Down Period shall be inclusive of the time required for the Generation Facility to ramp down and ramp up.

"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.

"Eligible Renewable Energy Resource" or "ERR" has the meaning set forth in California Public Utilities Code Section 399.11, *et seq.*, as amended or supplemented from time to time.

"Energy" means, with respect to each Project System, all electrical energy generated by the Generation Facility measured in kWh or MWh, or multiple units thereof. Energy shall include without limitation, Charging Energy, Stored Energy, Delivered Energy, 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 Delivery Point Metering Equipment" means, for a Project System, the meters and measuring equipment recognized by the CAISO at the Energy Delivery Point for the Project System, and which measures the Delivered Energy for such Project System delivered to the Energy Delivery Point.

"Energy Storage Capacity" means the Discharging Capacity of an Energy Storage System.

"Energy Storage System" has the meaning set forth in the Recitals.

"Energy Storage System Bundled Green Energy" means, with respect to the Energy Storage System, Energy, Green Attributes, and any other Product, the quantity of which is measured based on the amount of the Energy Storage System Delivered Energy. The quantity of Energy Storage System Bundled Green Energy shall be equal to the lesser of the quantity of (i) the Energy Storage System Delivered Energy, or (ii) the amount of Renewable Energy Credits that are delivered to Buyer in respect of the Energy Storage System Delivered Energy, unless a change in Applicable Laws occurs after the Effective Date that would, absent further action by Seller, change the methodology for determining the amount of Renewable Energy Credits delivered by the Energy Storage System such that the quantity of such Renewable Energy Credits is reduced as compared to the prior methodology, in which case the quantity of Energy Storage System Bundled Green Energy shall be equal to the Energy Storage System Delivered Energy.

"Energy Storage System Delivered Energy" means, with respect to the Energy Storage System, the portion of the Delivered Energy consisting of, or attributable to, Energy discharged from the Energy Storage System, as measured by the Metering Equipment.

"Energy Storage System Metering Equipment" means, for the Energy Storage System, the meters and measuring equipment recognized by the CAISO which measures the Charging Energy delivered to and Energy discharged from the Energy Storage System.

"Energy Storage System Scheduled Energy" means, for a Project System's Energy Storage System, the Scheduled Energy for the Energy Storage System.

"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 Capacity Attributes" means with respect to any particular day of any Showing Month, the Capacity Attributes (in MWs) for such day of such Showing Month, less any reductions to the amount of Capacity Attributes (in MWs) that must be provided for such day as specified in Appendix 1.1.1.

"Expected Energy Storage Contract Capacity" means the expected Energy Storage Capacity of the Energy Storage System, as measured in megawatts (MW_{AC}) at the location of the Energy Delivery Point, as set forth in Appendix 1.1.1.

"Expected Generation Facility Contract Capacity" means the expected maximum generation capacity of the Generation Facility, as measured in megawatts (MW_{AC}) at the location of the Energy Delivery Point, as set forth in Appendix 1.1.1.

"Expenditure" has the meaning set forth in Section 1.4.

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

"Flexible Capacity" means with respect to any particular Showing Month of the Delivery Period, the MWs of Product which are eligible to satisfy a load-serving entity's Flexible RAR.

"Flexible RAR" means the flexible capacity requirements established for load-serving entities by the CAISO pursuant to the Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

"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.

(c) 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, quarantine ordered by a Governmental Authority in response to disease epidemic, 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).

(d) 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, except to the extent Seller's

inability to obtain (or delays in obtaining) approvals is caused by an event of Force Majeure of the specific type described in any of the immediately preceding subsection (a)(i) through (a)(iii) above;

(iv) Seller's inability to obtain (or delays in obtaining) sufficient labor, equipment, materials, or other resources to build or operate the Project, except to the extent Seller's inability to obtain (or delays in obtaining) 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;

(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;

(viii) Seller's inability to obtain or maintain Site Control;

(ix) Any risks, delays or increased costs arising or resulting from any disease epidemic, other than delays caused by a quarantine or shutdown ordered by a Governmental Authority having jurisdiction in respect to such disease epidemic; or

(x) Seller's inability to obtain interconnection service under its [Large/Small] Generator Interconnection Agreement for the Project.

"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 Facility" has the meaning set forth in the Recitals.

"Generation Facility Bundled Green Energy" means, with respect to the Generation Facility, Energy, Green Attributes, and any other Product, the quantity of which is measured based on the amount of the Generation Facility Delivered Energy. The quantity of Generation Facility Bundled Green Energy shall be equal to the lesser of the quantity of (i) the Generation Facility Delivered Energy, or (ii) the amount of Renewable Energy Credits that are delivered to Buyer in respect of the Generation Facility Delivered Energy (or, if any such Generation Facility Delivered Energy is delivered to the Energy Storage System, the amount of Renewable Energy Credits that would reasonably have been expected to be delivered to Buyer in respect of such Generation Facility Delivered Energy if such Generation Facility Delivered Energy had been delivered to the Energy Delivery Point), unless a change in Applicable Laws occurs after the Effective Date that would, absent further action by Seller, change the methodology for determining the amount of Renewable Energy Credits delivered by the Generation Facility such that the quantity of such Renewable Energy Credits is reduced as compared to the prior methodology, in which case the quantity of Generation Facility Bundled Green Energy shall be equal to the Generation Facility Delivered Energy.

"Generation Facility Delivered Energy" means, with respect to the Generation Facility, (i) Generation Facility Grid Delivered Energy and (ii) any Energy generated by the Generation Facility that is delivered by the Project to the Energy Storage System to be used as Charging Energy for the Energy Storage System, as measured by the Metering Equipment in [MWh_{AC}][3].

"Generation Facility Grid Delivered Energy" means Energy generated by the Generation Facility that is delivered by the Project for Buyer's account at the Energy Delivery Point as measured by the Energy Delivery Point Metering Equipment, expressed in MWh_{AC}.

"Generation Facility Metering Equipment" means, for the Generation Facility, the meters and measuring equipment recognized by the CAISO which measures the Energy generated by the Generation Facility.

"Generation Facility Scheduled Energy" means, for the Generation Facility, the Scheduled Energy for the Generation Facility.

"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.

"GEP Damages" means, with respect to a Performance Measurement Period for which there is a GEP Failure Event, an amount equal to the product of (a) the difference of the Guaranteed Energy Production for such Performance Measurement Period, less the sum of Generation Facility Bundled Energy actually delivered to Buyer during such Performance Measurement Period, plus any deemed amounts set forth in the last sentence of Section 1.1.2(a) during such Performance

[3] **NTD**: If the Energy Storage System is DC coupled, then appropriate conversation methodology to be discussed.

Measurement Period, plus GEP Damages Credited Amounts associated with the immediately-prior Performance Measurement Period (in MWh), multiplied by (b) the Energy Price.

"GEP Damages Credited Amount" means, with respect to a Performance Measurement Period for which there is a GEP Failure Event, the amount (in MWh) calculated for clause (a) of the definition of "GEP Damages" for such Performance Measurement Period, but only to the extent that Seller paid GEP Damages associated with such amounts.

"GEP Failure" has the meaning set forth in Section 1.1.2(a)(i)."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.

"Green Attributes" means, subject to the limitations in the final sentence of this definition, 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: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) 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; and (3) 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, or any other Renewable Energy Incentives, (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.

"Guaranteed Energy Production" has the meaning set forth in Section 1.1.2(a).

"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 Energy Storage System 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.][4]

"Hour-Ahead" has the meaning set forth in the Tariff.

"Hour-Ahead Schedule" has the meaning set forth in the Tariff.

"Imbalance Energy" means, with respect to the Energy Storage System or Generation Facility, the amount of Energy, in any given settlement interval, by which the amount of Energy Storage System Delivered Energy or Generation Facility Grid Delivered Energy (as applicable) deviates from the amount of Energy Storage System Scheduled Energy or Generation Facility Scheduled Energy (as applicable).

"Industry Standards" has the meaning set forth in Section 8.1.1.

"Inflexible Capacity" means with respect to any particular Showing Month of the Delivery Period, the MWs of the Product which are not eligible to satisfy a load-serving entity's Flexible RAR.

"Initial Delivery Date" has the meaning set forth in Section 2.8.

"Initial Negotiation End Date" has the meaning set forth in Section 22.2.1.

"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 connected, 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

[4] **Note to Draft**: Buyer to provide form.

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.

"ITC" means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.

"[Large/Small] Generator Interconnection Agreement" means a [large/small] generator interconnection agreement entered into with the Transmission Provider.

"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 12.1 (subject to the Collateral Assignment Agreement, if applicable).

"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.

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

"Local RAR" means, for Projects providing Capacity Attributes, the local Resource Adequacy Requirements established for load-serving entities by the CAISO pursuant to the Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

"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 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.

"Metering Equipment" means, as applicable, the Generation Facility Metering Equipment, the Energy Storage System Metering Equipment, and the Energy Delivery Point Metering Equipment.

"Milestone Extension Date" has the meaning set forth in Section 6.2.1.

"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 Delivery Forecast" has the meaning set forth in Section 15.3.3.

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

"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.

"Monthly Supply Plan" has the meaning set forth in the Tariff.

"Moody's" means Moody's Investor Services, Inc. or its successor.

"MW" means mega-watt or mega-watts.

"Negative Imbalance Energy" has the meaning set forth in Section 14.4.1.

"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 Procedures" has the meaning set forth in Section 15.11.

"Operating Restrictions" means limitations on Buyer's ability to schedule and use Contract Capacity, Ancillary Services, and Energy that are identified in Appendix 1.1 to this Agreement.

"Outage Schedule" has the meaning set forth in Section 17.1.1.

"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 Intermittent Resource" 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 [or the owner of the distribution system 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.

"Performance Measurement Period" has the meaning set forth in Section 1.1.2(a).

"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 (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 Tariff.

"Positive Imbalance Energy" has the meaning set forth in Section 14.4.1.

"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, Capacity Attributes, Energy (including Bundled Green Energy), Green Attributes, 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.

"Project System" means the Generation Facility or the Energy Storage System, as applicable, as further described in Appendix 1.2.2.

"Protective Apparatus" means control devices (such as meters, relays, power circuit breakers and synchronizers) specified in the interconnection agreements for the Project.

"Qualified Assignee" means 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.

"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.

"RA Compliance Obligations" means RAR, Local RAR and Flexible RAR.

"RA Compliance Showings" means the (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) Flexible RAR compliance or advisory showings (or similar successor showings), in each case, an entity is required to make to the CAISO pursuant to the Tariff, to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, or to any Governmental Authority.

"Ramp Rate" means the ability of the Energy Storage System to change between power output levels, expressed in MW_{AC}/min.

"Real-Time Forecast" means the total amount of energy that the Generation Facility would have produced during an Economic Dispatch Down Period, as calculated by Seller using the best available data obtained through commercially reasonable methods and meteorological data at the Generation Facility during an Economic Dispatch Down Period, and any adjustments necessary to accurately reflect the Generation Facility's capacity to produce and deliver energy to the Energy Delivery Point, including applicable losses and manufacturers' warranted power curves, subject to Buyer's audit and approval not to be unreasonably withheld.

"Recovery Plan" has the meaning set forth in Section 6.2.1.

"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 (as defined in the Tariff) (or the output therefrom) and the CAISO.

"Renewable Energy Credit" has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision 08-08-028, as each may be amended from time to time or as further defined or supplemented by Law.

"Renewable Energy Incentives" means: (a) all federal, state, or local Tax Credits or other Tax benefits associated with the production of electricity from, or the construction, operation or the ownership of, the Project or any part thereof (including the Tax Credits and other credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits associated with the production of electricity from, or the construction, operation or the ownership of, the Project, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive available from a Governmental Authority that is associated with the production of electricity from, or the construction, operation or the ownership of, the Project; provided that Renewable Energy Incentives shall not include Renewable Energy Credits, Green Attributes, or Capacity Attributes.

"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" has the meaning set forth in the Resource Adequacy Rulings.

"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 Requirements" or "RAR" means the resource adequacy requirements applicable to an entity as established by the CAISO pursuant to the Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

"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.

"Resource ID" has the meaning set forth in the Tariff.

"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 Energy Storage System in recovering Charging Energy from the Energy Storage System, as measured at the Charging Energy Delivery Point to the Energy Delivery Point (based on 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.

"Sales Price" means (i) the price (in dollars per megawatt hour) at which Seller, acting in a commercially reasonable manner, resells any Product not Scheduled and received by Buyer, deducting from such proceeds any (a) costs (calculated in dollars per megawatt hour) reasonably incurred by Seller in reselling such Product including all costs charged by CAISO to Schedule and deliver the Product into the CAISO System, and (b) additional transmission charges (calculated in dollars per megawatt hour), if any, reasonably incurred by Seller in Scheduling and delivering such Product to the third party purchasers, or (ii) absent a sale despite commercially reasonable efforts to resell the Product, zero. The Sales Price shall also be reduced by all CAISO and other costs, charges and penalties with respect to the deviation from the Scheduled supply, in each case, resulting from Buyer's failure to take Product and calculated in dollars per megawatt hour; *provided*, however, in no event shall such price include any ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer's liability. The Sales Price may be less than zero.

"Schedule" means the actions of Seller, Buyer and/or their designated representatives, or Scheduling Coordinators, including each Party's Transmission Providers, if applicable, of

notifying, requesting and confirming to each other and the CAISO the quantity and type of Product to be delivered on any given day or days at a specified delivery point.

"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 the Energy discharged from the Energy Storage System or generated by a Generation Facility, as applicable, in either case that is 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 Project is either in whole or in part not capable of generating, charging, storing Energy or discharging Energy (as applicable) 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.

"Seller" has the meaning set forth in the introductory paragraph hereto.

"Seller Cost Test" means any test requested or required to be undertaken by Buyer hereunder.

"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.

"Showing Month" means the calendar month of the Delivery Period that is the subject of the RA Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the Tariff.

"Site" has the meaning set forth in the Recitals.

"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 an Energy Storage System in real time, expressed as a percent of Maximum Energy Capacity (e.g., 95% SOE).

"Station Use" means 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, plant lighting and control systems.

"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.

"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 (as defined in the Tariff).

"Supply Plan" has the meaning set forth in the Tariff.

"System Dispatch Down" means curtailment of delivery of Product from the Generation Facility or Energy Storage System resulting from (a) curtailment ordered by the CAISO (whether directly or through the Scheduling Coordinator or the Participating Transmission Owner), for any reason, including, but not limited to, an Exceptional Dispatch (as defined in the Tariff), any system emergency as defined in the Tariff ("System Emergency"), any warning of an anticipated System Emergency, or any warning of an imminent condition or situation which could jeopardize the CAISO's or Participating Transmission Owner's electric system integrity or the integrity of other systems to which the CAISO or Participating Transmission Owner is connected, any warning, forecast, or anticipated overgeneration conditions, including a request from CAISO to manage over-generation conditions; (b) curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner's electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected; (c) curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) as a result of scheduled or unscheduled maintenance or construction on the Participating Transmission Owner's transmission facilities or distribution operator's facilities (if interconnected to distribution or sub-transmission system) that prevents the delivery or receipt of Delivered Energy to or at the Energy Delivery Point, (d) curtailment in accordance with Seller's obligations under its interconnection agreement with the Participating Transmission Owner or distribution operator; or (e) in the case of an Energy Storage System, curtailment ordered by Buyer pursuant to a Dispatch Notice; *provided*, however, that, for purpose of this definition, System Dispatch Down for a Generation Facility shall not include Economic Dispatch Down of the Generation Facility.

"System Emergency" has the meaning set forth in the Tariff.

"System Response Time" means the amount of time for the Energy Storage System to change from an off-line state to the maximum discharge rate for the Energy Storage System and the amount of time for the Energy Storage System 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.

"Tax Credits" means the PTC, ITC, and any other state, local or federal production or other tax credit, depreciation benefit, tax deduction or investment tax credit specific to the production, sale or storage of renewable energy from, or the operation or the ownership of, the Project or any part thereof.

"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 Provider" means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Energy Delivery Point.

"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 17.1.

"VER Forecast" means the forecast of the Energy to be produced by the Generation Facility prepared by the CAISO or its agent in accordance with the VER Forecasting Program and communicated to the Scheduling Coordinator, which forecast is the last such forecast prepared by the CAISO that does not reflect curtailed production as a result of Economic Dispatch Down periods. As of the Effective Date, such VER Forecast is the CAISO forecast generated through its Resource Specific VER Forecast Usage Report.

"VER Forecasting Program" has the meaning set forth in the Tariff.

"Waiver Denial Periods" has the meaning set forth in the Tariff.

"WECC" means the Western Electricity Coordinating Council, or any successor thereto.

APPENDIX B

COMMERCIAL OPERATION CERTIFICATE

This certification ("Certification") of Commercial Operation is delivered by _____[*licensed professional engineer*] ("Engineer") to San Diego Gas & Electric Company ("Buyer") in accordance with the terms of that certain Renewable Energy and Storage Power Purchase Agreement dated _____ ("Agreement") by and between Owner and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of date below, Engineer hereby certifies and represents to Buyer the following:

1. We have read the Agreement, and we understand the requirements for Commercial Operation under the Agreement.

2. We have reviewed the material and data made available to us by the Owner.

3. We have reviewed all governmental approvals and permits identified by the Owner as being required for the construction and operation of the Project and are of the opinion that the Project as completed is in compliance in all material respects with the environmental and technical requirements contained therein.

4. Based on our review of the aforementioned information and of information provided to us by others which we have not independently verified, we are of the opinion that the following have been met:

(a) Except for punch list items that would not materially affect the performance, reliability or safe operation of the Project, the construction and installation of the Project has been completed in accordance with the specifications set forth in Appendix 1.2.1 of the Agreement and is ready for commercial operation in compliance with all Applicable Laws, Required Permits, and Accepted Electrical Practices;

(b) Each of the Generation Facility and the Energy Storage System has successfully passed all performance tests;

(c) The Energy Storage System has successfully passed all Commercial Operation Tests at a level that demonstrates Contract Capacity of at least the Expected Energy Storage System Contract Capacity and a Tested Round-Trip Efficiency Rate of at least the Guaranteed Round-Trip Efficiency Rate;

(d) Authorization to parallel the Project with the CAISO Grid has been obtained;

(e) The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Transmission Provider as appropriate on _____[DATE]_____;

(f) The CAISO has provided notification supporting Commercial Operation (which for avoidance of doubt does not need to include CAISO Ancillary Services Certification), in accordance with the CAISO Tariff on _____[DATE]_____;

(g) The interconnection facilities have been completed in accordance with applicable specifications, tariffs, laws and governmental approvals to enable power generated by the Project to be received at the Energy Delivery Point;

(h) Owner has obtained all governmental approvals (including all Required Permits) necessary for the continuous commercial operation of the Project and the Project is in compliance with all such governmental approvals, Required Permits and all other Applicable Laws; and

(i) The Generation Facility has a Contract Capacity of [___] MW_{AC} and the Energy Storage System has a Contract Capacity of [___] MW_{AC} and a Tested Round-Trip Efficiency Rate of [___]%.

EXECUTED this _____ day of _____, 20__.

Engineer

[_____],
a [_____]

By:_____
Name: _____
Title:_____

APPENDIX 1.1

OPERATING RESTRICTIONS[5]

[To be inserted by the Parties]

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.

5 **Note to Draft**:

APPENDIX 1.1.1

CONTRACT CAPACITY, ROUND TRIP EFFICIENCY AND EXPECTED CAPACITY ATTRIBUTES[6]

Expected Generation Facility Contract Capacity: ___ MW_{AC}

Expected Energy Storage Contract Capacity: ___ MW_{AC}

Guaranteed Round-Trip Efficiency Rate = _____.00%

Expected Capacity Attributes: _____ MW_{AC}

6 **Note to Draft**:

APPENDIX 1.2.2

PROJECT DESCRIPTION[7]

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:

[7] **Note to Draft**:

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[8]

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*	

*Critical items subject to Daily Delay Damages if not achieved by above dates (as may be extended pursuant to Section 6.1 of the Agreement).

[8] **Note to Draft**: Under Buyer review.

APPENDIX 6.1(b)

MONTHLY PROGRESS REPORT[9]

Monthly Progress Report

of

[INSERT SELLER'S NAME]

provided to

San Diego Gas & Electric Company

[Date]

9 **Note to Draft**: Under Buyer review.

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 Major[10] activities to be performed for each of the following aspects of the Project during the current calendar month:

[10] 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[11]

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, and (iv) other Project tests required by CAISO, CPUC or any other Governmental Authority having jurisdiction ("Other Required Tests"). 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

[11] **Note to Draft**:

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 calbration 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 Energy Storage System and from an off-line state to the maximum discharging rate of the Energy Storage System.

C. Test Showing. For satisfactory complietion of the Initial Compliance Tests, Seller must demonstrate to Buyer's reasonable satisfaction, that the Energy Storage System 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 be performed consistent with and in accordance with the requirements set forth by the CPUC and the CAISO at the time of such test for determining the portion of the Energy Storage System's Capacity that is eligible and can be counted to satisfy Resource Adequacy capacity requirements established for load-serving entities by the CAISO (unless otherwise set forth in this Agreement or this Appendix or as agreed to by Buyer in writing in its sole discretion). 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 from 0% State of Energy to the earlier of 100% State of Energy or maximum State of Energy at which the BMS begins to limit charging capacity. Charging Capacity shall be calculated by dividing total Charging Energy by the duration for this charging portion of the Contract Capacity Test.

2. Measurement of the Project's maximum Discharging Capacity over four (4) continuous hours of discharging from 100% State of Energy to the earlier of 0% State of Energy or the minimum State of Energy at which the BMS begins to derate Discharging Capacity. Discharging Capacity shall be calculated as dividing the total Discharging Energy during this discharging portion of the Contract Capacity Test by 4 hours.

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 [20%] State of Energy, which Stored Energy amount ("Stored $\text{Energy}_{\text{test,0}}$") 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 [80%] State of Energy, at the then-applicable Contract Capacity, which Charging Energy amount ("Charging $\text{Energy}_{\text{test}}$") and Stored Energy amount at the end of such charging ("Stored $\text{Energy}_{\text{test,1}}$") 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 $\text{Energy}_{\text{test}}$ multiplied by the Guaranteed Round-Trip Efficiency Rate. The Delivered Amount at the end of such discharging ("Delivered $\text{Energy}_{\text{test}}$") and the Stored Energy amount at the end of such discharging ("Stored $\text{Energy}_{\text{test,2}}$") shall be recorded.

4. The Tested Round-Trip Efficiency Rate (TRTER) shall be calculated as follows:

$$\text{TRTER} = \left(\frac{Stored\ Energy_{test,1} - Stored\ Energy_{test,0}}{Charging\ Energy_{test}}\right) \times \left(\frac{Delivered\ Energy_{test}}{Stored\ Energy_{test,1} - Stored\ Energy_{test,2}}\right) \times 100\%$$

APPENDIX 9.2

MONTHLY CAPACITY PAYMENT[12]

The Monthly Capacity Payment for each month of the Delivery Period shall be equal to the sum of the Monthly Capacity Payment for each Project System, as 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 for a Project System 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 a Project System 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 of the Energy Storage System in effect during month *m*, expressed in kW_{AC}, rounded to the nearest 100 kW_{AC}. If the Contract Capacity of the Energy Storage System changes during such month, then the Monthly Capacity Payment of the Energy Storage System for such month shall be prorated based on the applicable Contract Capacity of the Energy Storage System before such change and the applicable Contract Capacity of the Energy Storage System from and after such change.

CR is the Capacity Rate expressed in Dollars per kW_{AC}-year,

CR = $[XXX]/$kW_{AC}$-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

12 **Note to Draft**: Under Buyer review.

Month	Monthly Shaping Factor (%)
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" of the Energy Storage System for month m is the equivalent availability factor computed as follows:

$$\text{EAF}_{\text{m}} = \sum_{i}^{p} \frac{\text{Availability}_i}{p}$$

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 of (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 Energy Storage System 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 of the Energy Storage System applicable for such hour; or

(b) if the Energy Storage System 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 of the Energy Storage System 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" of the Energy Storage System 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:

$$\text{RTERF}_m = \frac{Tested\ Round\text{-}Trip\ Efficiency\ Rate_m}{Guaranteed\ Round\text{-}Trip\ Efficiency\ Rate}$$

Where:

Tested Round-Trip Efficiency Rate$_m$ is the Tested Round-Trip Efficiency Rate for the Energy Storage System in effect during month *m*;

Provided that if the Round-Trip Efficiency Rate Factor of the Energy Storage System for month *m* exceeds 1.00 under this clause (a), then the Round-Trip Efficiency Rate Factor of the Energy Storage System 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 = Tested Round-Trip Efficiency Rate$_m$ divided by 0.[___];

Provided that if the Round-Trip Efficiency Rate Factor of the Energy Storage System for month *m* exceeds 1.[___] under this clause (b), then the Round-Trip Efficiency Rate Factor of the Energy Storage System for month *m* shall be deemed to be 1.[____] for purposes of this clause (b).

(c) If the Round-Trip Efficiency Rate for an Energy Storage System changes during such month, then the Monthly Capacity Payment for the applicable Project System for such month shall be prorated based on the applicable Tested Round-Trip Efficiency Rate (and resulting Round-Trip Efficiency Rate Factor) of the Energy Storage System before such change and the applicable Tested Round-Trip Efficiency Rate (and resulting Round-Trip Efficiency Rate Factor) for the Energy Storage System from and after such change.

APPENDIX 9.3

MONTHLY ENERGY PAYMENT

The Monthly Energy Payment for each month of the Delivery Period shall be equal to the sum of the Monthly Energy Payment for each Project System, as determined as follows:

1. Monthly Energy Payment. The Monthly Energy Payment for a Project System shall equal the sum for each hour in the month of the product of (a) the Energy Price times (b) Generation Facility Bundled Green Energy for such Project System in such hour.

2. Energy Price. The price for the Generation Facility Bundled Green Energy that is delivered to Buyer in each Contract Year shall be as follows ("Energy Price"):

Contract Year	Energy Price ($/MWh)

Provided, however, that:

(a) if Seller delivers Generation Facility Bundled Green Energy in the aggregate for any CAISO settlement interval (not to exceed one hour) in excess of the product of the Contract Capacity for the Generation Facility times the length of such settlement interval, expressed in hours, then the Energy Price for such excess Generation Facility Bundled Green Energy in such settlement interval shall be reduced to zero dollars ($0), and if the real time Locational Marginal Price for the Delivery Point during such settlement interval is less than zero dollars ($0), Seller shall pay to Buyer an amount equal to the absolute value of such negative Locational Marginal Price times such excess Generation Facility Bundled Green Energy; and

(b) if Seller delivers Generation Facility Bundled Green Energy in the aggregate for any Contract Year during the Delivery Period in excess of one hundred five percent (105%) of the annual Contract Quantity, then for any such portion of such Generation Facility Bundled Green Energy (i) in excess of one hundred five percent (105%) of the annual Contract Quantity up to one hundred ten percent (110%) of the annual Contract Quantity, the Energy Price for such excess Generation Facility Bundled Green Energy for the remainder of that Contract Year shall be reduced to the lesser of (x) the Energy Price multiplied by fifty percent (50%) and (y) the real time Locational Marginal Price for the Delivery Point during the CAISO settlement interval when such Generation Facility Bundled Green Energy was delivered and (ii) in excess of one hundred ten percent (110%) of the annual Contract Quantity, the Energy Price for such excess Generation Facility Bundled Green Energy for the remainder of that Contract Year shall be reduced to zero dollars ($0); and, in each case, for each CAISO settlement interval during the time in which the real time Locational Marginal Price for any such excess Generation Facility Bundled Green Energy is less than zero dollars ($0), Seller shall pay to Buyer an amount equal to the absolute value of such negative Locational Marginal Price times the Generation Facility Bundled Green Energy delivered during such settlement interval.

APPENDIX 11.3

LETTER OF CREDIT FORM[13]

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

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[13] **Note to Draft**: Under Buyer review.

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[14]

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				

[14] **Note to Draft**: Under Buyer review.

20:00				
21:00				
22:00				
23:00				
0:00				

Comments:_____

_____

_____

_____

_____

_____

APPENDIX 15.3
DISPATCH AND UPDATED DISPATCH NOTICES[15]

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					

15 **Note to Draft**: Under Buyer review.

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 15.8
DAILY OPERATING REPORT[16]

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 15.8 of the Agreement.

16 **Note to Draft**: Under Buyer review.

APPENDIX 15.8
COMMUNICATIONS PROTOCOLS[17]

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

[17] **Note to Draft**: Under Buyer review.

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	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				

[Form of PPA for As-Available, Baseload, Peaking or Dispatchable Product]

[Standard contract terms and conditions that "may not be modified" per CPUC D.04-06-014 and subsequent decisions are shown in red shaded text and standard contract terms and conditions that may be modified per CPUC D.04-06-014 and subsequent decisions are shown in green shaded text.]

POWER PURCHASE AGREEMENT

Between

SAN DIEGO GAS & ELECTRIC COMPANY
(as "Buyer")

and

_____
(as "Seller")

POWER PURCHASE AGREEMENT

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COVER SHEET

This Power Purchase Agreement is made as of the following date: [_____]. This Power Purchase Agreement and all exhibits, schedules, appendices, and any written supplements hereto, any designated collateral, credit support or margin agreement or similar arrangement between the Parties as well as all written and signed amendments and modifications thereto shall be a part of, and shall be referred to as, the "Agreement." The Parties to this Agreement (hereinafter individually a "Party" and collectively the "Parties") are the following:

Name:_____("Seller")

All Notices:
Street: _____
City: _____ Zip:_____
Attn: Contract Administration
Phone: _____
Facsimile: _____
Duns: _____
Federal Tax ID Number: _____

Invoices:
_____
_____
_____
Attn: _____
Phone: _____
Facsimile: _____

Scheduling:
_____
_____
_____
Attn: _____
Phone: _____
Facsimile: _____

Payments:
_____
_____
_____
Attn: _____
Phone: _____
Facsimile: _____

Wire Transfer:
BNK: _____
ABA: _____
ACCT: _____
Confirmation: _____
FAX: _____

Credit and Collections:
_____
_____
_____
Attn: _____

Name: San Diego Gas & Electric Company ("Buyer")

All Notices:
Street: 8315 Century Park Court
City: San Diego, CA Zip: 92123
Attn: Electric & Fuel Procurement - Contract Administration
Phone: (858) 636-5536
Facsimile: (858) 650-6190
Duns: 006911457
Federal Tax ID Number: 95-1184800

Invoices:
San Diego Gas & Electric Company
8315 Century Park Ct.
San Diego, California 92123-1593
Attn: Electric & Fuel Procurement – Invoicing and Reporting
Phone: (858) 650-6187
Facsimile: (858) 650-6190

Scheduling:
San Diego Gas & Electric Company
8315 Century Park Ct.
San Diego, California 92123-1593
Attn: Transaction Scheduling Manager
Phone: (858) 650-6160
Facsimile: (858) 650-6191

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
Confirmation: SDG&E, Major Markets
FAX:(213) 244-8316

Credit and Collections:
San Diego Gas & Electric Company, Major Markets
555 W. Fifth Street, ML 18A3
Los Angeles, CA 90013-1011

Phone: _____
Facsimile: _____

With additional Notices of an Event of Default or Potential Event of Default to:

_____
_____
_____
Attn: _____
Phone: _____
Facsimile: _____

Attn.: Major Markets, Credit and Collections Manager
Fax No.: (213) 244-8316
Phone: (213) 244-4343

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

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

1.1 General. The following terms shall have the following meaning for purposes of this Agreement.

"[AAA][JAMS]" means [the American Arbitration Association] [JAMS, Inc.].

"Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

"Agreement" has the meaning set forth in the preamble to the Cover Sheet.

"Arbitration" has the meaning set forth in Section 12.3.

[For As-Available Product only: "As-Available" means a Product for which, subject to the terms of this Agreement, Seller is excused from selling and delivering the Product to Buyer, and Seller shall not be liable to Buyer for any damages determined pursuant to Section 3.1(h) of the Agreement, in the event that Seller fails to deliver the Product to Buyer for any of the following reasons:

(a) if the Project is unavailable as a result of a Forced Outage and such Forced Outage is not the result of Seller's negligence or willful misconduct;

(b) Force Majeure;

(c) by the Buyer's failure to perform;

(d) by a Planned Outage of the Project;

(e) a reduction in output as ordered under Dispatch Down Periods; or

(f) [the unavailability of landfill gas which was not anticipated as of the Execution Date, which is not within the reasonable control of, or the result of negligence of, Seller or the party supplying such landfill gas to the Project, and which by the exercise of reasonable due diligence, Seller is unable to overcome or avoid or causes to be avoided.] OR [insufficient wind power for the Project to generate energy as determined by the best wind speed and direction standards utilized by other wind producers or purchasers in the vicinity of the Project or if wind speeds exceed the Project's technical specifications.] OR [the unavailability of water or the unavailability of sufficient pressure required for operation of the hydroelectric turbine-generator as reasonably determined by Seller within its operating procedures, neither of which was anticipated as of the

Execution Date, which is not within the reasonable control of, or the result of negligence of, Seller or the party supplying such water to the Project, and which by the exercise of due diligence, such Seller or the party supplying the water is unable to overcome or avoid or causes to be avoided.] OR [insufficient solar power for the Project to generate energy as determined by the best solar standards utilized by other solar producers or purchasers in the vicinity of the Project.]

[For Dispatchable Product only: "Availability Adjustment Factor" has the meaning set forth in Section 4.1(b)***.]***

"Availability Incentive Payments" shall mean Availability Incentive Payments as defined in FERC filing ER09-1064 or such other similar term as modified and approved by FERC thereafter to be incorporated in the CAISO Tariff or otherwise applicable to CAISO.

[For Dispatchable Product only: "Availability Notice" has the meaning set forth in Section 3.3([f/g]).]

"Availability Standards" shall mean Availability Standards as defined in FERC filing ER09-1064 or such other similar term as modified and approved by FERC thereafter to be incorporated in the CAISO Tariff or otherwise applicable to CAISO.

"Bankrupt" means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of sixty (60) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) 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 (f) is generally unable to pay its debts as they fall due.

[For Baseload Product only: "Baseload" means a Unit Firm Product for which the delivery levels are uniform twenty-four (24) hours per day, seven (7) days per week.]

"Bundled Green Energy" means Energy, Green Attributes, and any other Product, the quantity of which is measured based on the amount of Delivered Energy, in each case, that are produced by or associated with the Project. The quantity of Bundled Green Energy shall be equal to the lesser of the quantity of (i) ***[When Seller is SC for the Project or when Buyer is SC but Project is not in the VER Forecasting Program:*** Contract Energy**]** ***[When SDG&E is SC for the Project and Project is in the VER Forecasting Program:*** Delivered Energy**]** (ii) Green Attributes that are delivered to Buyer, and (iii) any other Product that is delivered to Buyer, the quantity of which is measured based on the amount of Delivered Energy. For example, if the quantity of Renewable Energy Credits that are delivered to Buyer is less than the quantity of the ***[When Seller is SC for the Project or when Buyer is SC but Project is not in the VER Forecasting Program:*** Contract Energy**]** ***[When SDG&E is SC for the Project and Project is in the VER Forecasting Program:*** Delivered Energy**]**, then the quantity of Bundled Green Energy shall be equal to the quantity of Renewable Energy Credits that are delivered to Buyer.

"Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday and shall be between the hours of 8:00 a.m. and 5:00 p.m. local time for the relevant Party's principal place of business where the relevant Party, in each instance unless otherwise specified, shall be the Party 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 on the Cover Sheet.

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

[When SDG&E is the SC for the Project: "CAISO Charges Invoice" has the meaning set forth in Section 3.3([a/b])(iv).***]***

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

"CAISO Tariff" means the CAISO Operating Agreement and Tariff, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

"California Renewables Portfolio Standard" means the Renewables Portfolio Standard of California under California Senate Bills 1078 and 107, as codified in California Public Utilities Code Sections 387, 390.1, and Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1, as such provisions are amended or supplemented from time to time.

"Capacity Attributes" means any current or future defined characteristic, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific as to the location or any other attribute of the Project intended to value any aspect of the capacity of the Project to produce Energy or ancillary services, including but not limited to any accounting construct so that the Contract Capacity of the Project may be counted toward a Resource Adequacy obligation or similar measure in respect to the capacity of the Project to generate Energy by the CPUC, the CAISO, the FERC, or any other entity vested with the authority under federal or state Law, to require Buyer to procure, or to procure at Buyer's expense, Resource Adequacy or other similar products.

[For Dispatchable Product only: "Capacity Price" has the meaning set forth in Section 4.1(a).]

[For Baseload, Peaking, or Dispatchable Product only: "Capacity Test" shall be the complete capacity testing procedure for the Project that is reasonably acceptable to Buyer that Seller shall develop no later than thirty (30) days prior to the initial capacity testing of the Project prior to the Commercial Operation Date. The capacity testing procedure shall describe in detail the testing standard(s) to be used for the technology of the Project, the conditions under which testing shall take place, the average summer ambient conditions to which the results will be corrected, and the testing procedures. The same capacity testing procedure shall be applied to all subsequent Capacity Tests.]

"CEC" means the California Energy Commission or its successor agency.

"CEC Certification and Verification" means that the CEC has certified (or, with respect to periods before the Project has been constructed, that the CEC has pre-certified) that the Project is an ERR for purposes of the California Renewables Portfolio Standard and that all Energy produced by the Project qualifies as generation from an ERR for purposes of the Agreement.

"Claims" has the meaning set forth in Section 11.2(a).

"Commercial Operation" means that (a) the Project is operating and able to produce and deliver the Product to Buyer pursuant to the terms of this Agreement; (b) Seller shall have satisfied the requirements set forth in the Commercial Operation Certificate in the form attached as Exhibit E; (c) Seller shall have delivered a true, correct, and complete Commercial Operation Certificate from Seller, the Renewable Generation Equipment Supplier, the EPC Contractor, and a Licensed Professional Engineer; (d) Seller shall have delivered to Buyer the Delivery Term Security required under Article 8; (e) Seller has received all local, state and federal Governmental Approvals and other approvals as may be required by Law for the construction, operation and maintenance of the Project, including approvals, if any, required under the California Environmental Quality Act for the Project and related interconnection facilities; ***[For Baseload, Peaking, Dispatchable Product only:*** and (f) Seller shall have successfully completed the initial Capacity Test and delivered to Buyer a true, correct, and complete report documenting the results of Seller's initial Capacity Test as required under Section 3.1(f)].

"Commercial Operation Date" means the date on which Seller achieves Commercial Operation for the Project.

"Conditions Precedent" has the meaning set forth in Section 2.3.

"Construction Period Security" shall mean the Performance Assurance that Seller is required to maintain during the period and as otherwise specified in Section 8.4(a)[(ii)/(iii)] to secure performance of its obligations hereunder.

"Contract Capacity" has the meaning set forth in Section 3.1(f).

[When Seller is SC for the Project or when Buyer is SC but Project is not in the VER Forecasting Program: "Contract Energy" means the lower of Delivered Energy or Scheduled Energy for any given period in each case net of all Electrical Losses.**]**

"Contract Quantity" has the meaning set forth in Section 3.1(e).

"Contract Year" means a period of twelve (12) consecutive months (except in the case of the first Contract Year which may be longer) with the first Contract Year commencing on the Commercial Operation Date and each subsequent Contract Year commencing on the anniversary of the first day of the month following the Commercial Operation Date.

"Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into

new arrangements which replace a Terminated Transaction; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with such Terminated Transaction.

"Cover Sheet" means the document that precedes Article 1: General Definitions to this Agreement.

"CP Satisfaction Date" shall mean the date on which all of the Conditions Precedent have been satisfied (or waived in writing by the Party described in Section 2.4).

"CPUC" or "Commission or successor entity" means the California Public Utilities Commission, or successor entity.

"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 Buyer's requested relief contained in the approval filing and 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. ***[For Agreements for the purchase and sale of TRECS only, use STC REC-3 instead of the foregoing]***

[For Agreements with Delivery Terms greater than two years: "CPUC Approval Date" shall mean the date on which the Conditions Precedent set forth in Section 2.3(a) have been satisfied (or waived in writing by the beneficiary Party described in Section 2.4).]

[For Agreements with Delivery Terms greater than two years: "CPUC Approval Security" shall mean the Performance Assurance that Seller is required to maintain during the period and as otherwise specified in Section 8.4(a)(i) to secure performance of its obligations hereunder.]

"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) by S&P or Moody's.

"Daily Delay Damages" means an amount equal to (a) the Construction Period Security amount required hereunder, divided by (b) the number of days in the Project Cure Period.

"Day-Ahead Forecast" has the meaning set forth in Section 3.3([d/e]).

[*For As-Available and Baseload Products only:* "Deemed Bundled Green Energy" means the amount of Bundled Green Energy that Seller could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of Economic Dispatch Down. The quantity of Deemed Bundled Green Energy shall be equal to **[*For As-Available Products:*** (a) the Deemed Delivery Forecast of Energy corresponding to the applicable Economic Dispatch Down periods, whether or not Seller is participating in the VER Forecasting Program during such events, less the amount of Energy scheduled under Economic Dispatch Down as specified in the Dispatch Notice during such periods, and less any amount of Energy that was not delivered associated with any concurrent Planned Outage, Forced Outage, Force Majeure, System Dispatch Down, and/or CAISO fault but only to the extent the Deemed Delivery Forecast does not already reflect the foregoing *provided that*, if the applicable amount calculated pursuant to this clause (a) is negative, the Deemed Bundled Green Energy shall be zero (0), or (b) if there is no such Deemed Delivery Forecast available during the applicable Economic Dispatch Down periods or if the Bundled Green Energy amount has historically not been determined based on clause (i) of the definition of Bundled Green Energy, the amount of Bundled Green Energy that Seller could reasonably have delivered to Buyer but was prevented from delivering to Buyer as a result of Economic Dispatch Down as determined by Buyer in a commercially reasonable manner, which amount shall not include any amount of Energy that was not delivered associated with any concurrent Planned Outage, Forced Outage, Force Majeure, System Dispatch Down, and/or CAISO fault.] **[*For Baseload Products:*** the amount of Bundled Green Energy that Seller could reasonably have delivered to Buyer but was prevented from delivering to Buyer during the applicable Economic Dispatch Down periods, as determined by Buyer in a commercially reasonable manner, which amount shall not include any amount of Energy that was not delivered associated with any concurrent Planned Outage, Forced Outage, Force Majeure, System Dispatch Down, and/or CAISO fault.]]

[For As-Available only: "Deemed Delivery Forecast" means the forecast of the Energy to be produced by the Project prepared by the CAISO or its agent in accordance with the VER Forecasting Program and communicated to the Scheduling Coordinator, which forecast is the last such forecast prepared by the CAISO that does not reflect curtailed production as a result of Economic Dispatch Down periods. As of the Execution Date, such Deemed Delivery Forecast is the CAISO forecast generated through its Resource Specific VER Forecast Usage Report].

[Dispatchable Product only: "Default Availability Factor" means, for any period, the amount determined according to the following formula:

Default Availability Factor = (PH - (EDH - EEDH)) / PH

Where:

PH is the number of period hours;

EDH is the number of equivalent derate hours calculated as the sum, for each derate, of the product of the number of hours of full or partial derate hours times the size of the reduction from the initial Contract Capacity (as of the Commercial Operation Date) divided by the initial Contract Capacity. For the purposes of this calculation, a derate includes all

outages for any reason, including without limitation, Forced Outages, Force Majeure events, Dispatch Down Periods, Planned Outages, Buyer's failure to perform, and other times when any portion of the Contract Capacity is not available and when the Delivered Energy of the Project is less than the amount of Energy dispatched by Buyer; and

EEDH is the number of equivalent excused derate hours solely due to either Force Majeure events, Dispatch Down Periods or Buyer's failure to perform (and for no other reason), calculated as the sum, for each excused derate, of the product of the number of hours of full or partial derate hours times the size of the reduction from the initial Contract Capacity, divided by the initial Contract Capacity.]

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

"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.

"Delivered Energy" means all Energy produced from the Project and delivered to Buyer at the Delivery Point as measured in MWh at the CAISO revenue meter of the Project based on a power factor of precisely one (1) and net of all Electrical Losses.

"Delivery Point" means the point at which Buyer receives Seller's Product, as set forth in Section 3.1(d).

"Delivery Term" has the meaning set forth in Section 3.1(c).

"Delivery Term Security" shall mean the Performance Assurance that Seller is required to maintain during the period and as otherwise specified in Section 8.4(a)[(iii)/(iv)] to secure performance of its obligations hereunder.

"Development Period Security" shall mean the Performance Assurance that Seller is required to maintain during the period and as otherwise specified in Section 8.4(a)[(i)/(ii)] to secure performance of its obligations hereunder.

"Disclosing Party" has the meaning set forth in Section 13.1(a).

"Disclosure Order" has the meaning set forth in Section 13.1(a).

"Dispatch Down Period" means the period of curtailment of delivery of Product from the Project resulting from System Dispatch Down ***[For all Products other than Dispatchable Product:*** or Economic Dispatch Down***]***.

"Dispatch Notice" means the operating instruction, and any subsequent updates given either by Buyer to Seller or by the CAISO to Seller, directing Seller to operate the Project at a specified megawatt output for the period of time set forth in such order.

[For Dispatchable Product only: "Dispatchable" means a Unit Firm Product for which Seller makes available capacity for Buyer to Schedule and dispatch up or down at Buyer's option in accordance with Section 3.3([g/h]).]

"Distribution Upgrades" has the meaning set forth in the CAISO Tariff.

"DUNS" means the Data Universal Numbering System, which is a unique nine character identification number provided by Dun and Bradstreet.

[For Projects located outside of the CAISO: "Dynamic Scheduling Agreement" means the agreement between the CAISO and Buyer or Seller, as Scheduling Coordinator (as applicable), with respect to the duties and responsibilities of the Scheduling Coordinator with respect to facilities located outside the CAISO balancing area and whose product is dynamically transferred via a pseudo-tie to the CAISO, in form and substance reasonably acceptable to the parties thereto.***]***

"Early Termination Date" has the meaning set forth in Section 5.2.

[For all Products other than Dispatchable Product: "Economic Dispatch Down" means curtailment of delivery of Product from the Project that is the result of economic curtailment where Buyer (as the Scheduling Coordinator) or a third party Scheduling Coordinator (in accordance with Buyer's directions) either submits a self-schedule with a binding Product quantity or an economic bid in the applicable CAISO market or fails to submit any such schedule or bid, in either case, that when implemented by the CAISO results in an otherwise available Product quantity not being scheduled or awarded in such CAISO market and such curtailment is not concurrently the result of a Planned Outage, Forced Outage, Force Majeure, System Dispatch Down, and/or CAISO fault.

"Electrical Losses" means all electrical losses associated with the transmission of Product to the Delivery Point, including if applicable, but not limited to, any transmission or transformation losses between the CAISO revenue meter and the Delivery Point.

"Electrical Interconnection Upgrades" means the facilities to which Seller shall be able to interconnect and deliver Energy from the Project to and at the Delivery Point and Buyer shall be able to transmit Energy from the Delivery Point and the facilities that protect the Participating Transmission Owner's, Transmission Provider's, distribution operator's, ***[For Projects located outside of the CAISO:*** Native Balancing Authority's,***]*** or other affected system owner's, as applicable, electric system (or other systems to which such electric systems are connected, including the CAISO Grid) and the Participating Transmission Owner's, Transmission Provider's, distribution operator's, ***[For Projects located outside of the CAISO:*** Native Balancing Authority's,***]*** or other affected system owner's, as applicable, customers from faults occurring at the Project, including, but not limited to, all network, distribution, connection, transformation, switching, metering, communications, control, and safety equipment, as such equipment may be required pursuant to Good Industry Practices or in accordance with the Participating Transmission Owner's, Transmission Provider's, distribution operator's, ***[For Projects located outside of the CAISO:*** Native Balancing Authority's,***]*** or other affected system owner's, as applicable, facility connection requirements. Such Electrical Interconnection Upgrades include all Network Upgrades, Distribution Upgrades, Interconnection Facilities, and other network upgrades, distribution upgrades, or interconnection facilities ***[For Projects located outside of the CAISO:***

Native Balancing Authority's, or***]*** on any other affected system owner's electrical system that are determined to be necessary by the CAISO, Participating Transmission Owner, ***[For Projects located outside of the CAISO:*** Native Balancing Authority's, or***]*** other affected system owner, as applicable, to physically and electrically interconnect the Project to ***[For Projects located outside of the CAISO:*** Native Balancing Authority's system and***]*** the Participating Transmission Owner's electric system so as to allow Seller to deliver Energy from the Project to the Delivery Point and Buyer to be able to transmit Energy from the Delivery Point.

"Eligible Renewable Energy Resource" or "ERR" has the meaning set forth in California Public Utilities Code Section 399.11, *et seq*., as amended or supplemented from time to time.

"Energy" means electric energy measured in MWh and net of Station Service (unless otherwise specified).

"Energy Price" has the meaning set forth in Section 4.[1/2](a).

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

"EPC Contractor" means an engineering, procurement, and construction contractor, selected by Seller, with substantial experience in the engineering, procurement, and construction of power plants of the same type of facility as Seller's.

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

[For Dispatchable Product only: "Equivalent Availability Factor" or "EAF" has the meaning set forth in Section 4.1(b).]

"Event of Default" has the meaning set forth in Section 5.1.

"Execution Date" means the date hereof as set forth in the preamble of the Cover Sheet.

"Executive(s)" has the meaning set forth in Section 12.2(a).

"FERC" means the Federal Energy Regulatory Commission or any successor government agency.

"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)(vii) 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) a lack of wind, sun or other fuel source of an inherently intermittent nature;

(v) 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;

(vi) Seller's failure to obtain financing or other 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;

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

(viii) any equipment failure except if such equipment failure is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) though (a)(iii) above.

"Force Majeure Extension Period" has the meaning set forth in Section 3.9(c)(ii).

"Forced Outage" means any unplanned reduction or suspension of production of Product from the Project or unavailability of the Project in whole or in part that is not a Planned Outage or a willful withholding of Product when the Project is otherwise capable of delivering Product under Good Industry Practices.

"GAAP" has the meaning set forth in Section 13.4.

"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 for the remaining Delivery Term, determined in a commercially reasonable manner, subject to Section 5.2 hereof. Factors used in determining economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties, 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 market referent prices for renewable power set by the CPUC, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining term of this Agreement and include the value, if any, of Capacity Attributes, and Green Attributes.

"Good Industry Practice" means those practices, methods and acts that would be implemented and followed by prudent operators of electric transmission facilities (with respect to Buyer) or prudent operators of electric generation facilities similar to the Project (with respect to Seller) in the Western United States during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety, and shall include, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with manufacturers' warranties, restrictions in this Agreement, and the requirements of Governmental Authorities, WECC standards, the CAISO ***[For Projects located outside of the CAISO:*** Native Balancing Authority,***]*** and applicable Law. Good Industry Practice is not intended to be the optimum practice, method or act to the exclusion of all others, but rather is intended to be any of the practices, methods and/or actions generally accepted in the region.

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

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

"Governmental Charges" has the meaning set forth in Section 9.2.

"Green Attributes" means, subject to the limitations in the final sentence of this definition, 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: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) 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] and (3) 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. If the Project is a biomass 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 and for all electric generation using biomethane as fuel, Seller shall transfer to Buyer sufficient Green Attributes of biomethane production and capture to ensure that there are zero net emissions associated with the production of electricity from the Project using the biomethane.

"Guaranteed Commercial Operation Date" or "GCOD" means [*insert date*], as may be extended pursuant to Section 3.9(c)(ii).

"Guaranteed Energy Production" has the meaning set forth in Section 3.1(e).

"Guarantor" means, with respect to Seller, any person that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably

[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.

acceptable to Buyer, (c) has a Credit Rating of [____] or better from S&P or a Credit Rating of [____] or better from Moody's, (d) has a tangible net worth of at least [_____], (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of Buyer substantially in the form attached hereto as Exhibit D. ***[SDG&E will consider accepting a Guaranty based on the Project, the amount of Performance Assurance, and the identity of the Seller and Guarantor]***

"Guaranty" means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached hereto as Exhibit D. ***[SDG&E will consider accepting a Guaranty based on the Project, the amount of Performance Assurance, and the identity of the Seller and Guarantor]***

"Imbalance Energy" means the amount of Energy, in any given settlement period, by which the amount of Delivered Energy deviates from the amount of Scheduled Energy.

"Initial Negotiation End Date" has the meaning set forth in Section 12.2(a).

[For Projects located outside of the CAISO: "Interconnected Balancing Authority Agreement" means an agreement between the Native Balancing Authority and the CAISO to govern operation of their interconnected electric systems, including the dynamic transfer of Project output via a pseudo-tie from the Native Balancing Authority and the CAISO, in form and substance reasonably acceptable to the parties thereto.***]***

"Interconnection Facilities" has the meaning set forth in the CAISO Tariff.

"Interest Amount" means, with respect to an Interest Period, the amount of interest derived from the product of (a) the sum of (i) the principal amount of Performance Assurance in the form of cash held by Buyer during that Interest Period, and (ii) the sum of all accrued and unpaid Interest Amounts accumulated prior to such Interest Period; multiplied by (b) the Interest Rate in effect on the first day of the Interest Period; multiplied by (c) the number of days in that Interest Period; divided by (d) 360.

"Interest Payment Date" means the date on which cash held as Performance Assurance is returned pursuant to the terms of this Agreement.

"Interest Period" means the monthly period beginning on the first day of each month and ending on the last day of each month or the shorter period during which Performance Assurance in the form of cash is held by Buyer.

"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 rate 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.

"[Large/Small] Generator Interconnection Agreement" has the meaning set forth in the CAISO Tariff.

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

"Letter(s) of Credit" means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least [A-] with an outlook designation of "stable" from S&P or [A3] with an outlook designation of "stable" from Moody's, in substantially the form as contained in Exhibit C to this Agreement.

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

"Locational Marginal Price" has the meaning set forth in the CAISO Tariff.

"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 a Terminated Transaction for the remaining term of this Agreement, determined in a commercially reasonable manner. Factors used in determining the loss of economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties 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, market referent prices for renewable power set by the CPUC, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g. NYMEX), all of which should be calculated for the remaining term of this Agreement and include the value, if any, of Capacity Attributes, and Green Attributes.

"Manager" has the meaning set forth in Section 12.2(a).

"Milestones" has the meaning set forth in Section 3.9(b)(i).

[For Dispatchable Product only: "Monthly Capacity Payment" has the meaning set forth in Section 4.1(b).]

"Monthly Energy Payment" has the meaning set forth in Section 4.[1/2]([b/c]).

[For Dispatchable Product only: "Monthly Shaping Factor" has the meaning set forth in Section 4.1(b).]

"Moody's" means Moody's Investor Services, Inc., or its successor.

"MWh" means megawatt-hour.

[For Projects located outside of the CAISO: "Native Balancing Authority" means the balancing authority for the balancing authority area where the Project is physically interconnected to the electric system. As of the Execution Date, the Native Balancing Authority is [***insert name***].***]***

[For Projects located outside of the CAISO: "NBA Generator Agreement" means the agreement between the Native Balancing Authority and Seller with respect to Seller's obligations to the Native Balancing Authority in connection with the Native Balancing Authority's duties and obligations under the Interconnected Balancing Authority Agreement, in form and substance reasonably acceptable to the parties thereto.***]***

"Negative Imbalance Energy" has the meaning set forth in Section 4.[2/3].

"NERC" means the North American Electric Reliability Corporation or a successor organization that is responsible for establishing reliability criteria and protocols.

"NERC Holiday" means any of the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Three of these days, Memorial Day, Labor Day, and Thanksgiving Day, occur on the same day each year. Memorial Day is the last Monday in May; Labor Day is the first Monday in September; and Thanksgiving Day is the fourth (4^{th}) Thursday in November. New Year's Day, Independence Day, and Christmas Day occur on the same date each year, but in the event any of these holidays occur on a Sunday, the "NERC Holiday" is celebrated on the Monday immediately following that Sunday; and if any of these holidays occur on a Saturday, the "NERC Holiday" remains on that Saturday.

"Network Upgrades" has the meaning set forth in the CAISO Tariff.

"Non-Availability Charges" shall mean Non-Availability Charges as defined in FERC filing ER09-1064 or such other similar term as modified and approved by FERC thereafter to be incorporated in the CAISO Tariff or otherwise applicable to CAISO.

"Non-Defaulting Party" has the meaning set forth in Section 5.2.

"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).

"Notice to Proceed" or "NTP" means the notice provided by Seller to the EPC Contractor following execution of the EPC Contract between Seller and such EPC Contractor and satisfaction of all conditions precedent to performance of such contract, by which Seller authorizes such EPC Contractor to commence and complete full performance of the work under the EPC Contract without any delay or waiting periods.

"Outage Notification Form" means the completed document from Seller notifying Buyer of an outage of the Project substantially in the form attached hereto as Exhibit G. Buyer reserves the right to reasonably revise or change the form upon Notice to Seller.

[For intermittent As-Available Product: "Participating Intermittent Resource" shall have the meaning set forth in the CAISO Tariff.]

"Participating Transmission Owner" or "Participating TO" means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities that are interconnected to the Delivery Point and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid. As of the Execution Date, the Participating Transmission Owner is ***[San Diego Gas & Electric Company].***

"Party" or "Parties" means the Buyer or Seller individually, or to both collectively.

[For Peaking Product only: "Peaking" means a Unit-Firm Product for which Energy must be delivered during hours ending 1200-1900 (11:00 am to 7:00 pm) on Monday-Friday, excluding NERC Holidays, for the months July through October and during hours ending 1400-2100 (1:00 pm to 9:00 pm) on Monday-Friday, excluding NERC Holidays, for the months November and December.] ***[Note: Buyer will consider other firm products such as 6x16:*** "6x16 Block" means a Unit-Firm Product for which Energy must be delivered during hours ending 0700-2200 (6:00 am to 10:00 pm) on Monday-Saturday throughout the Delivery Term.]

"Performance Assurance" means collateral provided by Seller to Buyer to secure Seller's obligations hereunder and includes ***[For Agreements with Delivery Terms greater than two years:*** CPUC Approval Security,] Development Period Security, Construction Period Security, and Delivery Term Security.

[For As-Available, Baseload, Peaking Product: "Performance Measurement Period" has the meaning set forth in Section 3.1(e).]

"Planned Outage" means any planned reduction or suspension of the electrical output from the Project or unavailability of the Project in whole or in part as a result of the inspection, maintenance, or repair of equipment that is scheduled in accordance with Section 3.7(a).

"PNode" has the meaning set forth in the CAISO Tariff.

"Positive Imbalance Energy" has the meaning set forth in Section 4.[2/3].

"Product" has the meaning set forth in Section 3.1(a).

[For Projects receiving PTCs: "Production Tax Credit" or "PTC" means the tax credit for electricity produced from certain renewable generation resources described in Section 45 of the Internal Revenue Code of 1986, as it may be amended from time to time.***]***

"Project" means all of the *[insert technology]* electric generating units, the Site at which the generating facility is located, the utility interconnection facilities up to the point of change in

ownership to the applicable utility's facilities, and the other assets, tangible and intangible, that compose the generation facility as more particularly described on Exhibit A.

"Project Cure Period" has the meaning set forth in Section 3.9(c)(i).

"Qualified Assignee" has the meaning set forth in Section 13.2.

"Quarterly Progress Report" means the report similar in form and content attached hereto as Exhibit F, as may be modified from time to time to meet applicable CPUC requirements.

[For Projects located outside of the CAISO: "Pseudo Participating Generator Agreement" means an agreement between CAISO and Seller that is the equivalent of a Participating Generator Agreement (as defined in the CAISO Tariff) for generators interconnected to a Native Balancing Authority other than CAISO and whose output is dynamically transferred via a pseudo-tie to the CAISO, in form and substance reasonably acceptable to the parties thereto.***]***

[For Projects located outside of the CAISO: "Pseudo Tie Agreements" means the Interconnected Balancing Authority Agreement, the Dynamic Scheduling Agreement, the Pseudo Participating Generator Agreement, and the NBA Generator Agreement, or equivalent agreements that may be adopted by the CAISO or included in the CAISO Tariff, which are intended to permit and facilitate the dynamic transfer of the output of the Project via a pseudo-tie from its Native Balancing Authority to the CAISO.***]***

"Recording" has the meaning set forth in Section 13.6.

"Reductions" has the meaning set forth in Section 3.2(c).

"Referral Date" has the meaning set forth in Section 12.2(a).

"Remedial Action Plan" has the meaning provided in Section 3.9(b)(ii).

"Renewable Energy Credit" has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision 08-08-028, as each may be amended from time to time or as further defined or supplemented by Law.

"Renewable Generation Equipment Supplier" means the supplier of the [electric generating [wind] [gas] [steam] turbine(s)] [solar electric generating equipment] for the Project, selected by Seller.

"Replacement Price" means the price (in dollars per megawatt hour) at which Buyer, acting in a commercially reasonable manner, purchases for delivery at the Delivery Point (or any other reasonably equivalent delivery point for Buyer) a replacement for any Product (including its associated Green Attributes) that was not Scheduled and delivered by Seller, plus (a) costs (calculated in dollars per megawatt hour) reasonably incurred by Buyer in purchasing such replacement Product and (b) additional transmission charges (calculated in dollars per megawatt hour), if any, reasonably incurred by Buyer for such replacement Product, or absent a purchase, the market price at the Delivery Point (or any other reasonably equivalent delivery point for Buyer) for such replacement Product for the hours impacted by such failure to Schedule or deliver such

Product as determined by Buyer in a commercially reasonable manner. The Replacement Price also shall include all CAISO ***[For Projects located outside of the CAISO:*** , Native Balancing Authority,***]*** and other charges and penalties calculated in dollars per megawatt hour with respect to the deviation from the Scheduled supply resulting from Seller's failure to Schedule or deliver; provided, however, in no event shall such price include any ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller's liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party. If for any reason a Replacement Price is unavailable when Seller fails to deliver or Schedule Product, then the Replacement Price for the hours when a Replacement Price is unavailable shall be the last available Replacement Price together with any charges and penalties allocated to Buyer during such time.

"Resource Adequacy" means the procurement obligation of load serving entities, including Buyer, as such obligations are described in 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, 12-06-025, 13-06-024, and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time in the CPUC Resource Adequacy Rulemakings (R.) 04-04-003 and (R.) 05-12-013 or by any successor proceeding, and all other Resource Adequacy obligations established by any other entity, including the CAISO.

"Sales Price" means the price (in dollars per megawatt hour) at which Seller, acting in a commercially reasonable manner, resells any Product not Scheduled and received by Buyer, deducting from such proceeds any (a) costs (calculated in dollars per megawatt hour) reasonably incurred by Seller in reselling such Product including all costs charged by CAISO ***[For Projects located outside of the CAISO:*** and the Native Balancing Authority,***]*** to Schedule and deliver the Product into the CAISO System ***[For Projects located outside of the CAISO:*** or the Native Balancing Authority's system***],*** and (b) additional transmission charges (calculated in dollars per megawatt hour), if any, reasonably incurred by Seller in Scheduling and delivering such Product to the third party purchasers, or absent a sale despite commercially reasonable efforts to resell the Product, zero. The Sales Price shall also be reduced by all CAISO and other costs, charges and penalties with respect to the deviation from the Scheduled supply, in each case, resulting from Buyer's failure to take Product and calculated in dollars per megawatt hour; provided, however, in no event shall such price include any ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer's liability. The Sales Price may be less than zero.

"S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

"Schedule" means the actions of Seller, Buyer and/or their designated representatives, or Scheduling Coordinators, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other and the CAISO the quantity and type of Product to be delivered on any given day or days at a specified Delivery Point.

"Scheduling Coordinator" or "SC" means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff, for the purposes of undertaking the functions specified in "Responsibilities of a Scheduling Coordinator," of the CAISO Tariff, as amended from time-to-time.

"Scheduled Energy" means the Energy that clears under the applicable CAISO market based on the final Schedule developed in accordance with this Agreement, the operating procedures developed by the Parties pursuant to Section 3.10, and the applicable CAISO Tariff, protocols and Scheduling practices.

"SEC" means the U.S. Securities and Exchange Commission.

"Seller" shall have the meaning set forth on the Cover Sheet.

"Settlement Amount" means, with respect to the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such Party incurs as a result of the liquidation of a Terminated Transaction pursuant to Sections 5.2 and 5.3.

"Site" shall mean the location of the Project as described in Exhibit A.

"Station Service" means the electric energy produced by the Project that is used within the Project to power the lights, motors, control systems and other auxiliary electrical loads that are necessary for operation of the Project.

"System Dispatch Down" means curtailment of delivery of Product from the Project resulting from (a) curtailment ordered by the CAISO (whether directly or through the Scheduling Coordinator or the Participating Transmission Owner), for any reason, including, but not limited to, an Exceptional Dispatch (as defined in the CAISO Tariff), any system emergency as defined in the CAISO Tariff ("System Emergency"), any warning of an anticipated System Emergency, or any warning of an imminent condition or situation which could jeopardize the CAISO's or Participating Transmission Owner's electric system integrity or the integrity of other systems to which the CAISO or Participating Transmission Owner is connected, any warning, forecast, or anticipated overgeneration conditions, including a request from CAISO to manage over-generation conditions; (b) curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner's electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected; (c) curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) as a result of scheduled or unscheduled maintenance or construction on the Participating Transmission Owner's transmission facilities or distribution operator's facilities (if interconnected to distribution or sub-transmission system) that prevents the delivery or receipt of Delivered Energy to or at the Delivery Point, (d) curtailment in accordance with Seller's obligations under its interconnection agreement with the Participating Transmission Owner or distribution operator, ***[If the Project is located***

outside of the CAISO: or Native Balancing Authority; or (e) curtailment ordered by the Transmission Provider provided, that Seller has contracted for firm transmission with such Transmission Provider for the Product to be delivered to the Delivery Point and such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff***]***; ***[For Dispatchable Product only:*** or ([e/f]) curtailment ordered by Buyer pursuant to a Dispatch Notice.***]*** ***[For all Products other than Dispatchable:*** provided, however, that System Dispatch Down shall not include Economic Dispatch Down].

"Terminated Transaction" means the termination of this Agreement in accordance with Section 5.2 of this Agreement.

"Termination Payment" has the meaning set forth in Section 5.2.

"Transmission Provider" means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point.

[For Baseload, Peaking, or Dispatchable Product only: "Unit Firm" means, with respect to a Product, that the Product is intended to be supplied from the Project, and subject to the terms of this Agreement, Seller is excused from selling and delivering the Product to Buyer, and Seller shall not be liable to Buyer for any damages determined pursuant to Section 3.1(h) of the Agreement, in the event that Seller fails to deliver the Product to Buyer for any of the following reason:

(a) if the Project is unavailable as a result of a Forced Outage and such Forced Outage is not the result of Seller's negligence or willful misconduct;

(b) Force Majeure;

(c) by the Buyer's failure to perform;

(d) by a Planned Outage of the Project; or

(e) a reduction in output as ordered under Dispatch Down Periods.

The following products shall be considered "Unit Firm" products: Peaking, Baseload, and Dispatchable.]

[For an intermittent As-Available Product only: "VER Forecasting Program" means the rules, protocols, procedures and standards for Participating Intermittent Resources under the CAISO's Eligible Intermittent Resource Protocol, as may be amended from time to time, as set forth in the CAISO Tariff.]

"WECC" means the Western Electricity Coordinating Council or successor agency.

"WREGIS" means the Western Renewable Energy Generating Information System or any successor renewable energy tracking program.

1.2 Interpretation. The following rules of interpretation shall apply:

(a) 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.

(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.

(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 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.

(h) All references to dollars are to U.S. dollars.

ARTICLE 2: EFFECTIVENESS OF AGREEMENT; CONDITIONS PRECEDENT

2.1 Effectiveness of Agreement Prior to CP Satisfaction Date. Commencing on the Execution 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 Article 2, including, as it relates to Article 2, the rights and obligations under Articles 1, 5, 7, 8, 9, 10, 11, 12, and 13.

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

(a) 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 [___], (ii) diligently pursue development of the Project in accordance with Section 3.9, (iii) comply with Section 3.9(b) in achieving the applicable Milestones that have due dates occurring prior to the CP Satisfaction Date, reporting completion of such Milestones, and delivering Remedial Action Plans in respect of missed Milestones as more fully described therein, (iv) deliver the Quarterly Progress Report in accordance with Section 3.9(a), and (v) otherwise comply with its obligations, covenants, representations, and warranties under Articles 7-13. ***[For Agreements with Delivery Terms greater than two years:*** Upon an Event of Default of Seller prior to the CPUC Approval Date, Buyer may terminate this Agreement in which case Seller shall owe Buyer liquidated damages in the amount of the CPUC Approval Security.] Upon an Event of Default of Seller ***[For Agreements with Delivery Terms greater than two years:*** on or after the CPUC Approval Date but] prior to the CP Satisfaction Date, Buyer may terminate this Agreement in which case Seller shall owe Buyer liquidated damages in the amount of the Development Period 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.

(b) 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 Sections 2.3(a), and (ii) otherwise comply with its obligations, covenants, representations, and warranties under Articles 7-13. ***[For Agreements with Delivery Terms greater than two years:*** Upon an Event of Default of Buyer prior to the CPUC Approval Date, Seller may terminate this Agreement in which case Buyer shall owe Seller liquidated damages in the amount of the CPUC Approval Security.] Upon an Event of Default of Buyer ***[For Agreements with Delivery Terms greater than two years:*** on or after the CPUC Approval Date but] prior to the CP Satisfaction Date, Seller may terminate this Agreement in which case Buyer shall owe Seller liquidated damages in the amount of the Development Period Security. Each Party agrees and acknowledges that (a) the actual damages that Seller would incur due to an Event of Default of Buyer 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 Buyer prior to the CP Satisfaction Date.

2.3 Conditions Precedent. Subject to Section 2.1, the effectiveness of the remainder of this Agreement is conditioned upon the satisfaction (or waiver by the Party described in Section 2.4) 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:

(a) CPUC Approval. 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) Electrical Interconnection. No later than [_____], Seller shall have entered into a [Large/Small/Rule 21/Native Balancing Authority] Generator Interconnection Agreement ***[For Projects located outside of the CAISO:*** along with any supplemental arrangements with the CAISO as an affected system owner***]*** providing for the construction of the Electrical Interconnection Upgrades necessary to maintain the "[Full Capacity] [Energy Only] Deliverability Status" (as defined in the CAISO Tariff) of the Project and setting forth:

(i) 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 [Large/Small/Rule 21/Native Balancing Authority] Generator Interconnection Agreement for the Project ***[For Projects located outside of the CAISO:*** and its supplemental arrangements with the CAISO as an affected system owner],

(ii) a 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 as provided thereunder not exceeding $[_____], and [***Note: Seller may propose additional provisions whereby Seller can satisfy this Condition Precedent by buying down the Network***

Upgrade costs that exceed the foregoing cost cap in a manner that is mutually acceptable to the Parties.]

(iii) a nonrefundable cost that Seller would be obligated to pay thereunder not exceeding $[_____] (or such greater amount as Seller may approve, in its sole discretion).

(c) ***[Others, Major Governmental Approvals, Financing, etc.]***

2.4 Failure to Meet All Conditions Precedent.

(a) Beneficiary Party.

(i) Both of the Parties are the beneficiaries of the Conditions Precedent set forth in Sections 2.3(a), 2.3(b)(i)-(ii) ***[Others]***, and in order for a waiver of non-satisfaction of such Conditions Precedent to be effective, both of the Parties must waive (in their sole discretion) non-satisfaction by the deadline date therefor.

(ii) Buyer shall be the sole beneficiary of the Conditions Precedent set forth in Sections ***[List]***, and in order for a waiver of non-satisfaction of such Conditions Precedent to be effective, Buyer alone must waive (in its sole discretion) non-satisfaction by the deadline date therefor.

(iii) Seller shall be the sole beneficiary of the Conditions Precedent set forth in Sections 2.3(b)(iii) ***[Others]***, and in order for a waiver of non-satisfaction of such Conditions Precedent to be effective, Seller alone must waive (in its sole discretion) non-satisfaction by the deadline date therefor.

(b) Termination. If any of the Conditions Precedent is not satisfied or waived in writing by the beneficiary Parties thereto on or before the date that is fifteen (15) days after the applicable deadline date therefor, then this Agreement shall automatically terminate with no further obligation to either Party (other than as set forth in Sections 2.4(b)(i)-(ii) below and any other payment obligations which are accrued and payable at the time of termination).

(i) Upon a termination of this Agreement for any reason under Section 2.4 other than as described in Section 2.4(b)(ii) below, Seller shall forfeit to Buyer an amount equal to the Performance Assurance then required to be delivered to Buyer hereunder. Buyer may retain such Performance Assurance to pay such amount.

(ii) Upon a termination of this Agreement under this Section 2.4 as a result of the failure of the Conditions Precedent set forth in Sections 2.3(a) to be satisfied (or waived by both Parties) or as a result of

the failure of the Conditions Precedent set forth in Sections 2.3(b)(i)-(ii) to be satisfied or waived by Buyer, Buyer shall return to Seller the Performance Assurances then held by Buyer.

2.5 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 Term 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 Term, the Settlement Amount, indemnification payments or other damages (whether directly or indirectly such as through set-off or netting) and (ii) the undrawn portion of the ***[For Agreements with Delivery Terms greater than two years:*** CPUC Approval Security,] Development Period Security, Construction Period Security, or Delivery Term Security, as applicable, is released and/or returned as applicable (if any is due). All indemnity rights shall survive the termination or expiration of this Agreement for the longer of twelve (12) months or the expiration of the statute of limitations period of the claim underlying the indemnity obligation.

ARTICLE 3: OBLIGATIONS AND DELIVERIES

3.1 Transaction.

(a) Product. The "Product" to be delivered and sold by Seller and received and purchased by Buyer under this Agreement is ***[Seller to select:*** As-Available, Baseload, Peaking, or Dispatchable***]*** Energy, Capacity Attributes, Green Attributes, and other ancillary products, services or attributes similar to the foregoing which are or can be produced by or associated with the Project (net of Station Service) in accordance with the terms hereof.

(b) Transaction. Unless specifically excused by the terms of this Agreement during the Delivery Term, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Product at the Delivery Point, and Buyer shall pay Seller for the Product in accordance with the terms hereof. In no event shall Seller have the right to procure any element of the Product from sources other than the Project for sale or delivery to Buyer under this Agreement ***[If the Project is located outside of the CAISO:*** except with respect to Imbalance Energy from the Transmission Provider***]***.

(c) Delivery Term. The Parties agree that the period of Product delivery is [_____] Contract Years. As used herein, "Delivery Term" shall mean the period of Contract Years specified above beginning on the Commercial Operation Date and continuing until the end of the last Contract Year unless terminated earlier as provided by the terms of this Agreement.

(d) Delivery Point. The Delivery Point shall be [the point of interconnection of the Project to the CAISO Grid] ***[For Projects located outside of the CAISO, insert:*** "The Delivery Point shall be the point on the CAISO Grid where the Native Balancing Authority's grid is interconnected to the CAISO Grid at the ***[identify the local CAISO substation to which the Project has firm transmission rights]*** Substation (and, for payment purposes, the corresponding PNode for the Project, or if none exists, the PNode corresponding to the point on the CAISO Grid where the Native Balancing Authority's grid is interconnected to the CAISO Grid at the Delivery Point)."***]*** The Delivery Point shall be [the point of interconnection of the Project to the CAISO Grid] ***[Seller may specify another delivery point; for a Project located outside the CAISO Grid, the Delivery Point should be a CAISO Scheduling Point as defined by the CAISO]*** and for financial settlement purposes under the applicable CAISO market, the PNode corresponding to such point.

(e) ***[For Baseload, Peaking, As-Available Product:*** Contract Quantity and Guaranteed Energy Production. The quantity of Bundled Green Energy that Seller expects to be able to deliver to Buyer during each Contract Year is **[_____]** MWh ("Contract Quantity"). Throughout the Delivery Term, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production (as defined below) in any [twelve (12)] [twenty-four (24)] consecutive calendar month period during the Delivery Term ("Performance Measurement Period"). "Guaranteed Energy Production" means an amount of Bundled Green Energy, as measured in MWh, equal to [two times] [_____]% of the Contract Quantity. Notwithstanding the excuses to performance set forth in the definition of the Product type (as such Product type is specified in Section 3.1(a)), Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Force Majeure events, Buyer's failure to perform, or Dispatch Down Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer an amount of Bundled Green Energy that it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure events, Buyer's failure to perform, or Dispatch Down Periods.] ***[For Dispatchable Product:*** Contact Quantity. The quantity of Bundled Green Energy that Seller expects to be able to deliver to Buyer during each Contract Year is **[_____]** MWh ("Contract Quantity").]

(f) Contract Capacity. The "Contract Capacity" is the full generation capacity of the Project net of all Station Service which shall be ***[For As-Available Product:*** no less than [____] MW and no greater than [____] MW] ***[For Baseload, Peaking, or Dispatchable Product only:*** an amount determined periodically pursuant to a Capacity Test as set forth below]. Throughout the Delivery Term, Seller shall sell and Schedule

all Product associated with the Contract Capacity of the Project solely to Buyer, except in the case of an Event of Default of Buyer ***[If the Project is located outside of the CAISO:*** or the sale of Imbalance Energy to the Transmission Provider]. ***[For Dispatchable Product:*** Throughout the Delivery Term, Seller shall make the Contract Capacity available solely to Buyer at all times, except in the case of an Event of Default of Buyer ***[If the Project is located outside of the CAISO:*** or the sale of Imbalance Energy to the Transmission Provider].]

(i) ***[For Baseload, Peaking, Dispatchable Product:*** Initial Capacity Testing. Upon no less than fourteen (14) days prior Notice to Buyer, Seller shall schedule and complete a Capacity Test prior to the Commercial Operation Date for the Project. Such initial Capacity Test shall establish the Contract Capacity for the Project for the first Contract Year.]

(ii) ***[For Baseload, Peaking, Dispatchable Product:*** Annual Capacity Testing. Thereafter, at least once per Contract Year within the first quarter of each Contract Year, upon no less than 14 days prior Notice to Buyer, Seller shall schedule and complete a Capacity Test. In addition, Buyer shall have the right to require a retest of the Capacity Test at any time upon five (5) days prior written Notice to Seller if Buyer reasonably believes that the actual Contract Capacity has varied materially from the results of the most recent tests. Seller shall have the right to run a retest of the Capacity Test at any time upon two (2) days prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Good Industry Practices).]

(iii) ***[For Baseload, Peaking, Dispatchable Product:*** Witness at Capacity Tests. Buyer shall have the right to send one or more representative(s) to witness all Capacity Tests.]

(iv) ***[For Baseload, Peaking, Dispatchable Product:*** Capacity Test Reporting. No later than fourteen (14) days following any Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include meter readings and plant log sheets verifying the operating conditions and output of the Project. The Contract Capacity determined pursuant to a Capacity Test shall become the new Contract Capacity at the beginning of the day following the completion of the test for all purposes under this Agreement.]

(v) ***[For Baseload, Peaking, Dispatchable Product:*** Capacity Test Costs and Payments. Buyer shall pay the [Monthly Energy Payment] in respect of the Product produced during the initial Capacity Test prior to the Commercial Operation Date and each

annually scheduled Capacity Test thereafter. In addition, Buyer shall pay the [Monthly Energy Payment] in respect of the Product produced during any other Buyer requested test unless the results of such test demonstrate that the actual Contract Capacity has varied by more than two percent (2%) from the results of the most recent tests, in which case Buyer shall pay the lesser of the [Monthly Energy Payment] in respect of the Product produced during such test and the applicable CAISO real-time hourly average energy price. In addition, Buyer shall pay the lesser of the [Monthly Energy Payment] in respect of the Product produced during any Seller requested test and the applicable CAISO real-time hourly average energy price]. Buyer is responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing Capacity Testing. All other costs of any Capacity Tests shall be borne by Seller.]

(g) Project. All Product provided by Seller pursuant to this Agreement shall be supplied from the Project only ***[If the Project is located outside of the CAISO:*** except with respect to Imbalance Energy from the Transmission Provider**]**. Other than maintenance in accordance with Good Industry Practices, Seller shall not make any alteration or modification to the Project which results in a change to the Contract Capacity of the Project or any other material changes to the Project without Buyer's prior written consent. The Project is further described in Exhibit A.

(h) Performance Excuses.

(i) Seller Excuses. The performance of Seller to Schedule, deliver, and sell the Product shall be excused only for the reasons set forth in the definition of ***[Seller to select:*** "As-Available" or "Unit Firm"***]***. If Seller fails to Schedule, deliver, or sell all or part of the Product, and such failure is not excused as described above, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred an amount for such Product deficiency equal to the positive difference, if any, obtained by subtracting (A) the product of the Energy Price

(ii) Buyer Excuses. The performance of Buyer to Schedule, receive, and pay for the Product shall be excused only (A) during periods of Force Majeure, (B) by Seller's failure to perform or (C) during Dispatch Down Periods ***[For all Products other than Dispatchable Product:*** (except that Buyer shall not be excused from paying for the Product as required under Section 3.4 during periods of Economic Dispatch Down)***]***. If Buyer fails to Schedule, receive, or purchase all or part of the Product and such failure is not excused as described above, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which

the failure occurred an amount for such Product deficiency equal to the positive difference, if any, obtained by subtracting (Y) the product of the Sales Price times the Product deficiency from (Z) the product of the Energy Price times the Product deficiency. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

(i) 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. For all electric generation using biomethane as fuel, neither Buyer nor Seller may make a marketing, regulatory, or retail claim that asserts that a procurement contract to which that entity was a party resulted, or will result, in greenhouse gas reductions related to the destruction of methane if the capture and destruction is required by Law. If the capture and destruction of the biomethane is not required by Law, neither Buyer nor Seller may make a marketing, regulatory, or retail claim that asserts that a procurement contract to which that entity was a party resulted, or will result, in greenhouse gas reductions related to the destruction of methane, unless the environmental attributes associated with the capture and destruction of the biomethane pursuant to that contract are transferred to Buyer and retired on behalf of the retail customers consuming the electricity associated with the use of that biomethane, or unless Seller's procurement contract with the source of biomethane prohibits the source of biomethane from separately marketing the environmental attributes associated with the capture and destruction of the biomethane sold pursuant to that contract, and such attributes have been retired.

(j) Resource Adequacy. During the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Project's Contract Capacity, including Capacity Attributes, from the Project for Buyer to use in meeting its Resource Adequacy or successor program requirements, as the CPUC, CAISO or other regional entity may prescribe. Seller understands that the CPUC is currently in the process of developing requirements for Resource Adequacy and these requirements and the implementation thereof have not been finalized. Seller agrees that it shall take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to enable Buyer to use all of the Contract Capacity, including Capacity Attributes, to be committed by Seller to Buyer pursuant to this Agreement for the Resource Adequacy requirements of Buyer, including

for necessary deliverability Network Upgrades. Seller agrees that the Project is subject to the terms of the Availability Standards. ***[For Projects located outside of the CAISO, insert:*** Seller acknowledges that in order for the Project, as a generator that is dynamically transferred via a pseudo-tie to the CAISO, to qualify its Capacity Attributes as Resource Adequacy capacity, Seller will need, among other things, to maintain firm transmission service to the Delivery Point or equivalent arrangements, to maintain as effective the Pseudo-Tie Agreements, to establish a "Qualifying Capacity" (or its equivalent) periodically with the CPUC, to establish a "Net Qualifying Capacity" (or its equivalent) periodically with the CAISO, and to submit through Seller's Scheduling Coordinator a Resource Adequacy supply plan periodically to the CAISO. Seller acknowledges that (i) Buyer may allocate its share of import capability on the CAISO Grid to any CAISO import scheduling point on the CAISO Grid as it deems appropriate in its sole discretion, and (ii) Buyer may allocate its share, if any, of import capability at the CAISO import scheduling point corresponding to the Delivery Point to any resource at such CAISO import scheduling point as it deems appropriate in its sole discretion, even if, in either case, Buyer's allocation of such import capability, if any, to the CAISO import scheduling point corresponding to the Delivery Point or to the Project may not be sufficient for the Capacity Attributes from the Project to be accepted and approved by the CPUC and the CAISO as qualifying for the determination of, and as satisfying Buyer's requirement for demonstrating its procurement of, Resource Adequacy capacity. If there are determined to be deliverability Network Upgrade costs on the CAISO Grid as an affected system of the Native Balancing Authority as a result of this Project, Buyer can request that Seller elect to fund or elect not to fund all deliverability Network Upgrades. If Seller elects to fund any such deliverability Network Upgrades after Buyer's request that Seller not fund such deliverability Network Upgrades, Buyer shall have the right to declare a termination, and Seller shall owe Buyer a Termination Payment. If Buyer requests that Seller fund certain deliverability Network Upgrades, but Seller does not fund such deliverability Network Upgrades, Buyer shall have the right to declare a termination, and Seller shall owe Buyer a Termination Payment. If the Seller is required to provide Resource Adequacy hereunder, Seller agrees that the Project is subject to the terms of the Availability Standards.***]***

(k) WREGIS. Prior to the initial delivery of Energy to Buyer, Seller shall register the Project in WREGIS, execute a CAISO Qualified Reporting Entity Service Agreement to allow CAISO, on the Seller's behalf, to upload generation information directly into WREGIS, and take all other actions necessary to ensure that the Green Attributes produced from the Project in an amount equal to the amount of Delivered Energy are issued and tracked for purposes of satisfying the requirements of the California Renewable Portfolio Standard and transferred to Buyer, including

payment of all fees required to register the facility in WREGIS, issue WREGIS certificates, and transfer such certificates to Buyer. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under the Agreement.

(l) Prevailing Wage. To the extent applicable, Seller shall comply with the prevailing wage requirements of California Public Utilities Code Section 399.13, subdivision (h).

3.2 Transmission.

(a) Seller's Transmission Service Obligations. During the Delivery Term, Seller shall arrange and be responsible for transmission service for delivery of the Product to and at the Delivery Point and bear all risks and costs associated with such transmission service, including, but not limited to, all Transmission Provider costs and charges, electric transmission losses, and any transmission outages or curtailment, except as provided otherwise in this Agreement in respect of Dispatch Down Periods. ***[For Projects located outside of CAISO:*** Seller shall obtain and maintain during the Delivery Term firm transmission service to deliver the Product from the Site to the Delivery Point from all intermediary Transmission Providers between the Site and the Delivery Point. At Buyer's request, Seller shall provide to Buyer a copy of all firm transmission service agreements and any amendments thereto.***]*** Seller shall fulfill all contractual, metering and applicable interconnection requirements, including those set forth in ***[For Projects located outside of CAISO:*** the Native Balancing Authority's applicable tariffs,***]*** Participating Transmission Owner's applicable tariffs, the CAISO Tariff and implementing CAISO standards and requirements, including, but not limited to, executing applicable interconnection agreements, Participating Generator Agreement and Meter Service Agreement ***[For Projects located outside of CAISO:*** (or equivalent arrangements (such as a Pseudo-Participating Generator Agreement) for projects located outside the CAISO whose output is dynamically transferred via a pseudo-tie to the CAISO)***]*** so as to be able to deliver Energy to the CAISO Grid. ***[For Project located within the CAISO:*** Seller shall arrange for any interconnection agreement with the CAISO (or the Participating Transmission Owner, for distribution level interconnections).***]*** ***[For Projects located outside of CAISO:*** Seller shall arrange for and maintain, or cause to be maintained, during the Delivery Term appropriate interconnection agreements with the Native Balancing Authority and appropriate Pseudo Tie Agreements among the parties thereto that permit and facilitate the dynamic transfer of the output of the Project via a pseudo-tie from the Native Balancing Authority to the CAISO.] Any and such interconnection agreement is separate and not a part of this Agreement.

(b) Buyer's Transmission Service Obligations. During the Delivery Term, Buyer shall arrange and be responsible for transmission service for delivery of the Product from the Delivery Point and bear all risks and costs associated with such transmission service, including, but not limited to, all Transmission Provider costs and charges, electric transmission losses, and any transmission outages or curtailment, except as provided otherwise in this Agreement in respect of Dispatch Down Periods.

(c) Congestion Charges. Seller shall be responsible for all costs of congestion for transmission of the Product up to and at the Delivery Point. Buyer shall be responsible for all costs of congestion for transmission of the Product from the Delivery Point. To the extent that Seller is reimbursed for or receives any refunds, credits, or benefits from the CAISO for congestion charges or losses in respect of transmission of the Product from the Delivery Point, whether due to differences between the locational marginal pricing at the Delivery Point and Buyer's load aggregation point or any other point downstream of the Delivery Point, congestion revenue rights associated with any transmission path downstream of the Delivery Point, or any other hedging instruments associated with the transmission of the Product from the Delivery Point (collectively, any such refunds, credits or benefits are referred to as "Reductions"), then, at Buyer's option, either (i) Seller shall transfer any such Reductions and their related rights to Buyer; or (ii) Buyer shall reduce payments due to Seller under this Agreement in amounts equal to the Reductions and Seller shall retain the Reductions.

3.3 Scheduling.

(a) ***[For As-Available intermittent Product only:*** VER Forecasting Program Requirements. Seller shall cause the Project to become a Participating Intermittent Resource including executing all necessary documents to become a Participating Intermittent Resource. Seller shall be responsible for all CAISO forecasting fees and related charges associated with the Project becoming a Participating Intermittent Resource and participating in the VER Forecasting Program. Seller and Buyer shall comply with the VER Forecasting Program, and all additional protocols issued by the CAISO relating to Participating Intermittent Resources, including the VER Forecasting Program, for the Delivery Term. Seller shall provide Buyer with a copy of the notice from the CAISO certifying the Project as a Participating Intermittent Resource prior to the Commercial Operation Date. In the event that the VER Forecasting Program or the CAISO Tariff and/or any protocols relating thereto are changed, amended, modified replaced or terminated, Seller and Buyer agree to comply with such revisions and, to the extent practical, to implement such revisions in a manner that maintains the relative economic positions of the Parties as of the date of this Agreement.]

(b) Scheduling Coordinator.

[When Seller is SC for the Project, include the following two paragraphs:

(i) Seller as Scheduling Coordinator for the Project. During the Delivery Term, Seller shall be its own Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with its Transmission Provider to Schedule and deliver the Product to the Delivery Point and Buyer shall be its own Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with its Transmission Provider to Schedule and receive the Product at the Delivery Point. Throughout the Delivery Term, Buyer and Seller shall submit inter-SC trades for scheduling all Product from the Project at the Delivery Point (including Energy, Integrated Forward Market Load Uplift Obligations in respect of self-scheduled Energy, and other Product from time to time contemplated under the CAISO Tariff to be subject to inter-SC trades), based on a final Schedule developed in compliance with this Agreement. During the Delivery Term, each Party or each Party's SC shall conduct all Scheduling in accordance with the operating procedures developed by the Parties pursuant to Section 3.10 and in full compliance with the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, or real time basis, as determined by Buyer. ***[For As-Available intermittent Product only:*** Whenever the VER Forecasting Program is available, Seller shall submit Schedules and any updates to such Schedules to the CAISO based on the most current forecast of Delivered Energy consistent with the VER Forecasting Program.**]** In all cases, ***[For all Products other than Dispatchable:*** consistent with its Economic Dispatch Down curtailment rights,**]** Buyer may direct the Scheduling Coordinator to submit, and Seller shall cause the Scheduling Coordinator to submit in accordance with such Buyer's directions, a self-schedule or an economic bid in the applicable CAISO market in order to Schedule the Product with the CAISO. It is the intent of the Parties that neither Party be subject to a double payment or a double charge for Product from the Project through this Agreement and CAISO settlement process and that the more detailed Scheduling and operating procedures developed pursuant to Section 3.10 complement the CAISO settlement process to produce a final economic result between them that is consistent with the fundamental transaction of this Agreement.

(ii) CAISO Costs and Revenues. Seller shall be responsible for CAISO costs (including penalties and other charges) and shall be entitled to all CAISO revenues (including credits and other payments) as the Scheduling Coordinator for the Project, in each case, associated

with Imbalance Energy, including all CAISO charges or penalties incurred as a consequence of the Project not being available, the Seller not notifying the CAISO and Buyer of outages in a timely manner (in accordance with the CAISO Tariff and as set forth in Section 3.7), any other failure by Seller to abide by the CAISO Tariff, and any other deviations between Delivered Energy and Scheduled Energy that are attributable to Seller, the Project, or any event, circumstance, act, or incident occurring prior to or at the Delivery Point, including without limitation uninstructed deviation penalties. 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 or other CAISO charges associated with the Project not providing sufficient Resource Adequacy capacity are the responsibility of the Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, the cost of the sanctions or penalties shall be the Seller's responsibility. Buyer shall be entitled to all credits, payments, or revenues from the CAISO in respect of the Product Scheduled or delivered from the Project, including revenues associated with CAISO dispatches, inter-SC trade credits, and bid cost recovery.

[When SDG&E is SC for the Project, include the following seven paragraphs:

(iii) Buyer as Scheduling Coordinator for the Project. [During the Delivery Term] [Upon initial synchronization of the Project to the CAISO Grid], Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Project for both the delivery and the receipt of the Product at the Delivery Point. At least thirty (30) days prior to the [Commercial Operation Date of the Project] [initial synchronization of the Project to the CAISO Grid], 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 beginning of the Delivery Term] [initial synchronization of the Project to the CAISO Grid]. [During the Delivery Term] [On and after initial synchronization of the Project to the CAISO Grid], 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 (as Seller's SC) shall submit Schedules to the CAISO based on the final Schedule developed in accordance with this Agreement, the operating procedures developed by the Parties pursuant to Section 3.10, and

the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, or real time basis, as determined by Buyer. ***[For As-Available intermittent Product only:*** Buyer (as Seller's SC) shall submit Schedules and any updates to such Schedules to the CAISO based on the most current forecast of Delivered Energy consistent with the VER Forecasting Program whenever the VER Forecasting Program is available, and consistent with Buyers' best estimate based on the information reasonably available to Buyer including Buyer's forecast whenever the VER Forecasting Program is not available.] In all cases, ***[For all Products other than Dispatchable:*** consistent with its Economic Dispatch Down curtailment rights,**]** Buyer (as the Scheduling Coordinator) may, or may direct the third party Scheduling Coordinator to, submit a self-schedule or an economic bid in the applicable CAISO market in order to Schedule the Product with the CAISO.

(iv) Notices. Buyer (as Seller's SC) shall provide Seller with access to a web based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Project's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. In accordance with Section 3.7 and this Section 3.2, Seller will cooperate with Buyer to provide such notices and updates. If the web based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, or facsimile transmission to the personnel designated to receive such information.

(v) CAISO Costs and Revenues. Except as otherwise set forth below, ***[For all Products other than Dispatchable Product:*** in Section 3.4(c)(ii),***]*** and elsewhere in this Agreement, Buyer (as Seller's SC) shall be responsible for CAISO costs (including penalties, ***[For As-Available Product VER Forecasting Program Participants only:*** Negative Imbalance Energy costs or revenues,] and other charges) and shall be entitled to all CAISO revenues (including credits, ***[For As-Available Product VER Forecasting Program Participants only:*** Positive Imbalance Energy revenues or costs,] and other payments) as the Scheduling Coordinator for the Project, including revenues associated with CAISO dispatches, bid cost recovery, inter-SC trade credits, or other credits in respect of the Product Scheduled or delivered from the Project. ***[For As-Available Product VER Forecasting Program Participants only:*** Seller shall be responsible for all CAISO charges or penalties net of credits and payments (including without limitation all Imbalance Energy costs), in each case, resulting from the Seller not notifying the

CAISO and Buyer (as Seller's SC) of outages or other unavailability of Project capacity in a timely manner (in accordance with the CAISO Tariff and as set forth in Section 3.7) or any other failure by Seller to abide by the CAISO Tariff.***]*** ***[For all Products other than As-Available Product VER Forecasting Program Participants:*** Seller shall be responsible for all CAISO charges or penalties net of credits and payments, in each case, resulting from the Project not being available, the Seller not notifying the CAISO and Buyer (as Seller's SC) of outages in a timely manner (in accordance with the CAISO Tariff and as set forth in Section 3.7), any other failure by Seller to abide by the CAISO Tariff, and deviations between Delivered Energy and Scheduled Energy that are attributable to Seller, the Project, or any event, circumstance, act, or incident occurring prior to or at the Delivery Point, including without limitation uninstructed deviation penalties.**]** 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 or other CAISO charges associated with the Project not providing sufficient Resource Adequacy capacity are the responsibility of the Seller and for Seller's account. In addition, if during the Delivery Term, 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.

(vi) CAISO Settlements. Buyer (as Seller's SC) shall be responsible for all settlement functions with the CAISO related to the Project. Buyer shall render a separate invoice to Seller for any CAISO charges or penalties ("CAISO Charges Invoice") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after 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 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.

(vii) Dispute Costs. Buyer (as Seller's SC) may be required to dispute CAISO settlements in respect of the Project. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees, including reasonably allocated costs of in-house counsel of the Buyer) associated with its involvement with such CAISO disputes. In no event shall Buyer (or its third party designee, as Scheduling Coordinator) be liable to Seller for the actions, inactions, errors, or omissions of the CAISO or its agents in the performance of their scheduling functions and/or market operations.

(viii) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, 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 such expiration date.

(ix) Master File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master File and Resource Data Template (or successor data systems) for this Project consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.**]**

(c) Annual Delivery Schedules. No later than forty-five (45) days before (A) the first day of the first Contract Year of the Delivery Term and (B) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month's average-day expected Delivered Energy, by hour, for the following calendar year.

(d) Monthly Delivery Schedules. Ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide a non-binding forecast of each day's average expected Delivered Energy, by hour, for the following month ("Monthly Delivery Forecast").

(e) Daily Delivery Schedules. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall ***[When Seller is SC for the Project:*** cause its Scheduling Coordinator to**]** provide Buyer with a ***[For As-Available intermittent Product only:*** non-binding forecast of the Project's available capacity (or if the VER Forecasting Program is not available for any reason, the expected Delivered Energy)] ***[For all Products other than As-Available intermittent:*** binding forecast of the expected Delivered Energy] for each hour of the immediately succeeding day ("Day-Ahead Forecast") ***[For all Products other than As-Available intermittent: [When Seller is SC for the Project:*** concurrent with delivery to the CAISO**]** ***[When SDGE***

is SC for the Project: and Buyer shall submit a Schedule to the CAISO consistent with such Day-Ahead Forecast**]**, it being understood that, ***[For all Products other than Dispatchable:*** consistent with its Economic Dispatch Down curtailment rights,**]** Buyer (as the Scheduling Coordinator) may, or may direct the third party Scheduling Coordinator to, submit a self-schedule or an economic bid in the applicable CAISO market in order to Schedule the Product with the CAISO]. A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include Schedules for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of ***[For As-Available intermittent Product only:*** the Project's available capacity (or if the VER Forecasting Program is not available for any reason, the expected Delivered Energy)] ***[For all Products other than As-Available intermittent:*** the expected Delivered Energy]. Seller may not change such Schedule past the deadlines provided in this section except in the event of a Forced Outage or Schedule change imposed by Buyer or the CAISO, in which case Seller shall promptly provide Buyer with a copy of any and all updates to such Schedule indicating changes from the then-current Schedule. These notices and changes to the Schedules shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein, then for such unscheduled delivery period only Buyer shall rely on the delivery Schedule provided in the Monthly Delivery Forecast or Buyer's best estimate based on information reasonably available to Buyer and Seller shall be liable for Scheduling and delivery based on such Monthly Delivery Forecast or Buyer's best estimate.

(f) Real Time Delivery Schedules. Notwithstanding anything to the contrary herein, in the event Seller makes a change to its Schedule on the actual date of delivery for any reason including Forced Outages (other than a scheduling change imposed by Buyer or CAISO) which results in a change to its deliveries (whether in part or in whole), Seller shall notify Buyer immediately by calling Buyer's on-duty Scheduling Coordinator. Seller shall notify Buyer and the CAISO of Forced Outages in accordance with Section 3.7. Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Project during or after the end of the outage.

(g) ***[For Dispatchable Product Only:*** Availability Notices. During the Delivery Term, 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 capacity that the Project is expected to have available 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 developed by the Parties under Section 3.10 by (in order of preference) electronic mail, facsimile transmission or, telephonically to Buyer personnel designated to receive such communications.]

(h) ***[For Dispatchable Product Only:*** Dispatch Notices. Buyer or the CAISO will have the right to dispatch the Project, seven days per week and 24 hours per day (including holidays), by providing Dispatch Notices and updated Dispatch Notices to Seller electronically, subject to the requirements and limitations set forth in this Agreement, including the system requirements under Section 3.4(b) and the Project operating restrictions set forth in Exhibit H. Each Dispatch Notice will be effective unless and until Buyer modifies such Dispatch Notice by providing Seller with an updated Dispatch Notice. 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 the timelines as specified in the CAISO Tariff.]

3.4 Dispatch Notices.

(a) General. Seller shall reduce delivery amounts as directed by the CAISO, the Participating Transmission Owner, Buyer, or a Transmission Provider during any Dispatch Down Period.

(b) System Requirements. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary (i) for Seller to respond and follow instructions, including an electronic signal conveying real time instructions, to operate the Project as directed by the Buyer and/or the CAISO, including to implement a System Dispatch Down or an Economic Dispatch Down in accordance with the then-current methodology used to transmit such instructions as it may change from time to time, and (ii) for Buyer and/or the CAISO to control the quantity of Product generated by the Project in order to implement a System Dispatch Down or an Economic Dispatch Down, in each case, in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. As of the Execution Date, the systems required to comply with clause (i) include at a minimum the CAISO's Automatic Dispatch System (as described in the CAISO website) and the systems required to comply with clause (ii) include at a minimum the CAISO'S Application Programming Interfaces (as described in the CAISO website). If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take all commercially reasonable steps necessary to become compliant as soon as possible. Seller shall be liable

pursuant to Section ***[For all Products other than Dispatchable Product:*** 3.4(c)(ii)***] [For Dispatchable Product:*** 3.3(b)[(ii)/(iii)]***]*** for failure to comply with an order directing a Dispatch Down Period, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, an order directing a Dispatch Down Period via such systems and facilities shall have the same force and effect on Seller as any other form of communication. If an electronic submittal is not possible, Buyer and/or the CAISO may provide 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 and Seller shall maintain communications systems necessary to permit such transmittal of Dispatch Notices. The Parties shall describe with more specificity the Economic Dispatch Down process (including the automated communication process for Dispatch Notices) in the operating procedures developed by the Parties pursuant to Section 3.10.

(c) ***[For all Products other than Dispatchable Product:*** Economic Dispatch Down. Each of Buyer and the CAISO has the right to order Seller to curtail deliveries of Energy from the Project to the Delivery Point for Economic Dispatch Down purposes, seven days per week and 24 hours per day (including holidays), by providing Dispatch Notices and updated Dispatch Notices to Seller electronically via the communications systems described in Section 3.4(b), subject to the requirements and limitations set forth in this Agreement, including the Project operating restrictions set forth in Exhibit H. Each Dispatch Notice will be effective unless and until Buyer (or the CAISO) modifies such Dispatch Notice by providing Seller with an updated Dispatch Notice. 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 the timelines as specified in the CAISO Tariff. Seller agrees to adjust the Project's Delivered Energy as set forth in a Dispatch Notice that meets the requirements of Economic Dispatch Down.]

(i) [Buyer Payments. Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which any such Economic Dispatch Down occurred an amount equal to the positive difference, if any, of (Y) the product of the Energy Price, times, minus (Z) the product of the positive value of the Sales Price, if received, times the amount of Deemed Bundled Green Energy resulting from such Economic Dispatch Down.

(ii) [Failure to Comply. If Seller fails to comply with a Dispatch Notice that is in compliance with this Agreement, then, for the deviation between the Delivered Energy and the amount set forth in the Dispatch Notice, Seller shall pay Buyer an amount equal to the sum

of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for any Delivered Energy in excess of the amount set forth in the Dispatch Notice (for example, the Energy Price adjusted by TOD Factors), and (B) is all Imbalance Energy costs or charges (excluding any revenues or credits), and (C) is any penalties or other charges resulting from Seller's failure to comply with the Dispatch Notice.]

3.5 Standards of Care.

(a) General Operation. Seller shall comply with all applicable requirements of Law, the CAISO, NERC and WECC relating to the Project (including those related to safety, construction, ownership and/or operation of the Project).

(b) CAISO and WECC Standards. Each Party shall perform all generation, scheduling and transmission services in compliance with all applicable (i) operating policies, criteria, rules, guidelines, tariffs and protocols of the CAISO, (ii) WECC scheduling practices and (iii) Good Industry Practices.

(c) Reliability Standard. Seller agrees to abide by all (i) NERC, WECC and CAISO reliability requirements, including all such reliability requirements for generator owners and generator operators, and, if applicable, CPUC General Order No.167, "Enforcement of Maintenance and Operation Standards for Electrical Generating Facilities," and (ii) all applicable requirements regarding interconnection of the Project, including the requirements of the interconnected Transmission Provider.

3.6 Metering.

(a) CAISO Revenue Meter. All output from the Project per the terms of this Agreement must be delivered through a single CAISO revenue meter and that meter must be dedicated exclusively to the Project described herein. All Product purchased under this Agreement must be measured by the Project's CAISO revenue meter to be eligible for payment under this Agreement. Seller shall bear all costs relating to all metering equipment reasonably necessary to accommodate the Project. In addition, Seller hereby agrees to provide all meter data to Buyer in a form acceptable to Buyer, and consents to Buyer obtaining from the CAISO the CAISO meter data applicable to the Project and all inspection, testing and calibration data and reports. Seller shall grant Buyer the right to retrieve the meter reads from the CAISO meter reporting website and/or directly from the CAISO meter(s) at the Project site. If the CAISO makes any adjustment to any CAISO meter data for a given time period, Seller agrees that it shall submit revised monthly invoices, pursuant to Section 6.2, covering the entire applicable time period in order to conform fully

such adjustments to the meter data. Seller shall submit any such revised invoice no later than thirty (30) days from the date on which the CAISO provides to Seller such binding adjustment to the meter data.

(i) 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 Good Industry Practice and the CAISO 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.

(ii) 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 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 was determined pursuant to a test required by Buyer, Seller shall bear the expense of any such test.

(iii) Delivered 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 is increased or decreased, the revised Delivered Energy 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, they shall be recalculated using the revised amount of Delivered Energy. 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 6.2.

(b) Real Time Telemetry. Seller shall install, activate and maintain metering, communication and telemetry equipment for the Project in a centralized system to which Buyer shall have real time access. Seller shall link its system to Buyer via an approved Buyer communication network, utilizing existing industry standard network protocol, as

reasonably approved by Buyer. Seller shall correct any problems with such equipment as soon as practicable.

(c) ***[The following section is for As-Available Intermittent Products only]*** Meteorological Station. Seller, at its own expense, shall install and maintain such stand-alone meteorological stations at the Project as may be required under the VER Forecasting Program and the CAISO Tariff to monitor and report weather data to both the CAISO and Buyer's weather station data collection system. Each station shall be equipped with instruments and equipment that meet the specifications of the VER Forecasting Program and shall measure, collect, record, format, and communicate the data required under the VER Forecasting Program. Seller shall submit to Buyer for review and approval, which shall not be unreasonably withheld, its technical specifications for the meteorological station along with a site plan showing the location of the station within the Project. Seller shall correct any problems with such equipment as soon as practicable.

3.7 Outage Notification.

(a) Planned Outages. Seller shall schedule Planned Outages for the Project in accordance with Good Industry Practices and with the prior written consent of Buyer, which consent may not be unreasonably withheld or conditioned. The Parties acknowledge that in all circumstances, Good Industry Practices shall dictate when Planned Outages should occur. Seller shall notify Buyer of its proposed Planned Outage schedule for the Project for the following calendar year by submitting a written Planned Outage schedule no later than October 1st of each year during the Delivery Term. The Planned Outage schedule is subject to Buyer's approval, which approval may not be unreasonably withheld or conditioned. Buyer shall promptly respond with its approval or with reasonable modifications to the Planned Outage schedule and Seller shall use its best efforts in accordance with Good Industry Practices to accommodate Buyer's requested modifications. Notwithstanding the submission of the Planned Outage schedule described above, Seller shall also submit a completed Outage Notification Form to Buyer no later than fourteen (14) days prior to each Planned Outage and all appropriate outage information or requests to the CAISO in accordance with the CAISO Tariff. Seller shall contact Buyer with any requested changes to the Planned Outage schedule if Seller believes the Project must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Good Industry Practices. Seller shall not change its Planned Outage schedule without Buyer's approval, not to be unreasonably withheld or conditioned. Seller shall use its best efforts in accordance with Good Industry Practices not to schedule Planned Outages during the months of July, August, September and October. At Buyer's request, Seller shall use commercially

reasonable efforts to reschedule Planned Outage so that it may deliver Product during CAISO declared or threatened emergency periods. Seller shall not substitute Energy from any other source for the output of the Project during a Planned Outage.

(b) Forced Outages. Within ***[When Seller is the SC for the Project:*** Within two hours of any Forced Outage,**]** ***[When SDG&E is the SC for the Project:*** Within one-half of the notification time prescribed under the CAISO Tariff for Forced Outages,**]** Seller shall submit a completed Outage Notification Form to the Buyer in accordance with the instructions shown on the form and shall submit outage information to the CAISO in accordance with the CAISO Tariff ***[When SDG&E is the SC for the Project:*** and Section 3.3(b)(ii) above**]**. Seller shall not substitute Energy from any other source for the output of the Project during a Forced Outage.

(c) Coordination with CAISO. Seller shall be responsible ***[When SDG&E is SC for the Project:*** in accordance with Section 3.3(b)(ii)**]** for all outage coordination communications with the CAISO. Buyer shall cooperate with Seller in arranging and coordinating all Project outages with the CAISO.

3.8 Operations Logs and Access Rights.

(a) Operations Logs. Seller shall maintain a complete and accurate log of all material operations and maintenance information on a daily basis. Such log shall include, but not be limited to, information on power production, fuel consumption, efficiency, availability, maintenance performed, outages, results of inspections, manufacturer recommended services, replacements, electrical characteristics of the generators, control settings or adjustments of equipment and protective devices. Seller shall maintain this information for at least two (2) years and shall provide this information electronically to Buyer within one day of Buyer's request.

(b) Access Rights. Buyer, its authorized agents, employees and inspectors shall have the right of ingress to and egress from the Project during normal business hours upon reasonable advance Notice and for any purposes reasonably connected with this Agreement.

3.9 New Generation Facility.

(a) Project Development. Seller, at no cost to Buyer, shall:

(i) Design and construct the Project.

(ii) Perform all studies, pay all fees, obtain all necessary approvals and execute all necessary agreements with the CAISO and the

Participating Transmission Owner for the Electrical Interconnection Upgrades to Schedule and deliver the Product from the Project [***For Projects Providing Resource Adequacy:*** under "Full Capacity Deliverability Status" (as defined in the CAISO Tariff)]. Following satisfaction or waiver of the Conditions Precedent set forth in Section 2.3(b), Seller shall not request from the CAISO or the Participating Transmission Owner any changes to its plan of interconnection that are inconsistent with the plan of interconnection that was evaluated in connection with the satisfaction or waiver of the Conditions Precedent in Section 2.3(b) without Buyer's prior written consent.

(iii) Acquire all Governmental Approvals and other approvals necessary for the construction, operation, and maintenance of the Project.

(iv) Complete all environmental impact studies necessary for the construction, operation, and maintenance of the Project, including all environmental analysis required under the California Environmental Quality Act for the Project and related interconnection facilities.

(v) At Buyer's request, provide to Buyer Seller's electrical specifications and design drawings pertaining to the Project.

(vi) Within fifteen (15) days after the close of each calendar quarter following the Execution Date until the Commercial Operation Date, provide to Buyer a Quarterly Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The Quarterly Progress Report shall identify the Milestones and indicate whether Seller has met or is on target to meet such Milestones.

(vii) Provide access to Buyer, its authorized agents, employees and inspectors for purpose of inspecting the Project's construction site or on-site Seller data and information pertaining to the Project during normal business hours upon reasonable advance Notice.

(viii) At Buyer's request, provide information to Buyer relating to Seller's or Seller's contractor's use, during Project construction, of "Women-Owned Businesses" or "Minority-Owned Businesses" or "Disabled Veteran Business Enterprises" as defined in CPUC General Order 156, and the number of new employees hired by Seller or Seller's contractors and the number of women, minority, and disabled veterans trained or hired by Seller or Seller's contractor's as contemplated under Cal. Public Utilities Code

§910(a)(8), as each such group of entities and individuals may be amended from time to time or further defined, supplemented, or superseded by applicable Law or replaced with similar designations or certifications. [*Include other covenants related to "women-owned business" or "minority-owned business" as may be applicable to the Seller's RFO bid.*]

(b) Construction Milestones.

(i) The Parties agree time is of the essence in regards to this Agreement. As such, the Parties also agree certain milestones for the construction of the Project as set forth in the Milestone schedule attached hereto as Exhibit B ("Milestones") must be achieved in a timely fashion or Buyer will suffer damages.

(ii) Within seven (7) days after completion of each Milestone, Seller shall provide Buyer with Notice along with accompanying documentation (including reasonably redacted copies of applicable agreements, Governmental Approvals, and certificates) to reasonably demonstrate the achievement of such Milestone. If Seller misses the deadline date for three (3) or more Milestones or misses the deadline date for any one Milestone by more than ninety (90) days, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan ("Remedial Action Plan") that describes in detail a reasonable course of action and plan (including accelerating the work, for example, by using additional shifts, overtime, additional crews or resequencing of the work, as applicable) to achieve the missed Milestones and all subsequent Milestones no later than the Guaranteed Commercial Operation Date (as it may be extended under Section 3.9(c)(i)-(ii)); provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to meet any subsequent Milestones and the Guaranteed Commercial Operation Date.

(c) Daily Delay Damages.

(i) COD. Seller shall cause the Project to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date; provided, however, that the Commercial Operation Date shall not occur more than one hundred eighty (180) days prior to the Guaranteed Commercial Operation Date***. [NOTE to bidders: To be changed to 30 days for 2021 online date bids.]*** Seller may elect to extend the Guaranteed Commercial Operation Date for no more than a total of [_____] days (the "Project Cure Period") by providing Buyer with Notice of its election to extend the Guaranteed Commercial Operation Date by no later than 5:00

p.m. on the Business Day prior to the Guaranteed Commercial Operation Date along with Seller's estimate of the duration of the extension and its payment of Daily Delay Damages for each day or portion of a day that the Guaranteed Commercial Operation Date is extended. Seller may further extend the Guaranteed Commercial Operation Date beyond the already extended Guaranteed Commercial Operation Date subject to the same terms applicable to the original extension; provided, however, that the total of all extensions under this clause (i) shall not exceed the Project Cure Period. The Daily Delay Damages payments are in addition to, and not a part of, the Construction Period Security. Seller will be entitled to a refund (without interest) of any estimated Daily Delay Damages payments paid by Seller that exceed the amount required to cover the number of days or partial days by which the Commercial Operation Date occurred after the original Guaranteed Commercial Operation Date (where the original Guaranteed Commercial Operation Date excludes any extensions under this Section 3.9(c)(i) but includes any extensions under Section 3.9(c)(ii)). In addition, Seller shall submit a Remedial Action Plan within ten (10) days after each extension of the Guaranteed Commercial Operation Date if the Project has not then achieved the Commercial Operation Date. Each Party agrees and acknowledges that (a) the actual damages that Buyer would incur due to a delay in achieving the Commercial Operation Date on or before the original Guaranteed Commercial Operation Date (where the original Guaranteed Commercial Operation Date excludes any extensions under this Section 3.9(c)(i) but includes any extensions under Section 3.9(c)(ii)) 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 Commercial Operation Date for the length of the extensions paid for in advance by Seller up to the Project Cure Period 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 Commercial Operation Date altogether.

(ii) Extensions. The Guaranteed Commercial Operation Date and the deadline dates for Milestone numbers [_____] as set forth in Exhibit B shall be extended on a day for day basis for up to ninety (90) ***[NOTE: to be changed to 30 days for 2021 online bids.]*** calendar days in the aggregate ("Force Majeure Extension Period") without imposition of any Daily Delay Damages to the extent Seller is actually and demonstrably delayed in its critical path to achieving the Commercial Operation Date by the Guaranteed Commercial Operation Date as a result of Force Majeure; provided, however,

any such delay in excess of this period shall be subject to Daily Delay Damages pursuant to Section 3.9(c)(i).

3.10 Operating Procedures. No later than forty-five (45) days before the Commercial Operation Date, and from time to time as reasonably determined necessary by the Parties, the Parties shall meet to address how each Party will perform its respective obligations under this Agreement, including, but not limited to: (1) the method of day-to-day communications; (2) key personnel lists for each Party; (3) procedures for Forced Outage and Planned Outage reporting; (4) procedures for delivery forecasting; (5) procedures for record keeping; (6) Scheduling procedures; and (7) invoicing and payment procedures; provided, that the failure to agree on these operating procedures will not relieve the Parties of their respective obligations under this Agreement, and any failure to agree shall be resolved in accordance with the dispute resolution procedures in Article 12.

ARTICLE 4: COMPENSATION; MONTHLY PAYMENTS

4.1 ***[For Dispatchable Product Only:*** Capacity Payment.

(a) Capacity Price.

Contract Year	Capacity Price ($/KW)
1	

(b) Monthly Capacity Payment. For each month, Buyer shall pay Seller for the Product the amount calculated as follows ("Monthly Capacity Payment"):

MCP = CC x CP x SF x AAF

Where:

MCP is the Monthly Capacity Payment expressed in Dollars for such month of the Delivery Term.

CC is the Contract Capacity, expressed in kW, rounded to the nearest 100 kW.

CP is the Capacity Price expressed in Dollars per kW-year, for the applicable month.

SF is the Monthly Shaping Factor for the applicable month, 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

AAF is the Availability Adjustment Factor for each month, expressed as a three-place decimal and determined as follows:

(a) If the Equivalent Availability Factor ("EAF") for the month is less than or equal to 0.980, then the AAF equals EAF / 0.98.

(b) If the EAF for the month is greater than 0.980 but less than 0.990, then the AAF equals 1.0.

(c) If the EAF for the month is greater than or equal to 0.990, then the AAF equals EAF / 0.99.

EAF is the Equivalent Availability Factor for each month determined as follows:

EAF = (PH - (EDH - EEDH)) / PH

Where:

PH is the number of period hours;

EDH is the number of equivalent derate hours calculated as the sum, for each derate, of the product of the number of hours of full or partial derate hours times the size of the reduction from the Contract Capacity divided by the Contract Capacity for the month. For the purposes of this calculation, a derate includes all outages for any reason, including without limitation, Forced Outages, Force

Majeure events, Dispatch Down Periods, Planned Outages, Buyer's failure to perform, and other times when any portion of the Contract Capacity is not available and when the Delivered Energy of the Project is less than the amount of Energy dispatched by Buyer; and

EEDH is the number of equivalent excused derate hours solely due to either Dispatch Down Periods or Buyer's failure to perform (and for no other reason), calculated as the sum, for each excused derate, of the product of the number of hours of full or partial derate hours times the size of the reduction from the Contract Capacity, divided by the Contract Capacity for the month.

4.2 Energy Payment. ***[NOTE: for this IRP RFO, contract price shall be adjusted based on NQC provided. Formula for such adjustments will be provided based on bid.]***

(a) Energy Price. The price for the Bundled Green Energy that is delivered to Buyer in each Contract Year shall be as follows ("Energy Price"):

Contract Year	Energy Price ($/MWh)

provided, however, that:

(i) if Seller delivers Bundled Green Energy in the aggregate for any CAISO settlement interval (not to exceed one hour) in excess of the product of the Contract Capacity times the length of such settlement interval, expressed in hours, then the Energy Price for such excess Bundled Green Energy in such settlement interval shall be reduced to zero dollars ($0), and if the real time Locational Marginal Price for the Delivery Point during such settlement interval is less than zero dollars ($0), Seller shall pay to Buyer an amount equal to the absolute value of such negative Locational Marginal Price times such excess Bundled Green Energy;

(ii) if Seller delivers Bundled Green Energy in the aggregate for any Contract Year during the Delivery Term in excess of one hundred fifteen percent (110%) of the annual Contract Quantity, then the Energy Price for such excess Bundled Green Energy for the remainder of that Contract Year shall be reduced to zero dollars ($0), and for each CAISO settlement interval during that time in which the real time Locational Marginal Price is less than zero dollars ($0), Seller shall pay to Buyer an amount equal to the absolute value of such negative Locational Marginal Price times

the Bundled Green Energy delivered during such settlement interval;

(b) Monthly Energy Payment. For each month, Buyer shall pay Seller for the Product an amount equal to the sum for each hour in the month of the product of the Energy Price times the Bundled Green Energy in each hour ("Monthly Energy Payment").

Monthly Energy Payment = ∑ Energy Price x Bundled Green Energy

For any period where the quantity of Bundled Green Energy is less than the quantity of Delivered Energy and the quantity of Bundled Green Energy cannot practicably be determined for each settlement interval during such period (for example, where WREGIS does not specify in which settlement periods Renewable Energy Credits were delivered or not delivered), then the quantity of Bundled Green Energy for any settlement interval during the entire period shall be equal to the product of the quantity of Delivered Energy for a settlement interval multiplied by the quotient of the aggregate quantity of Green Attributes that are delivered to Buyer during such entire period divided by the aggregate quantity of Delivered Energy that is delivered to Buyer during such entire period.

4.3 Imbalance Energy. Seller shall use commercially reasonable efforts to deliver Energy in accordance with the Scheduled Energy. Buyer and Seller recognize that from time to time the amount of Delivered Energy will deviate from the amount of Scheduled Energy. When Delivered Energy minus Scheduled Energy is a positive amount, it shall be considered "Positive Imbalance Energy;" when Delivered Energy minus Scheduled Energy is a negative amount, the absolute (i.e., positive) value of that amount shall be considered the "Negative Imbalance Energy." ***[When Seller is SC for the Project or when Buyer is SC but Project is not in the VER Forecasting Program:*** Seller shall be responsible for settlement of Imbalance Energy with the CAISO and all fees, liabilities, assessments, or similar charges assessed by the CAISO in connection with Imbalance Energy.] Buyer and Seller shall cooperate to minimize charges and imbalances associated with Imbalance Energy to the extent possible. Seller shall promptly notify Buyer as soon as possible of any material imbalance that is occurring or has occurred. ***[When SDG&E is SC for the Project and Project is in the VER Forecasting Program:*** Buyer shall receive all Green Attributes for the Positive Imbalance Energy in all settlement intervals.**]**

[When Seller is SC for the Project or when Buyer is SC but Project is not in the VER Forecasting Program, include the following two paragraphs:

(a) Positive Imbalance Energy (Over Deliveries). In the event that Delivered Energy for any CAISO settlement interval is equal to or greater than Scheduled Energy for such CAISO settlement interval, Buyer shall have no payment obligation in respect of the Positive Imbalance Energy. Buyer shall receive all Green Attributes for the Positive Imbalance Energy in such CAISO settlement interval regardless as to whether it was sold into the CAISO. Seller shall be entitled to all payments or credits from the CAISO to Seller's SC and Seller shall make all payments to the CAISO in respect of the Positive Imbalance Energy.

(b) Negative Imbalance Energy (Under Deliveries). In the event that Delivered Energy for any CAISO settlement interval is less than Scheduled Energy for such CAISO settlement interval, Buyer shall have no payment obligation in respect of the Negative Imbalance Energy. Seller shall make all payments to the CAISO and Seller shall be entitled to all payments or credits from the CAISO to Seller's SC in respect of the Negative Imbalance Energy required under the CAISO Tariff.]

4.4 Additional Compensation. To the extent not otherwise provided for in this Agreement, in the event that Seller is compensated by a third party for any Product produced by the Project, including, but not limited to, compensation for Resource Adequacy or Green Attributes, Seller shall remit all such compensation directly to Buyer; provided that for avoidance of doubt, nothing herein precludes Seller from retaining credits related to transmission upgrades funded by Seller.

4.5 Energy Sales Prior to Commercial Operation Date. For each month prior to the Commercial Operation Date, as compensation for the Product delivered to Buyer, (i) Buyer shall pay Seller for the Product an amount equal to the product of ***[SDG&E to insert REC value amount in $/MWh]*** times the total Bundled Green Energy delivered to Buyer in such month, and (ii) Seller shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, inter-SC trade credits, or other credits in respect of the Product Scheduled or delivered from the Project, and Seller shall be responsible for all CAISO costs (including penalties, Imbalance Energy costs, and other charges) including all CAISO charges or penalties, in each case, resulting from the Project not being available, the Seller not notifying the CAISO of outages in a timely manner, and any other failure by Seller to abide by the CAISO Tariff, including without limitation uninstructed deviation penalties. ***[When Buyer is SC for the Project, include the following:*** Each month, Buyer (as the SC for the Project) shall deliver an invoice to Seller including a statement of all such CAISO revenues and charges within thirty (30) days after the CAISO final settlement data is available to Buyer for such deliveries.]

ARTICLE 5: EVENTS OF DEFAULT; FORCE MAJEURE

5.1 Events of Default. An "Event of Default" shall mean,

(a) with respect to a Party that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within five (5) Business Days after Notice thereof;

(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, and such default is not remedied within thirty (30) days after Notice thereof;

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent

constituting a separate Event of Default, and except for such Party's obligations to Schedule, deliver, or receive the Product, the exclusive remedy for which is provided in Section 3.1(h)) and such failure is not remedied within thirty (30) days after Notice thereof;

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 13.2; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement Energy that was not generated by the Project ***[If the Project is located outside of the CAISO:*** other than Imbalance Energy from the Transmission Provider];

(ii) the failure by Seller to achieve the Commercial Operation Date no later than the Guaranteed Commercial Operation Date;

(iii) ***[For Baseload, Peaking, Dispatchable Product:*** the Contract Capacity at the Commercial Operation Date or at any other time pursuant to a Capacity Test is less than [_____] MW and such default is not remedied within thirty (30) days after Notice thereof;] ***[NOTE: for this IRP RFO, there will be an NQC minimum of 70% bid NQC, which must be maintained on average over any consecutive 12-month period.]***

(iv) ***[For Baseload, Peaking, As-Available Product:*** the failure by Seller to achieve the Guaranteed Energy Production requirement during any Performance Measurement Period as set forth in Section 3.1(e) of this Agreement] ***[For Dispatchable Product:*** the Default Availability Factor of the Project is less than [_____] percent for any rolling twelve (12) consecutive calendar month period];

(v) the failure by Seller to deliver a Remedial Action Plan that reasonably demonstrates in detail how Seller will achieve the Commercial Operation Date no later than the Guaranteed

Commercial Operation Date, if such failure is not remedied within ten (10) days after Notice;

(vi) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.3 or 8.4 of this Agreement;

(vii) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an 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:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or

(viii) 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:

(A) 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;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) 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;

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

(E) 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;

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

(G) Seller shall fail to renew or 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.

5.2 Remedies; Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("Non-Defaulting Party") shall have the right (a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("Early Termination Date") that terminates this Agreement and ends the Delivery Term effective as of the Early Termination Date, to accelerate all amounts owing between the Parties, and to collect liquidated damages calculated in accordance with Section 5.3 below ("Termination Payment"); (b) to withhold any payments due to the Defaulting Party under this Agreement; (c) to suspend performance; and (d) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement.

5.3 Termination Payment. The Termination Payment for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to the Non-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 5.1(a)(iv) [Bankruptcy], if the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Termination Payment shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages; provided, however, that any lost Capacity Attributes and Green Attributes shall be deemed direct damages covered by this Agreement. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement

transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction 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 a Terminated Transaction 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 a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

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

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 12.

5.6 Rights And Remedies Are Cumulative. Except where liquidated damages are provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 5 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

5.7 Mitigation. Any Non-Defaulting Party shall be obligated to mitigate its Costs, losses and damages resulting from any Event of Default of the other Party under this Agreement.

5.8 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 gives Notice and details of the Force Majeure to the other Party as detailed below, then, the Party impacted by Force Majeure shall be excused from the performance of its obligations to the extent impacted. Within forty-eight (48) hours of commencement of an event of Force Majeure, the non-performing Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of the commencement of an event of Force Majeure the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim. Seller shall not substitute Product from any other source for the output of the Project during an outage resulting from Force Majeure. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure. Buyer shall not be required to make any payments for any Product that Seller fails to Schedule, deliver or provide as a result of Force Majeure during the term of a Force Majeure. This Agreement may be terminated by the non-claiming Party with no further obligation to the Force-Majeure-claiming Party if a Force Majeure event prevents the performance of a material portion of the obligations of the Force-Majeure-

claiming Party hereunder and such Force Majeure event is not resolved within eight (8) months after the commencement of such Force Majeure event. In addition to the foregoing, prior to the Commercial Operation Date, this Agreement may be terminated by Buyer with no further obligation to Seller if one or more Force Majeure events prevents Seller from achieving the Commercial Operation Date by the end of the Force Majeure Extension Period; provided, however, that Buyer shall not have the right under this section to terminate this Agreement until the Guaranteed Commercial Operation Date if Seller is paying delay liquidated damages to Buyer as required under Section 3.9(c)(i) during the Project Cure Period (it being acknowledged, that Seller may elect to pay Daily Delay Damages during periods of Force Majeure up to the expiration of any remaining unclaimed portion of the Project Cure Period in lieu of claiming Force Majeure relief hereunder).

ARTICLE 6: PAYMENT

6.1 Billing and Payment. On or about the tenth (10^{th}) day of each month beginning with the second month of the first Contract Year and every month thereafter, and continuing through and including the first month following the end of the Delivery Term, Seller shall provide to Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Project for any CAISO settlement time interval during the preceding months, (b) access to any records, including invoices or settlement data from CAISO, necessary to verify the invoice; and (c) an invoice, in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with Article 4 (which may include preceding months), with all component charges and unit prices identified and all calculations used to arrive at invoiced amounts described in reasonable detail. Buyer shall pay the undisputed amount of such invoices on or before thirty (30) days after receipt of the invoice. If either the invoice date or payment date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Default Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Invoices may be sent by facsimile or e-mail.

6.2 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 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 6.2 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 any Party 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.

6.3 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, including any related damages calculated pursuant to Section 3.1(h), 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.

ARTICLE 7: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE. EXCEPT FOR A PARTY'S INDEMNITY OBLIGATION IN RESPECT OF THIRD PARTY CLAIMS OR AS OTHERWISE EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 11.2 (INDEMNITIES), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE 8: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Buyer Financial Information. If requested by Seller, Buyer shall deliver (i) within one hundred twenty (120) days following the end of each fiscal year, a copy of Buyer's annual report containing audited consolidated financial statements for such fiscal year and (ii) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Buyer's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; 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 Buyer diligently pursues the preparation, certification and delivery of the statements. Buyer shall be deemed to have satisfied such delivery requirement if the applicable report is publicly available.

8.2 Seller Financial Information. Seller shall provide the following financial information:

(a) If requested by Buyer, Seller shall deliver (i) within one hundred twenty (120) days following the end of each fiscal year, a copy of Seller's annual report containing audited consolidated financial statements for such fiscal year and (ii) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Seller's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; 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 Seller diligently pursues the preparation, certification and delivery of the statements.

(b) ***[If a Guaranty may be provided:*** If a Guaranty is provided and if requested by Buyer, Seller shall deliver (i) within one hundred twenty (120) days following the end of each fiscal year, a copy of Guarantor's annual report containing audited consolidated financial statements for such fiscal year and (ii) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Guarantor's quarterly report containing unaudited consolidated financial statements for such fiscal quarter certified by an officer of Guarantor. In all cases the statements shall be for the most recent accounting period and 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 Guarantor diligently pursues the preparation, certification and delivery of the statements. Seller shall be deemed to have satisfied such delivery requirement if the applicable report is publicly available.]

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent Seller delivers Performance Assurance hereunder, Seller hereby grants to Buyer 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, Buyer, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Buyer'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, Buyer 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 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 the 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.

8.4 Performance Assurance.

(a) ***[For Agreements with Delivery Terms greater than two years:*** CPUC Approval Security,] Development Period Security, Construction Period Security, Delivery Term Security. 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:

(i) ***[For Agreements with Delivery Terms greater than two years:*** 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 8.4(b)(i) below;]

(ii) Development Period Security in the amount of [_____] in the form of cash or a Letter of Credit [or a Guaranty] from ***[For Agreements with Delivery Terms greater than two years:*** the CPUC Approval Date] ***[For all other Agreements:*** the Execution Date of this Agreement] until the return date specified in Section 8.4(b)[(i)/(ii)] below;

(iii) 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 8.4(b)[(ii)/(iii)] below; and

(iv) 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 8.4(b)[(iii)/(iv)] below.

Except as set forth in Section 2.2 as it pertains to [***For Agreements with Delivery Terms greater than two years:*** the CPUC Approval Security and] the Development Period Security, any such Performance Assurance shall not be deemed a limitation of damages.

(b) Return of Performance Assurance.

(i) ***[For Agreements with Delivery Terms greater than two years:*** 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 2.4(b)(ii).

(ii) 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) termination of the Agreement under Section 2.4(b)(ii).

(iii) 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.

(iv) 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).

8.5 Interest on Cash. If Seller provides Performance Assurance in the form of cash, Buyer shall pay interest on such cash held as ***[For Agreements with Delivery Terms greater than two years:*** CPUC Approval Security,] Development Period Security, Construction Period Security, or Delivery Term Security, as applicable, at the Interest Rate. On or before each Interest Payment Date, Buyer shall transfer the sum of all accrued and unpaid Interest Amounts due to Seller for

such security in the form of cash by wire transfer to the bank account specified under "Wire Transfer" in the Cover Sheet.

8.6 Costs of Letter of Credit. If Seller provides Performance Assurance in the form of a Letter of Credit, in all cases, the reasonable costs and expenses of (including but not limited to the reasonable costs, expenses, and attorneys' fees, including reasonably allocated costs of in-house counsel of the Buyer) establishing, renewing, substituting, canceling, increasing and reducing the amount of (as the case may be) one or more Letters of Credit shall be borne by the Seller.

ARTICLE 9: GOVERNMENTAL CHARGES

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

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any governmental authority ("Governmental Charges") on or with respect to the Product or the transaction under this Agreement arising prior to and at the Delivery Point, including, but not limited to, ad valorem taxes and other taxes attributable to the Project, land, land rights or interests in land for the Project. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or the transaction under this Agreement from the Delivery Point. In the event Seller is required by Law or regulation 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 Law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct such amounts from payments to Seller with respect to payments under the Agreement; if Buyer elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse Buyer for such amounts upon request. 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.

ARTICLE 10: REPRESENTATIONS AND WARRANTIES; COVENANTS

10.1 General Representations and Warranties. On the Execution Date and the CP Satisfaction 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) it has all Governmental Approvals necessary for it to perform its obligations under this Agreement, except for as of the Execution Date (i) CPUC Approval in the case of Buyer, and (ii) all Governmental Approvals necessary to construct, operate and maintain the Project and related interconnection facilities in the case of Seller;

(c) the execution, delivery and performance of this Agreement is 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 applicable Law;

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

(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 becoming Bankrupt;

(f) 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 any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

(g) 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;

(h) 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; and

(i) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or the ability to make or take delivery of the Product as provided in this Agreement.

10.2 Seller Representations and Warranties.

(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.

(b) 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 CPUC Decision 08-08-028, and as may be

modified by subsequent decision of the CPUC 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.

(c) [*Include other appropriate representations, warranties, and covenants to satisfy the California RPS content category requirements.*]

10.3 Covenants.

(a) General Covenants. Each Party covenants that throughout the Delivery Term:

(i) it shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;

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

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

(iv) it shall not dispute its status as a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

(b) Seller Covenants.

(i) Seller covenants throughout the Delivery Term that it, or its permitted successors or assigns, shall maintain ownership of a fee, easement, long-term leasehold interest, or other similar asset ownership interest in the Project.

(ii) Seller covenants throughout the Delivery Term that it shall maintain market based rate authority from FERC to sell Product to Buyer under the terms of this Agreement.

(iii) If at any time during the Delivery Term, Seller's representations and warranties set forth in Section 10.2 become materially false or misleading, Seller covenants that it shall provide prompt Notice to Buyer describing such default along with a description of its efforts to cure such default.

(iv) [*Include other appropriate representations, warranties, and covenants to satisfy the California RPS content category requirements.*]

(v) [*Include other appropriate covenants regarding the use of contractors that may be diverse business enterprises.*]

ARTICLE 11: TITLE, RISK OF LOSS, INDEMNITIES

11.1 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to or at the Delivery Point.

11.2 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 under this Agreement up to and at the 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 Law, including without limitation the CAISO Tariff, (iv) any Governmental Charges for which Seller is responsible hereunder, or (v) 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 Delivery Point, (ii) the failure by Buyer to comply with applicable Law, including without limitation the CAISO Tariff, or (iii) 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.

ARTICLE 12: DISPUTE RESOLUTION

12.1 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 12. 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 12.

12.2 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.

(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

12.2(a) above, refuses or does not meet within the ten (10) Business Day period specified in Section 12.2(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.

12.3 Arbitration. Any dispute that cannot be resolved by management negotiations as set forth in Section 12.2 above shall be resolved through binding arbitration by a retired judge or justice from the [AAA][JAMS] panel conducted in San Diego, California, administered by and in accordance with [AAA's Commercial Arbitration Rules] [JAMS [Comprehensive][Streamlined] 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 [AAA's Commercial Arbitration Rules] [JAMS [Comprehensive][Streamlined] 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.

(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) 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.

(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 Section 13.1.

ARTICLE 13: MISCELLANEOUS

13.1 Confidentiality.

(a) 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 13.1(b) 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 subsection (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 13.1(a) ("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.

(b) RPS Confidentiality. Notwithstanding Section 13.1(a) of this Agreement, at any time on or after the date on which the Buyer 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, anticipated Commercial Operation Date, Contract Quantity, and Delivery Point.

(c) Publicity. Except as otherwise agreed to in this Section 13.1 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.

13.2 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 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.

13.3 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement including amounts of Delivered Energy or Scheduled Energy. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Default Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived except to the extent any misinformation was from a third party not Affiliated with any Party and such third party corrects its information after such twelve-month period. In addition, Buyer shall have the right, at its sole expense and during normal working hours, to examine the

records of Seller to the extent reasonably necessary to verify Seller's compliance with its representations and warranties set forth in Section 10.2.

13.4 Sarbanes-Oxley and SEC 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 may require access to information concerning Seller's organizational structure, including its debt/capital structure, as well as to 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 13.4(a)(iii) or any other provision of this Agreement.

(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 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.

13.5 Entire Agreement. This Agreement, together with the Cover Sheet and each and every appendix, attachment, amendment, schedule and any written supplements hereto, if any, between the Parties constitutes the entire agreement between the Parties.

13.6 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees.

13.7 Forward Contract. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code.

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

13.9 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.

13.10 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. Except to the extent provided for herein, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The headings used herein are for convenience and reference purposes only. This Agreement shall be binding on each Party's successors and permitted assigns.

13.11 Severability. If any provision in this Agreement is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement and the Parties

shall use their best efforts to modify this Agreement to give effect to the original intention of the Parties.

13.12 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.

13.13 Notices. Whenever this Agreement requires or permits delivery of a "Notice" (or requires a Party to "notify"), the Party with such right or obligation shall provide a written communication delivered personally, by a nationally recognized overnight courier, mailed by registered or certified mail (return receipt requested), or by facsimile or e-mail (if facsimile numbers or e-mail addresses are identified on the Cover Sheet or by subsequent Notice) to the receiving Party at the addresses identified on the Cover Sheet (or at such other addresses as such receiving Party shall identify by like Notice to the other Party); provided, however, that notices of Outages or other Scheduling or dispatch information or requests, shall be provided in accordance with the terms set forth in the relevant section of this Agreement. Invoices may be sent by facsimile or e-mail (if facsimile numbers or e-mail addresses are identified on the Cover Sheet or by subsequent Notice). A Notice delivered in accordance herewith shall be deemed received (i) on the date of delivery, if hand delivered, (ii) two Business Days after the date of sending, if sent by a nationally recognized overnight courier, or at such earlier time as is confirmed by the receiving Party, (iii) three Business Days after the date of mailing, if mailed by registered or certified mail, return receipt requested, or at such earlier time as is confirmed by the receiving Party, and (iv) on the Business Day on which such Notice was transmitted by facsimile transmission or e-mail (where permitted); provided, however, that a Notice delivered in accordance with this Section but received on any day other than a Business Day or after 5:00 p.m. in the place of receipt will be deemed received on the next Business Day. Each Party shall provide Notice to the other Party of the persons authorized to nominate and/or agree to a Schedule or Dispatch Order for the delivery or acceptance of the Product or make other Notices on behalf of such Party and specify the scope of their individual authority and responsibilities, and may change its designation of such persons from time to time in its sole discretion by providing Notice.

13.14 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. Pub. Util. Dist. No. 1 of Snohomish County, 128 S. Ct. 2733 (2008).

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

[_____]
a [_____]

By: _____
Name:_____
Title:_____

SAN DIEGO GAS & ELECTRIC COMPANY
a California corporation

By: _____
Name:_____
Title:_____

Exhibit A

PROJECT DESCRIPTION INCLUDING DESCRIPTION OF SITE

PROJECT DESCRIPTION

Project name _____

Project Site name: _____

Project physical address: _____

Total number of electric generating units at the Project (committed and not committed to Buyer) _____

Technology Type: _____

Substation:

The term "Site" as defined in the Agreement means the following parcel description upon which the Project is located:

Latitude and Longitude of Project:_____.

The nameplate capacity of the Project is _____.

The electric generating units utilized as generation assets as part of the Project are described below:

[INSERT MAP]

Exhibit B

MILESTONE SCHEDULE

	Date	*Project Name*
1.		Obtains control of all lands and rights-of-way comprising the Site.
2.		Files a CEC Pre-Certification and Verification application.
3.		Receives a completed [Phase I Interconnection Study Report] [interconnection feasibility study] and CAISO Deliverability Assessment Study Report. [***Omit if addressed by a Condition Precedent***]
4.		Receives a completed [Phase II Interconnection Study Report] [interconnection system impact study] and CAISO Deliverability Assessment Study report [***Omit if addressed by a Condition Precedent***]
5.		Files CEQA/NEPA application with appropriate agency(ies).
6.		Executes interconnection agreement and/or transmission agreement and receives FERC approval.
7.		Receives CEQA/NEPA approval/permit
8.		Executes an Engineering, Procurement and Construction ("EPC") contract.
9.		Delivers full NTP under EPC contract and begins construction of the Project.
10.		***[For Projects located in the CAISO:*** Executes Meter Service Agreement and Participating Generator Agreement. ***[For Projects located outside of the CAISO:*** Executes or causes to be executed all Pseudo Tie Agreements.***]***
11.		Delivers Energy to the Transmission Provider to which the Project is physically interconnected.
12.		Receives all Governmental Approvals necessary to achieve COD.
13.		Receives CEC Certification and Verification.

Exhibit C

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 Power Purchase Agreement between Beneficiary and Applicant dated _____ or under any transaction contemplated thereby (whether by failure to perform or pay any obligation thereunder or by occurrence of a "default", "event of default" or similar term as defined in such agreement, any other agreement between Beneficiary and Applicant, or otherwise). The amount due to Beneficiary is U.S. $_____."

or

2- Statement signed by a person purported to be an authorized representative of Beneficiary stating that: "[name of Applicant] ("Applicant") has forfeited all or part of its ***[For Agreements with Delivery Terms greater than two years:*** CPUC Approval Security or] Development Period Security as set forth and defined in the Power Purchase Agreement between Beneficiary and Applicant dated _____. The amount due to Beneficiary, whether or not a default has occurred, is U.S. $_____."

or

3- Statement signed by a person purported to be an authorized representative of Beneficiary stating that: "as of the close of business on [insert date, which is less than 60 days prior to the expiration date of the Letter of Credit] you have provided written

notice to us indicating your election not to permit extension of this Letter of Credit beyond its current expiry date. The amount due to Beneficiary, whether or not a default has occurred, is U.S. $_____."

Special Conditions:

- All costs and banking charges pertaining to this Letter of Credit are for the account of Applicant.

- Partial and multiple drawings are permitted.

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

This Letter of Credit expires on _____ at our counters.

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

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

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

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

govern. Matters not covered by the UCP shall be governed and construed in accordance with the laws of the State of California.

[Name of Bank]

_____
Authorized Signature(s)

Exhibit D

FORM OF GUARANTY

GUARANTY

In consideration of San Diego Gas & Electric Company ("Company") entering into a power purchase agreement with [NAME OF COUNTERPARTY] (hereinafter referred to as "Applicant"), [NAME OF GUARANTOR], a [TYPE OF LEGAL ENTITY i.e. California corporation], (hereinafter referred to as "Guarantor") agrees with Company as follows:

1. The term "Obligations" shall mean all obligations, liabilities and indebtedness of any kind whatsoever arising in connection with _____ or arising in connection with or under any security agreement or other agreement between the Company and Applicant. The amount of Obligations existing from time to time shall be calculated after giving effect to all contractual netting arrangements between Applicant and the Company.

2. Guarantor unconditionally and irrevocably guarantees to Company the full, prompt and faithful payment and performance when due of each and all of the Obligations.

3. This is a continuing guaranty relating to the Obligations. Guarantor acknowledges that there is a continuing consideration to Guarantor for this Guaranty and therefore Guarantor waives and relinquishes the right to revoke or terminate this Guaranty as provided in California Civil Code Section 2815.

4. Any of the Obligations may be amended, modified, waived, or increased (whether or not beyond any dollar limitation hereunder), further agreements may be entered into between Company and Applicant, Company may provide additional goods or services or credit to Applicant or increase or decrease the dollar value of such goods, services or credit, and further obligations (including, without limitation, the provision or pledging of security to Company for any obligation), indebtedness and liabilities may be entered into or incurred from time to time by Applicant and without further authorization from or notice to Guarantor and no such action shall terminate, release, impair, reduce, discharge, diminish or in any way affect any of the obligations of Guarantor hereunder or any security furnished by Guarantor or give Guarantor any recourse or defense against Company. Company need not inquire into the power of Applicant or the authority of its officers, directors, partners or agents acting or purporting to act in its behalf.

5. With respect to all Obligations, this is a guaranty of payment and performance and not of collection, and Guarantor waives and agrees not to assert or take advantage of:

(a) any right to require Company to proceed against Applicant or any other person or to resort to, proceed against or exhaust any security held by it at any time or to pursue any other remedy in its power before proceeding against any Guarantor;

(b) demand, presentment, protest and notice of any kind including, without limiting the generality of the foregoing, notice of nonperformance, protest, dishonor and acceptance of this Guaranty, notice under Section 9611 of the California Commercial Code, and

notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of Applicant, Company, a guarantor under this or any other instrument, or creditor of Applicant or any other person whomsoever, in connection with any of the Obligations or any collateral for any of the Obligations or in connection with any of the Obligations; and

(c) any suretyship defenses and suretyship rights of every nature otherwise available under California law and the laws of any other state or jurisdiction, including, without limitation, all defenses and rights arising under Sections 2787 through 2855 of the California Civil Code (the "Suretyship Provisions") and any successor provisions to those Sections. Without limiting the generality of the foregoing, Guarantor acknowledges his, her or its understanding that the Suretyship Provisions provide various partial or complete defenses to the recovery by Company from Guarantor and/or grant Guarantor rights the enforcement of which could reduce or eliminate entirely Guarantor's liability hereunder to Company. Among the defenses and rights contained in the Suretyship Provisions are the following: (1) Section 2809 of the Civil Code, which provides, in part, that the obligation of a surety must not be either larger in amount or in other respects more burdensome than that of the principal; (2) Section 2810 of the Civil Code, which provides, in part, that a surety is not liable if for any reason other than the mere personal disability of the principal there is no liability upon the part of the principal at the time of execution of the contract, or the liability of the principal thereafter ceases; (3) Section 2819 of the Civil Code, which provides, in part, that a surety is exonerated if the creditor alters the original obligation of the principal without the consent of the surety; (4) Section 2845 of the Civil Code, which provides, in part, that a surety is exonerated to the extent that the creditor fails to proceed against the principal, or to pursue any other remedy in the creditor's power which the surety cannot pursue and which would lighten the surety's burden; (5) Section 2846 of the Civil Code, which provides that a surety may compel his principal to perform the obligation when due; (6) Section 2847 of the Civil Code, which provides, in part, that if a surety satisfies the principal obligation, or any part thereof, the principal is obligated to reimburse the surety for the amounts paid by the surety; (7) Section 2848 of the Civil Code, which provides, in part, that a surety, upon satisfaction of the obligation of the principal is entitled to enforce remedies which the creditor then has against the principal; (8) Section 2849 of the Civil Code, which provides, in part, that a surety is entitled to the benefit of security held by the creditor for the performance of the principal obligation held by the creditor; (9) Section 2850 of the Civil Code, which provides, in part, that whenever the property of a surety is hypothecated with property of the principal, the surety is entitled to have the property of the principal first applied to the discharge of the obligation; and (10) Section 2822 of the Civil Code, which provides, in part, for a right to have the principal designate the portion of any obligation to be satisfied by the surety in the event that the principal provides partial satisfaction of such obligation.

6. All existing and future indebtedness of Applicant to Guarantor ("Intercompany Obligations") is subordinated to all Obligations hereby guaranteed. All of Guarantor's right, title and interest in and to the Intercompany Obligations and rights to receive any payments of the Intercompany Obligations are hereby granted and assigned to Company as continuing security for the Obligations hereby guaranteed, and, in the event of any default in the payment of any of the Obligations when due and until the Obligations guaranteed hereby have been paid in full (a) at the Company's request, Applicant shall forthwith pay to the Company all or any part of such Intercompany Obligations and any capital which Guarantor is entitled to withdraw until all of the

Obligations guaranteed hereby have been paid in full, and (b) Guarantor shall pay to Company immediately any payments of such Intercompany Obligations received by Guarantor.

7. Guarantor agrees to pay all attorneys' fees (including without limitation, reasonably allocated fees of in-house counsel) and all other costs and expenses which may be incurred by Company in the enforcement of this Guaranty against Guarantor.

8. This Guaranty is not assignable by Guarantor without Company's consent. This Guaranty shall inure to the benefit of Company and its successors and assigns, including the assignees of any Obligations, and bind the heirs, executors, administrators, successors and permitted (if any) assigns of Guarantor. This Guaranty is assignable by Company with respect to all or any portion of the Obligations, and when so assigned Guarantor shall be liable to the assignees under this Guaranty without in any manner affecting the liability of Guarantor hereunder with respect to any Obligations retained by Company.

9. This Guaranty shall be governed by and construed in accordance with the laws of the State of California, without reference to its choice of law provisions. Guarantor hereby irrevocably and unconditionally agrees that any legal action or proceeding against Guarantor or any of Guarantor's property with respect to this Guaranty may 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, as Company may elect, and by executing and delivering this Guaranty Guarantor hereby submits to and accepts with regard to any such action or proceeding for himself, herself or itself and in respect of his, her or its property, generally, irrevocably and unconditionally, the jurisdiction of the above mentioned courts. Guarantor hereby irrevocably appoints the Secretary of State of the State of California as his, her or its agent for service of process in any suit or proceeding if the Guarantor is located outside the State of California at the time of service or cannot reasonably be located by Company. The foregoing, however, shall not limit the right of Company as it may elect to bring any legal action or proceeding or to obtain execution of judgment in any other appropriate jurisdiction including but not limited to any other jurisdiction in which Guarantor or his, her or its property is located.

10. Except as provided in any other written agreement now or at any time hereafter in force between Company and Guarantor, this Guaranty shall constitute the entire agreement of Guarantor with Company with respect to the subject matter hereof and no representation, understanding, promise or condition concerning the subject matter hereof shall be binding upon Company unless expressed herein.

11. All notices, demands, requests and other communications required or permitted hereunder shall be in writing and shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, or by reliable overnight courier to the address of the Company set forth below (or to such new address as Company may designate hereafter in a notice to Guarantor) in the case of a communication to the Company and to the address appearing next to Guarantor's signature on this Guaranty (or to such new address as Guarantor may designate hereafter in a notice to Company) in the case of a communication to Guarantor. Any notice served personally shall be deemed delivered upon receipt, and any notice served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on

the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier.

San Diego Gas & Electric Company
555 W. Fifth Street
Attn: Major Markets 18A3, Credit Manager
Los Angeles, CA 90013
Fax No.: (213) 244-8316

12. Until all of the Obligations guaranteed hereby have been satisfied in full, Guarantor shall have no right of subrogation or reimbursement from the Applicant which Guarantor may have as a result of any payment by Guarantor under this Guaranty, and waives any right to enforce any remedy which Company now has or may hereafter have against the Applicant as a result of such payment by Guarantor under this Guaranty and waives any right under section 2849 of the California Civil Code and any other benefit of or right to participate in any security now or hereafter held by Company.

13. All amounts payable by Guarantor hereunder shall be paid without set-off or counterclaim and without any deduction or withholding whatsoever unless and to the extent that Guarantor shall be prohibited by law from doing so, in which case Guarantor shall pay to Company such additional amount as shall be necessary to ensure that Company receives the full amount it would have received if no such deduction or withholding had been made.

14. If any portion of this Guaranty is held to be unenforceable by a court of competent jurisdiction, the remainder of this Guaranty shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned Guarantor has executed this Guaranty on [MONTH AND DAY], [YEAR].

GUARANTOR:
[NAME OF GUARANTOR]

_____
Signature

_____
Title

_____
Printed Name of Person Signing for
Guarantor

_____
Guarantor's Address

_____
City, State, Zip

_____
Guarantor's Phone No.

Exhibit E

COMMERCIAL OPERATION CERTIFICATE

The undersigned, _____ ("EPC Contractor"), _____ ("Renewable Generation Equipment Supplier"), _____ ("Licensed Professional Engineer") and [_____] ("Owner") make the following certifications to San Diego Gas & Electric Company ("SDG&E"), dated as of _____. All capitalized terms not otherwise defined herein shall have the meaning given to them in the Power Purchase Agreement dated _____ between Owner and SDG&E (the "Agreement").

Renewable Generation Equipment Supplier hereby certifies that:

1. The [_____] comprising the Project have been erected and installed at the project site and have been commissioned as required under the Supply and Installation Agreement ("[_____] Supply Agreement") dated as of _____, by and between Renewable Generation Equipment Supplier and Owner and each such [_____] has passed the performance testing required to be performed pursuant to the [_____] Supply Agreement.

2. The Warranty Period under the Warranty Agreement ("Warranty Agreement") dated as of _____, by and between Renewable Generation Equipment Supplier and Owner has commenced.

EPC Contractor hereby certifies that:

All requirements necessary to achieve [Commercial Operation/Substantial Completion] as set forth in the agreement between the EPC Contractor and Owner dated _____ ("EPC Contract") have been completed and the Project has successfully passed all performance tests at a level that demonstrates satisfaction of at least the [minimum performance guarantees].

Owner hereby certifies that:

1. Except for punch list items that would not materially affect the performance, reliability or safe operation of the Project, the Project has been completed in accordance with all applicable specifications and is ready for continuous commercial operation in compliance with all applicable laws and governmental approvals. The Project has successfully passed all performance tests at a level that demonstrates satisfaction of at least the [insert minimum performance guarantees], and complete test reports have been submitted to Buyer.

2. The Operation and Maintenance Agreement (O&M Agreement), by and between Owner and _____ dated as of _____ has commenced.

3. Owner has a valid leasehold or real property interest in the Project Site for a term of at least [___] years from the Commercial Operation date.

4. The interconnection facilities have been completed in accordance with applicable specifications, tariffs, laws and governmental approvals to enable power generated by the Project to be received at the Delivery Point.

5. Owner has obtained all governmental approvals necessary for the continuous commercial operation of the Project and the Project is in compliance with all such governmental approvals and all other applicable laws.

6. The Contract Capacity of the Project is [___] MWac and [___] MWdc at [_____] conditions.

Licensed Professional Engineer certifies that:

1. We have read the Agreement, the [_____] Supply Contract, and the EPC Contract and we understand the requirements for Commercial Operation under the Agreement, the specifications and performance testing requirements under the [_____] Supply Contract, and the requirements for [Commercial Operation/Substantial Completion] under the EPC Contract.

2. We have reviewed the material and data made available to us by the Owner, the Renewable Generation Equipment Supplier, and the EPC Contractor for the Project.

3. To the extent practical, we have reviewed the engineering, procurement, construction and performance testing for the Project and in the course of this review we have not discovered any material errors or omissions in the work performed to date.

4. We have reviewed the certificates of Owner, Renewable Generation Equipment Supplier, and EPC Contractor above, and find the representations provided to be correct in all material respects.

5. We have reviewed all Governmental Approvals and permits identified by the Owner as being required for the construction and operation of the Project and are of the opinion that the Project as completed is in compliance in all material respects with the environmental and technical requirements contained therein.

6. Based on our review of the aforementioned information and of information provided to us by others which we have not independently verified, we are of the opinion that, as of, Commercial Operation has occurred as defined in the Agreement.

Executed this ___ day of ___, 200_

RENEWABLE GENERATION EQUIPMENT SUPPLIER
[*Name of Renewable Generation Equipment Supplier*]
a _____ corporation

By:_____
Name:
Title:

EPC CONTRACTOR
[*Name of EPC Contractor*]
a _____ corporation

By:_____
Name:
Title:

OWNER
[*Name of Owner*]
a _____ limited liability company

By:_____
Name:
Title:

LICENSED PROFESSIONAL ENGINEER:
[*Name of* Licensed Professional Engineer]
a _____

By:_____
Name:
Title:

ACCEPTED BY SAN DIEGO GAS & ELECTRIC COMPANY

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

Exhibit F

FORM OF QUARTERLY PROGRESS REPORT

Quarterly Progress Report
of
[_____]

("Seller")

provided to
San Diego Gas & Electric Company

[Date]

Table of Contents

[Insert Table of Contents]

1.0 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 Power Purchase Agreement by and between _____ ("Seller") and San Diego Gas & Electric Company dated _____ __, ____ (the "Agreement").

Seller shall review the status of each significant element of the Project schedule and Seller shall identify such matters referenced in clauses (i)-(v) below as known to Seller and which in Seller's reasonable judgment are expected to adversely affect the Project or the Project 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 Governmental Approval, or compliance therewith, with respect to which there is an actual or threatened dispute over the interpretation of a law or regulation, actual or threatened opposition to the granting of a necessary Governmental Approval, any organized public opposition, any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, or in each case which could reasonably be expected to materially threaten or prevent financing of the Project, attaining any Condition or Milestone, or obtaining any contemplated agreements with other parties which are necessary for attaining any Condition or Milestone or which otherwise reasonably could be expected to materially threaten Seller's ability to attain any Condition or Milestone;

(ii) Any development or event in the financial markets or the independent power industry, any change in taxation or accounting standards or practices or in Seller's business or prospects which reasonably could be expected to materially threaten financing of the Project, attainment of any Condition or Milestone or materially threaten any contemplated agreements with other parties which are necessary for attaining any Condition or Milestone or could otherwise reasonably be expected to materially threaten Seller's ability to attain any Condition or Milestone;

(iii) 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 attain any Condition or Milestone;

(iv) Any material change in the Seller's schedule for initiating or completing any material aspect of Project;

(v) The status of any matter or issue identified as outstanding in any prior Quarterly 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 Quarter Quarterly Progress Report to [_____], together with all attachments and exhibits, with [3] copies of the Report delivered to [_____] and [_____].

2.0 Executive Summary.

2.1 Major activities to be performed for each aspect of the Project during the current calendar quarter.

Please provide a brief summary of the Major[2] activities to be performed for each of the following aspects of the Project during the current calendar quarter:

2.1.1 Design

2.1.2 Engineering

2.1.3 Major Equipment procurement

2.1.4 Construction

2.1.5 Milestone report

2.1.6 Permitting (See Section 3.0)

2.2 Major activities scheduled to be performed in the previous calendar quarter but not completed as scheduled.

Please provide a brief summary of the Major activities which were scheduled to be performed in the previous calendar quarter and their status, including those activities that were not completed as scheduled:

2.2.1 Design

2.2.2 Engineering

2.2.3 Major Equipment procurement

2.2.4 Construction

2.2.5 Milestone report

2.2.6 Permitting

[2] 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 Facility 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.

3.0 Permitting.

The following describes each of the major Governmental Approvals required for the construction of the Project and the status of each:

3.1 State and/or federal Governmental Approvals.

Please describe each of the Major state and/or federal Governmental Approval (including the Permit to Construct issued by the San Diego County Air Pollution Control District) to be obtained by Seller (or EPC Contractor) and the status of each.

DESCRIPTION	STATUS

3.2 Local and/or county Governmental Approvals.

Please describe each of the Major local and/or county Governmental Approvals to be obtained by Seller and the status of each.

DESCRIPTION	STATUS

3.3 Permitting activities which occurred during the previous calendar quarter.

Please list all permitting activities which occurred during the previous calendar quarter.

3.4 Permitting activities occurring during the current calendar quarter.

Please list all permitting activities which are expected to occur during the current calendar quarter.

3.5 Permitting Notices received from EPC Contractor.

Please attach to this Quarterly Progress Report copies of any notices related to permitting activities received from EPC Contractor during the previous calendar quarter.

4.0 Design Activities.

4.1 Table of design schedule to be followed by Seller and its subcontractors.

The following table lists the design schedule to be followed by Seller and its subcontractors.

ACTIVITY	CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

4.2 Design activities to be performed during the current calendar quarter.

Please explain in detail the design activities which are expected to be performed during the current calendar quarter.

4.3 Table of design activities completed during the previous calendar quarter.

Please explain in detail the design activities which were completed during the previous calendar quarter.

5.0 Engineering Activities.

5.1 Table of engineering schedule to be followed by Seller and its subcontractors.

The following table lists the engineering schedule to be followed by Seller and its subcontractors:

ACTIVITY	CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

5.2 Engineering activities to be performed during the current calendar quarter.

Please explain in detail the engineering activities which are expected to be performed during the current calendar quarter.

5.3 Engineering activities completed during the previous calendar month.

Please explain in detail the engineering activities which were completed during the previous calendar quarter.

5.4 Three-month look-ahead engineering schedule.

Please provide a three-month look ahead engineering schedule.

6.0 Major Equipment Procurement.

6.1 Table of major equipment to be procured by Seller and its subcontractors.

The following table lists major equipment to be procured by Seller and its subcontractors:

EQUIPMENT DESCRIPTION	MANUFACTURER	MODEL	CONTRACTED DELIVERY DATE	ACTUAL DELIVERY DATE	PROJECTED INSTALLATION DATE	ACTUAL INSTALLATION DATE

6.2 Major Equipment procurement activities to be performed during the current calendar quarter.

Please explain in detail the major equipment procurement activities which are expected to be performed during the current calendar quarter.

6.3 Major Equipment procurement activities completed during the previous calendar quarter.

Please explain in detail the major equipment procurement activities which were completed during the previous calendar quarter.

7.0 Construction Activities.

7.1 Table of construction activities to be performed by Seller and its subcontractors.

The following tables lists construction activities to be performed by Seller and its subcontractors:

ACTIVITY	CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE
Civil Progress			
Structural Progress			
[Steam] Generator Progress			
Piping Progress			
IC and Electrical Progress			
Subcontractor Progress			

7.2 Construction activities to be performed during the current calendar quarter.

Please explain in detail the construction activities which are expected to be performed during the current calendar quarter.

7.3 Construction activities completed during the previous calendar quarter.

Please explain in detail the construction activities which are expected to be performed during the previous calendar quarter.

7.4 EPC Contractor Monthly Progress Report.

Please attach a copy of the Monthly Progress Reports received during the previous calendar quarter from the EPC Contractor pursuant to the EPC Contract, certified by the EPC Contractor as being true and correct as of the date issued.

7.5 Three-month look-ahead construction schedule.

Please provide a three-month look ahead construction schedule.

8.0 Milestones.

8.1 Milestone schedule.

Please state the status and progress of each Milestone and identify any completed Milestone(s) for the previous calendar quarter.

8.2 Remedial Action Plan (applicable if Seller fails to achieve Milestone by the Milestone Date).

Please explain in detail each of the following aspects of Seller's remedial action plan:

8.2.1 Missed Milestone

8.2.2 Plans to achieve missed Milestone

8.2.3 Plans to achieve subsequent Milestone

8.2.4 Delays in engineering schedule

Please explain in detail any delays beyond the scheduled Milestone Dates stated in Section 5.1, any impact from the delays on the engineering schedule, and Seller's plans to remedy such impact.

8.2.5 Delays in Major Equipment procurement

Please explain in detail any delays beyond the contracted delivery date and/or the projected installation date stated in Section 6.1, any impact from the delays on Major Equipment procurement schedule, and Seller's plans to remedy such impact.

8.2.6 Delays in construction schedule

Please explain in detail any delays beyond the scheduled completion dates stated in Section 7.1, any impact from the delays on the construction schedule, and Seller's plans to remedy such impact.

9.0 Safety and Health Reports

9.1 Please list all accidents from the previous calendar quarter:

9.2 Any work stoppage from the previous calendar quarter:

9.3 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 Seller's Quarterly 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:_____

RPS Project Development Status Report

Project Name
Date

Date of Latest Construction Progress Report from Counterparty:	
Project Owner/Counterparty:	
Technology:	
Capacity (MW):	Annual Energy (GWh/year):
On-Line Date:	Term/Duration (years):
Construction Start Date:	Point of Delivery:
Location:	

Status At-A-Glance

The below to be filled in w/ either: Completed, Acceptable, Unknown, or Concern. See Section B for a description of milestones. When the answer is "Concern" the milestone should be flagged with a notation number where additional detail is provided in Section A.

Milestones	Status	Initial Completion Date	Projected Completion Date
Fuel/Resource Supply:			
Financing:			
Corporate Financing			
Project Financing			
Site Control (100%):			
Permitting:			
Engineering:			
Major Equipment Procurement:			
Construction:			
Startup Testing and Commissioning:			
Transmission:			

Transmission - Detail (see Section C)
Dependent Transmission Upgrade(s):
Scheduled Completion:
Point of Interconnection:
Early Interconnection:
Gen-Tie Length:
Gen-Tie Voltage:
ISO Queue Position:
Feasibility Study (FS):
System Impact Study (SIS):
Facilities Study (FAS):
Remedial Action Plan:
Additional Comments:
Date of Preparation:

Exhibit G

OUTAGE NOTIFICATION FORM

OUTAGE NOTIFICATION FORM

This form may be used to comply with CAISO's outage notification requirements for both planned and forced outages. Report outages as soon as possible by submitting form via email to TSched@SempraUtilities.com or via fax at (858) 650-6191.

Request Type:

New Scheduled Maintenance Outage

Previous Notification (if applicable)

Date Sent: mm/dd/yyyy
Time Sent: hh:mm

Generator Name:
Location Code:
Address:

Contact Name:
Phone Number:
Email:

Alternate Name:
Alternate Number:
Email:

(For times, use 24hr format)

Today's Date: mm/dd/yyyy
Current Time: hh:mm

Outage Start Date: mm/dd/yyyy
Outage Start Time: hh:mm

Outage End Date: mm/dd/yyyy
Outage End Time: hh:mm

Outage Duration:
MW Available During Outage:
MW Unavailable During Outage:
RMR Unit? Yes/No

System (Select One)

- (●) Boiler — Codes 0010-1999
- ( ) Generator — Codes 4500-4899
- ( ) Regulatory, Safety, Environmental — Codes 9504-9720
- ( ) Balance of Plant — Codes 3110-3999
- ( ) Pollution Control Equipment — Codes 8000-8835
- ( ) Others — Codes 9900-9999
- ( ) Steam Turbine — Codes 4000-4499
- ( ) External — Codes 9000-9040

Cause Code Ranges / Affected Component

(Select One)

Cause Code / Component Problem

(Select One)

Comments

Exhibit H

PROJECT OPERATING RESTRICTIONS

Operational characteristics of the Project must be equal to or greater than the resource flexibility reflected in the resource Master File, as such term is defined in the CAISO Tariff. Buyer may request that CAISO modify the Master File for the Project to reflect the findings of a CAISO audit of the Project and to ensure that the information provided by Seller is true and accurate. Seller agrees to coordinate with Buyer and any third party Scheduling Coordinator to ensure all information provided to the CAISO regarding the operational and technical constraints in the Master File for the Project are accurate and are actually based on physical characteristics of the resource. The Parties agree to make reasonable modifications to this Exhibit H to modify existing operating restrictions or add additional operating restrictions that may be necessary to address changes in the CAISO Tariff or applicable Law applicable to the Products provided from this Project.

- Nameplate capacity of the Project: ____MW
- Minimum operating capacity: ____MW
- Advance notification required for a Dispatch Notice: ____
- Ramp Rate: ____MW/minute

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" or "Party B") and **[INSERT NAME]** ("Buyer" or "Party A"), each individually a "Party" and together the "Parties", effective as of [INSERT DATE] (the "Confirmation Effective Date"). This Transaction is governed by the WSPP Agreement effective as of July 28, 2020, 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 NAME]** ("Buyer")	**Name: San Diego Gas & Electric Company** ("Seller")
	All Notices: Counterparty: Attn: Phone: Email: Duns: Federal Tax ID Number:	**All Notices:** 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
	Invoices: Attn: Phone: Email:	**Invoices:** 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
	Wire Transfer: Bank Name: Bank ABA: Account Number:	**Wire Transfer:** 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

	Credit and Collections: Attn: Phone: Email: **Defaults:** With additional Notices of an Event of Default or Potential Event of Default to: Attn: Phone: Email:	**Credit and Collections:** San Diego Gas & Electric Company, Major Markets 8326 Century Park Court, CP 21 San Diego, CA 92123 Attn.: Credit and Collections Manager Fax No.: (858) 650-6190 Phone: Email: **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

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**.** During 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 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" or the "Facility"). The Project from which Product is sold by Seller to Buyer shall: (a) 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, for the Delivery Term, all output from the Facility, unless excused pursuant to the definition of Unit Contingent Delivery Obligation below, up to [INSERT] MWh. 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 NP15 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:	$[INSERT] **/** 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 the later of (i) the first day of the calendar month following the calendar month in which CPUC approval occurs and (ii) January 1, 2022 (the "Start Date"), and continue until midnight on December 31, 2022; 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 first 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 NP-15.
Unit Contingent Delivery Obligation:	“Unit Contingent Obligation” shall have the following meaning: 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 to Buyer, instantaneously upon Seller’s receipt of such Product, consistent with the terms of this Confirmation on an as as-available basis. Seller’s failure to deliver shall be excused, and Seller shall have no obligation to make up or replace any failure of the Facility to generate and deliver the quantity from the Project: if (i) the Project is unavailable as a result of a Scheduled Maintenance or Forced Outage, (ii) by an event or circumstance that affects the Project so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller, (iii) by Buyer’s failure to perform, or (iv) by a reduction or insufficiency of biomass that causes a reduction or cessation of generation of electric energy by the Project. Buyer shall have no obligation to pay for any Product that Seller is unable to deliver.
Scheduling Obligations:	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.
Condition Precedent:	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 December 31, 2021. 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.” Any termination made by a Party under this section shall be without liability or obligation to the other Party. 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.

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”.

“Forced Outage” means the removal from service availability of a generating unit, transmission line, or other facility for emergency reasons, or the condition in which the equipment is unavailable due to unanticipated failure.

“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 (SOx), nitrogen oxides (NOx), 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,

[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.

(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.

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. **[STC 2, Green Attributes, Modifiable.]**

"Integrated Forward Market" has the meaning set forth in the Tariff.

"Scheduled Maintenance" means an outage or partial outage scheduled to perform the necessary normal maintenance on a generating unit, transmission line, or other facility to preserve the reliability of the unit or overall system reliability, including scheduled outages for such maintenance.

"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. **[STC 2 - Green Attributes, Modifiable.]**

(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

Notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, neither Party shall be required to post performance assurance, collateral or other security for this Transaction.

4.2. CPUC Filing and Approval

Within thirty (30) 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 of (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 to be 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.

Such Monthly Cash Settlement Amount constitutes payment for the Product, including the Green Attributes, for such applicable Calculation Period. Buyer shall be obligated to make such payments with respect to each applicable Calculation Period notwithstanding the fact that the Green Attributes associated with a particular Calculation Period may be delivered or credited to Buyer's WREGIS account subsequent to the conclusion of the applicable Calculation Period in accordance with Section 3.2(b) of this Confirmation, provided that if Seller fails to comply with the provisions of Section 3.2(b), Buyer shall be entitled to exercise all rights and remedies available to Buyer under this Agreement for Seller's failure to deliver the Product.

5.3. Invoicing; Payment Date

(a) Invoices for each Monthly Cash Settlement Amount shall be sent by Seller to Buyer within ten (10) Business Days after the last day of the Calculation Period, in Excel/PDF format via email to Buyer's Invoice Contact set forth above in Contact Information. 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.

(b) 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 (20^{th}) 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.

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. **[STC 6, Non-Modifiable.]**

(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. **[STC REC-1, Non-modifiable.]**

(b) 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 $10,000 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. **[STC REC-2, Non-modifiable.]**

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. **[STC 17, Applicable Law, Non-Modifiable.]**

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.

7.3. SOVEREIGN IMMUNITY

Purchaser warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds from (a) suit, (b) jurisdiction of court (provided that such court is located within a venue permitted under the Agreement), or (c) execution or enforcement of any judgment; provided, however, that nothing in this Agreement shall waive the obligations and/or rights set forth in the California Government Claims Act

(Government Code Section 810 et seq.).

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) Each Party recognizes that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). 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 Disclosure 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."

7.5 No Recourse to Members of Buyer

Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Buyer will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Seller will have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Buyer or Buyer's constituent members, in connection with this Confirmation.

7.6 Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

7.7 Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

[*Signatures appear on the following page*.]

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE:

SAN DIEGO GAS & ELECTRIC COMPANY	**[INSERT COUNTERPARTY]**
BY: _____	BY: _____
NAME:	NAME:
TITLE:	TITLE:

_____ APPROVED AS TO LEGAL FORM

EXHIBIT A

TO THE CONFIRMATION BETWEEN [INSERT NAME] AND SAN DIEGO GAS & ELECTRIC COMPANY

DATED: [INSERT]

PROJECT FACILITY

Facility	Resource ID	Capacity (MW)	CEC RPS ID	WREGIS GU ID	Balancing Authority
HL Power Company, LP	LASSEN_6_UNITS	24	60077A	W604	CAISO

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 _____, 2025 (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:
San Diego Gas & Electric Company
8315 Century Park Court CP 21D
San Diego CA 92123-1593
Attn: Contract Administration
Telephone: (858) 650-6176
Duns: 006911457
Federal Tax ID Number: 95-1184800

Name: Party B / Buyer

All Notices:
< company name >
< street address >
< city/state/zip >

Attn: _____
Telephone: (___) ___-____
Facsimile: (___) ___-____
Duns: _____
Federal Tax ID Number: _____

Invoices:
San Diego Gas & Electric Company
8315 Century Park Court
San Diego CA 92123-1593
Attn: Energy Accounting Manager
Telephone: (858) 650-6177

Invoices:
< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: (___) ___-____
Facsimile: (___) ___-____

Scheduling:
San Diego Gas & Electric Company
8315 Century Park Court, CP 21D
San Diego, CA 92123-1593
Attn: Transaction Scheduling Manager
Day Ahead: (858) 650-6168
Real Time: (858) 650-6160

Scheduling:
< company name >
< street address >
< city/state/zip >
Attn: _____
Day Ahead: (___) ___-____
Real Time: (___) ___-____
Facsimile: (___) ___-____

Payments: San Diego Gas & Electric Company 8315 Century Park Court San Diego CA 92123-1593 Attn: Energy Accounting Manager Telephone: (858) 650-6177	**Payments:** < company name > < street address > < city/state/zip > Attn: _____ Telephone: (___) ___-____ Facsimile: (___) ___-____
Wire Transfer: Union Bank of California 445 South Figueroa Street Los Angeles CA 90071 ABA Routing Number: 122000496 Payee: San Diego Gas & Electric Company Account Number: 4430000352 Confirmation: SDG&E – Major Markets	**Wire Transfer:** < bank street address > < bank city/state/zip > ABA Routing Number: _____ Payee: _____ Account Number: _____ Confirmation: _____ Facsimile: (___) ___-____
Credit and Collections: San Diego Gas & Electric Company 8315 Century Park Court CP 21CSan Diego, CA 92123 Attn: Energy Risk Manager Telephone: (858) 650-6190 Email: sdge_mmcredit@sdge.com	**Credit and Collections:** < company name > < street address > < city/state/zip > Attn: _____ Telephone: (___) ___-____ Facsimile: (___) ___-____
With additional Notices of an Event of Default or Potential Event of Default to: San Diego Gas & Electric Company 8330 Century Park Ct. San Diego, California 92123 Attn: General Counsel Telephone: (858) 650-6141	**With additional Notices of an Event of Default or Potential Event of Default to:** < company name > < street address > < city/state/zip > Attn: _____ Telephone: (___) ___-____ Facsimile: (___) ___-____

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

Article Two Transaction Terms and Conditions	☐ Optional provision in Section 2.4. If not checked, inapplicable.
Article Four Remedies for Failure to Deliver or Receive	☒ Accelerated Payment of Damages.

If not checked, inapplicable.

Article Five
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: : [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

(d) Downgrade Event:
☒Not Applicable
☐ Applicable

(e) Guarantor for Party B: N/A
Guarantee Amount: N/A

8.2 Party B Credit Protection

(a) Financial Information:
☐ Option A
☐ Option B Specify: _____
☐ Option C Specify: _____

(b) Credit Assurances:
☒Not Applicable
☐ Applicable

(c) Collateral Threshold:
☒ Not Applicable
☐ Applicable
If applicable, complete the following:

Party A Collateral Threshold: $_____;
provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: $_____
Party A Rounding Amount: $_____

(d) Downgrade Event:
☒Not Applicable
☐ Applicable
If applicable, complete the following:

☐ It shall be a Downgrade Event for Party A if Party A 's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party A is not rated by either S&P or Moody's

☐ Other:
Specify: _____

(e) Guarantor for Party A: N/A

Guarantee Amount: N/A

Article 10
Confidentiality

☒ Confidentiality Applicable If not checked, inapplicable.

Schedule M

☐ Party A is a Governmental Entity or Public Power System
☐ Party B is a Governmental Entity or Public Power System
☐ Add Section 3.6. If not checked, inapplicable
☐ Add Section 8.4. If not checked, inapplicable

Note to Buyers: If Buyer is a form of governmental entity, then Schedule M shall apply and further modifications to this Confirm will be needed.

Other Changes

1. The modifications to Section 1.12, 1.50 and 5.2 of the Master Agreement specified in that certain Errata published by the Edison Electric Institute (version 1.1, July 18, 2007) are hereby incorporated herein as if set forth in full.

2. Section 1.60 is amended by inserting the words "in writing" immediately following the words "agreed to".

3. In Section 2.1, delete the first sentence in its entirety and replace with the following:

"A Transaction, or an amendment, modification or supplement thereto, shall be entered into only upon a writing signed by both Parties evidencing the commercial terms of such Transaction (a

"Confirmation")."

4. Section 2.3 is deleted in its entirety and replaced with the following:

   "2.3 No Oral Agreements or Modifications. Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Transactions may not be orally amended, supplemented or modified and any such amendment, supplement or modification shall only be effective pursuant to a writing signed by both Parties."

5. Section 2.4 is hereby amended by deleting the words "either orally or" in the sixth line.

6. 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.

7. Section 10.6 of the Master Agreement shall be deleted in its entirety and replaced with the following:

   "10.6 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."

8. Schedule P: Products and Related Definitions shall be deleted in its entirety.

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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 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 “Confirmation Execution Date” has the meaning specified in the introductory paragraph.

1.13 “Contract Price” means, for any day in any Monthly Delivery Period, the Capacity Price for such period.

1.14 “Contract Quantity” means the quantity of Product (in MW) as set forth in Section 3.5.

1.15 “Contract Term” has the meaning set forth in Section 2.1.

1.16 “CPUC” means the California Public Utilities Commission.

1.17 “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.

1.18 “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.

1.19 "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.

1.20 "Delivery Period" has the meaning specified in Section 3.3.

1.21 "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.

1.22 "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.

1.23 "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.

1.24 "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.

1.25 "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.

1.26 "GADS" means the Generating Availability Data System, or its successor.

1.27 "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.

1.28 "Local Capacity Area" has the meaning set forth in the Tariff.

1.29 "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.

1.30 "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.

1.31 "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.

1.32 "LSE" means load-serving entity.

1.33 "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)).

1.34 "Master Agreement" has the meaning specified in the introductory paragraph.

1.35 "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.

1.36 "Monthly Payment" has the meaning specified in Section 4.1.

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

1.38 "NERC" means the North American Electric Reliability Corporation, or its successor.

1.39 "NERC/GADS Protocols" means the GADS protocols established by NERC, as may be updated from time to time.

1.40 "Net Qualifying Capacity" has the meaning set forth in the Tariff.

1.41 "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]*.

1.42 "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]*.

1.43 "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.

1.44 "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.

1.45 "Product" has the meaning specified in Section 3.1.

1.46 "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.

1.47 "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.

1.48 "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.

1.49 "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.

1.50 "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.

1.51 "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.

1.52 "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.

1.53 "Replacement Unit" means a generating unit providing Replacement Capacity.

1.54 "Resource Category" shall be as described in the CPUC Filing Guide.

1.55 "RMR Contract" has the meaning set forth in the Tariff.

1.56 "S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc. or its successor).

1.57 "Scheduling Coordinator" or "SC" has the meaning set forth in the Tariff.

1.58 "Seller" has the meaning specified in the introductory paragraph.

1.59 "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.

1.60 "Substitution Rules" has the meaning set forth in Section 3.8(b).

1.61 "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]*.

1.62 "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.

1.63 "Transaction" has the meaning specified in the introductory paragraph.

1.64 "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.

1.65 "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.

1.66 "Unit EFC" means the effective flexible capacity or capacity that is qualified to provide Flexible RA Attributes established by the CAISO for the applicable Unit.

1.67 "Unit NQC" means the Net Qualifying Capacity established by the CAISO for the applicable Unit.

1.68 "Unit Delivered Quantity" means the amount of applicable Product (in MW) actually "delivered" by Seller to Buyer by each individual Unit. As used herein, "delivered" shall mean shown in the Supply Plan and, for purposes of Section 4.1, shall include any RA Substitute Capacity under Section 3.8, and in all cases, shall not include (i) any portion of Contract 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] *[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.]*

3.2 Unit Contingent 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 Planned Outage, Force Majeure or any adjustment of the Capacity Attributes of any Unit(s), if the Unit(s) are not available to provide any portion of the Product, 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 _____ through _____, 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 3.8, and;

(b) Seller shall submit, or cause each Unit's SC to submit, written notification to Buyer, no later than fifteen (15) Business Days before the relevant deadline for any applicable Compliance Showing, that Buyer will be credited with Unit Delivered Quantity for the applicable portion of the Delivery

Period in the Unit's SC Supply Plan so that the total amount of Unit Delivered Quantity for each Unit credited equals the Unit Contract Quantity.

3.6 CAISO/CPUC Offer Requirements

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

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]*[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 3.6.

(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 3.8(b)(ii), then Seller shall reimburse Buyer for any and all Non-Availability Charges incurred by Buyer and shall pay Buyer the CPM revenue the CAISO would have paid the Buyer but for Seller failure, due to such failure or inability to utilize the Substitution Rules; provided, that if Buyer is unable to utilize the Substitution Rules because the RA Substitute Capacity does not qualify for substitution under Section 9.3.1.3.1, 9.3.1.3.2, 40.9.4.2.1(1)(i) or (ii) of the Tariff, then Seller shall not be responsible for any such Non-Availability Charges described in this Section 3.8(d) associated with such inability.

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:

$$Monthly\ Payment = \sum_{n=1}^{d} (A_n * B_n * 1000)$$

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)
January	
February	
March	
April	
May	
June	

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 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 Reliability Capacity, or their successor, and Imbalance Reserves 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 CAISO 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 [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, Buyer agrees to deliver (i) cash or (ii) a Letter of Credit, in substantially the same form as attached hereto as Appendix B in the amount of _____ to Seller 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 Buyer's damages. Seller shall return to Buyer 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 Buyer 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	
Unit NQC (MW)	
Prorated Percentage of Unit Factor	
Unit EFC (MW)	*[Comment: If the Product does not include flexible capacity, insert "Not Applicable"]*
Prorated Percentage of Unit Flexible Factor	
Resource Type	
Resource Category (MMC Bucket 1, 2, 3 or 4)	
Path 26 (North or South)	
Local Capacity Area (if any, as of Confirmation Execution Date)	
Unit Contract Quantity (MW) for Capacity Attributes (excluding Flexible RA Attributes)	
Unit Contract Quantity (MW) for Flexible RA Attributes	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	

Appendix B [If applicable]

Form of Letter of Credit

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., New York time, on the Expiration Date (as hereinafter defined).

This Letter of Credit shall be of no further force or effect upon the close of business on _____or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day, unless extended in accordance with the terms of this Letter of Credit. For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in New York, New York.

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

1. The original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings); and

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

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at_____or such other number as specified from time to time by the Bank or by electronic signature. The facsimile or electronic signature transmittal shall be deemed delivered when received. It is understood that drawings made by facsimile transmittal or electronic signature are deemed to be the operative instrument without the need of originally signed documents.

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

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

Banking charges shall be the sole responsibility of the Applicant.

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

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

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

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

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

AUTHORIZED SIGNATURE for Bank

_____

By:

Title:_____

ATTACHMENT A TO APPENDIX B
DRAWING CERTIFICATE TO [ISSUING BANK NAME]
IRREVOCABLE STANDBY LETTER OF CREDIT

Reference Number. _____
(Sample Text)

DRAWING CERTIFICATE
Bank
Bank Address

Subject: Irrevocable Standby Letter of Credit
Reference Number: _____

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

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

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

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

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:

CONFIRMATION LETTER FOR BILATERAL IMPORT CAPABILITY TRANSFER BETWEEN SAN DIEGO GAS & ELECTRIC ("PARTY A") AND [PARTY B NAME] ("PARTY B")

This confirmation letter ("Confirmation") confirms the Transaction between Party A ("Buyer/Seller") and Party B ("Buyer/Seller"), which becomes effective on the date fully executed by both Parties (the "Confirmation Effective 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 is governed by the Master Power Purchase and Sale Agreement between the Parties, effective as of [Date of EEI Master between Parties], together with the Cover Sheet, [the Collateral Annex and Paragraph 10 to the Collateral Annex,] and any other annexes thereto (collectively, as amended, restated, supplemented, or otherwise modified from time to time, the "Master Agreement"). The Master Agreement and this Confirmation are collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings specified for such terms in the Master Agreement or the Tariff (defined below), as applicable. Section references herein are to this Confirmation unless otherwise noted.

1. Definitions

1.1 "Bilateral Import Capability Transfer" is the transfer of Remaining Import Capability from one Market Participant to another, as defined and described in the Tariff.

1.2 "Buyer" has the meaning specified in the introductory paragraph.

1.3 "CAISO" means the California Independent System Operator Corporation, or any successor entity performing substantially the same functions.

1.4 "CIRA" means the CAISO Customer Interface for Resource Adequacy.

1.5 "CIRA System Failure" means a disruption in transfer of Product caused solely by the CIRA System that is not within the control of, or the result of the negligence of, either Party and which could not have been avoided by the exercise of due diligence.

1.6 "Confirmation" has the meaning specified in the introductory paragraph.

1.7 "Confirmation Effective Date" has the meaning specified in the introductory paragraph of this Confirmation.

1.8 "Contract Month" has the meaning set forth in Section 3.3 of this Confirmation.

1.9 "Contract Price" means the price, expressed in dollars per kW-month, specified for each Contract Month as set forth in the Contract Price Table in Section 4.1.

1.10 "Contract Quantity" means, with respect to the Contract Month, the amount of Product, expressed in MW set forth in the Contract Quantity Table in Section 3.3.

1.11 "Contract Term" has the meaning set forth in Section 2.1.

1.12 "CPUC" means the California Public Utilities Commission.

1.13 "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. This definition does not include "market participant" as defined in the CAISO's Business Practice Manual for Definitions and Acronyms as published on the CAISO website.

1.14 "Master Agreement" has the meaning specified in the introductory paragraph of this Confirmation.

1.15 "One-Time Payment" has the meaning specified in Section 4.1 of this Confirmation.

1.16 "Procurement Review Group" has the meaning set forth in CPUC Decision D. 02-08-071.

1.17 "Product" has the meaning specified in Section 3.1 of this Confirmation.

1.18 "Remaining Import Capability" means the quantity in MW of Total Import Capability assigned to a Load Serving Entity up to its Load Share Quantity after the assignment of Existing Contract Import Capability and Pre-RA Import Commitment Capability.

1.19 "Scheduling Coordinator" has the meaning set forth in the Tariff.

1.20 "Seller" has the meaning specified in the introductory paragraph of this Confirmation.

1.21 "Tariff" means the Fifth Replacement FERC Electric Tariff and the associated CAISO protocol provisions, including any current CAISO-published "Operating Procedures" and "Business Practice Manuals," in each case as amended or supplemented from time to time.

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 last Contract Month or (b) the date the Parties' obligations under the Agreement have been fulfilled.

2.2 Binding Nature

This Agreement shall be effective and binding as of the Confirmation Effective Date.

3. Transaction

3.1 Product

Seller shall transfer to Buyer, in the manner set forth in Section 3.3, the Remaining Import Capability (the "Product") corresponding to the Contract Quantity, for each day in each Contract Month, and at the applicable Contract Price.

3.2 Delivery Point

Branch Group	**Bilateral Import Capability Transfer**

CAISO BG/MSL Name	(e.g., MALIN500)

3.3 Delivery of Product

Seller shall transfer to Buyer, within five (5) Business Days following receipt of the One Time Payment, the Product in the amount of the Contract Quantity for the Contract Month(s) by registering the transfer with the CAISO as a Bilateral Import Capability Transfer, and completing any other action or documentation required by the CAISO to effect such transfer.

Contract Quantity: Seller shall transfer the Contract Quantity for each of the following months (each a "Contract Month"):

Contract Quantity Table

Contract Month Reference	Contract Month and Year	Contract Quantity (MW)	SCID of Benefitting LSE (Buyer to fill out)
(e.g. 4)	(e.g. April – YYYY)	XX	

3.4 Buyer's Re-Sale of Product

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

4. Payment

4.1 One-Time Payment

Buyer shall make a One-Time Payment for the Product. The One-Time Payment is to be received by Seller within five (5) Business Days following the Confirmation Effective Date. The Parties understand and agree that the One-Time Payment shall be paid by Buyer in advance of the applicable Contract Month(s) and that the payment of such One-Time Payment when due and payable hereunder shall be a condition to Seller's obligation to deliver Product in respect of such Contract Month(s). This "One Time Payment" is defined and calculated as follows:

$$\text{One-Time Payment} = \sum_{i=1}^{k}(A_i \text{ x } B_i \text{ x } 1{,}000)$$

where: A_i = Contract Price i (in \$/kW-month) for Contract Month i

B_i = Contract Quantity i (in MW) transferred by Seller for Contract Month i

k = *Count of Contract Months*

The One-Time Payment shall be rounded to two decimal places.

CONTRACT PRICE TABLE

Contract Month Reference	Contract Month and Year	Contract Price ($/kW-month)
(e.g. 4)	(e.g. April – YYYY)	$X.XX

5. CIRA System Failure

5.1 If a Party is unable to transfer or receive Product due to a CIRA System Failure, the affected Party shall, within two (2) Business Days from its discovery of the CIRA System Failure, provide the other Party with Notice and full details identifying the cause of the CIRA System Failure. Each Party shall use reasonable efforts to cause transfer or receipt of the Product.

5.2 Neither Party's failure to transfer or receive Product due solely to a CIRA System Failure constitutes an Event of Default or failure to deliver Product. In no event shall Buyer be obligated to pay for Product that it does not receive, nor shall Seller be required to pay damages to Buyer pursuant to Section 6.1, due solely to a CIRA System Failure.

6. Damages for Failure to Deliver Product

If Seller fails to transfer to Buyer the Contract Quantity for any Contract Month in accordance with Section 3.3, then with respect to such Contract Month, Seller shall pay to Buyer damages in the amount of set forth in this Article Six as follows in lieu of damages specified in Section 4.1 of the Master Agreement:

For each Contract Month for which the Buyer has made a payment to Seller in accordance with Section 4.1 of this Confirmation, Seller shall pay to Buyer damages in the amount equal to (x) the applicable Contract Price multiplied by (y) the amount of Contract Quantity not delivered by Seller for that Contract Month, multiplied by (z) 1,000 kw/MW, for each Contract Month that Product was not transferred.

7. Confidentiality

Notwithstanding Section 10.11 of the Master Agreement, the Parties may disclose all terms and conditions of this Transaction to any Governmental Body, the CPUC, CAISO, and the Procurement Review Group; 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 Scheduling Coordinator to further disclose such information. Notwithstanding the foregoing, the Parties may disclose the terms of this Confirmation to the CAISO to effectuate Seller's delivery of product and the transfer of the Product and the CAISO may publicly disclose the transfer of the Product from Seller to Buyer as indicated in the Tariff promptly following Seller's delivery of Product. In addition, if 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, other than the Contract Price.

8. Party B Collateral Requirements

TBD

9. Counterparts

This Confirmation may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered by electronic mail (including pdf or any electronic signature complying with the federal ESIGN Act of 2000, California's Uniform Electronic Transactions Act (Cal. Civ. Code Section 1633.1, et seq.) or other applicable law) or other transmission method and any counterpart so delivered shall have the same legal effect as an original.

[*Signature page follows*]

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

SAN DIEGO GAS & ELECTRIC COMPANY		**[INSERT LEGAL NAME OF PARTY B]**	
By:	_____	By:	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____

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 _____, 2025 (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:
San Diego Gas & Electric Company
8315 Century Park Court CP 21D
San Diego CA 92123-1593
Attn: Contract Administration
Telephone: (858) 650-6176
Duns: 006911457
Federal Tax ID Number: 95-1184800

Name: Party B / Buyer

All Notices:
< company name >
< street address >
< city/state/zip >

Attn: _____
Telephone: (___) ___-____
Facsimile: (___) ___-____
Duns: _____
Federal Tax ID Number: _____

Invoices:
San Diego Gas & Electric Company
8315 Century Park Court
San Diego CA 92123-1593
Attn: Energy Accounting Manager
Telephone: (858) 650-6177

Invoices:
< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: (___) ___-____
Facsimile: (___) ___-____

Scheduling:
San Diego Gas & Electric Company
8315 Century Park Court, CP 21D
San Diego, CA 92123-1593
Attn: Transaction Scheduling Manager
Day Ahead: (858) 650-6168
Real Time: (858) 650-6160

Scheduling:
< company name >
< street address >
< city/state/zip >
Attn: _____
Day Ahead: (___) ___-____
Real Time: (___) ___-____
Facsimile: (___) ___-____

Payments: San Diego Gas & Electric Company 8315 Century Park Court San Diego CA 92123-1593 Attn: Energy Accounting Manager Telephone: (858) 650-6177	**Payments:** < company name > < street address > < city/state/zip > Attn: _____ Telephone: (___) ___-____ Facsimile: (___) ___-____
Wire Transfer: Union Bank of California 445 South Figueroa Street Los Angeles CA 90071 ABA Routing Number: 122000496 Payee: San Diego Gas & Electric Company Account Number: 4430000352 Confirmation: SDG&E – Major Markets	**Wire Transfer:** < bank street address > < bank city/state/zip > ABA Routing Number: _____ Payee: _____ Account Number: _____ Confirmation: _____ Facsimile: (___) ___-____
Credit and Collections: San Diego Gas & Electric Company 8315 Century Park Court CP 21CSan Diego, CA 92123 Attn: Energy Risk Manager Telephone: (858) 650-6190 Email: sdge_mmcredit@sdge.com	**Credit and Collections:** < company name > < street address > < city/state/zip > Attn: _____ Telephone: (___) ___-____ Facsimile: (___) ___-____
With additional Notices of an Event of Default or Potential Event of Default to: San Diego Gas & Electric Company 8330 Century Park Ct. San Diego, California 92123 Attn: General Counsel Telephone: (858) 650-6141	**With additional Notices of an Event of Default or Potential Event of Default to:** < company name > < street address > < city/state/zip > Attn: _____ Telephone: (___) ___-____ Facsimile: (___) ___-____

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

Article Two Transaction Terms and Conditions	☐ Optional provision in Section 2.4. If not checked, inapplicable.
Article Four Remedies for Failure to Deliver or Receive	☒ Accelerated Payment of Damages.

If not checked, inapplicable.

Article Five
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: : [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

(d) Downgrade Event:
☒Not Applicable
☐ Applicable

(e) Guarantor for Party B: N/A
Guarantee Amount: N/A

8.2 Party B Credit Protection

(a) Financial Information:
☐ Option A
☐ Option B Specify: _____
☐ Option C Specify: _____

(b) Credit Assurances:
☒Not Applicable
☐ Applicable

(c) Collateral Threshold:
☒ Not Applicable
☐ Applicable
If applicable, complete the following:

Party A Collateral Threshold: $_____;
provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: $_____
Party A Rounding Amount: $_____

(d) Downgrade Event:
☒Not Applicable
☐ Applicable
If applicable, complete the following:

☐ It shall be a Downgrade Event for Party A if Party A 's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party A is not rated by either S&P or Moody's

☐ Other:
Specify: _____

(e) Guarantor for Party A: N/A

Guarantee Amount: N/A

Article 10
Confidentiality

☒ Confidentiality Applicable If not checked, inapplicable.

Schedule M

☐ Party A is a Governmental Entity or Public Power System
☐ Party B is a Governmental Entity or Public Power System
☐ Add Section 3.6. If not checked, inapplicable
☐ Add Section 8.4. If not checked, inapplicable

Note to Buyers: If Buyer is a form of governmental entity, then Schedule M shall apply and further modifications to this Confirm will be needed.

Other Changes

1. The modifications to Section 1.12, 1.50 and 5.2 of the Master Agreement specified in that certain Errata published by the Edison Electric Institute (version 1.1, July 18, 2007) are hereby incorporated herein as if set forth in full.

2. Section 1.60 is amended by inserting the words "in writing" immediately following the words "agreed to".

3. In Section 2.1, delete the first sentence in its entirety and replace with the following:

"A Transaction, or an amendment, modification or supplement thereto, shall be entered into only upon a writing signed by both Parties evidencing the commercial terms of such Transaction (a

"Confirmation")."

4. Section 2.3 is deleted in its entirety and replaced with the following:

   "2.3 No Oral Agreements or Modifications. Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Transactions may not be orally amended, supplemented or modified and any such amendment, supplement or modification shall only be effective pursuant to a writing signed by both Parties."

5. Section 2.4 is hereby amended by deleting the words "either orally or" in the sixth line.

6. 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.

7. Section 10.6 of the Master Agreement shall be deleted in its entirety and replaced with the following:

   "10.6 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."

8. Schedule P: Products and Related Definitions shall be deleted in its entirety.

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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 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 “Confirmation Execution Date” has the meaning specified in the introductory paragraph.

1.13 “Contract Price” means, for any day in any Monthly Delivery Period, the Capacity Price for such period.

1.14 “Contract Quantity” means the quantity of Product (in MW) as set forth in Section 3.5.

1.15 “Contract Term” has the meaning set forth in Section 2.1.

1.16 “CPUC” means the California Public Utilities Commission.

1.17 “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.

1.18 “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.

1.19 "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.

1.20 "Delivery Period" has the meaning specified in Section 3.3.

1.21 "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.

1.22 "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.

1.23 "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.

1.24 "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.

1.25 "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.

1.26 "GADS" means the Generating Availability Data System, or its successor.

1.27 "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.

1.28 "Local Capacity Area" has the meaning set forth in the Tariff.

1.29 "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.

1.30 "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.

1.31 "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.

1.32 "LSE" means load-serving entity.

1.33 "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)).

1.34 "Master Agreement" has the meaning specified in the introductory paragraph.

1.35 "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.

1.36 "Monthly Payment" has the meaning specified in Section 4.1.

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

1.38 "NERC" means the North American Electric Reliability Corporation, or its successor.

1.39 "NERC/GADS Protocols" means the GADS protocols established by NERC, as may be updated from time to time.

1.40 "Net Qualifying Capacity" has the meaning set forth in the Tariff.

1.41 "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]*.

1.42 "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]*.

1.43 "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.

1.44 "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.

1.45 "Product" has the meaning specified in Section 3.1.

1.46 "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.

1.47 "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.

1.48 "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.

1.49 "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.

1.50 "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.

1.51 "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.

1.52 "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.

1.53 "Replacement Unit" means a generating unit providing Replacement Capacity.

1.54 "Resource Category" shall be as described in the CPUC Filing Guide.

1.55 "RMR Contract" has the meaning set forth in the Tariff.

1.56 "S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc. or its successor).

1.57 "Scheduling Coordinator" or "SC" has the meaning set forth in the Tariff.

1.58 "Seller" has the meaning specified in the introductory paragraph.

1.59 "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.

1.60 "Substitution Rules" has the meaning set forth in Section 3.8(b).

1.61 "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]*.

1.62 "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.

1.63 "Transaction" has the meaning specified in the introductory paragraph.

1.64 "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.

1.65 "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.

1.66 "Unit EFC" means the effective flexible capacity or capacity that is qualified to provide Flexible RA Attributes established by the CAISO for the applicable Unit.

1.67 "Unit NQC" means the Net Qualifying Capacity established by the CAISO for the applicable Unit.

1.68 "Unit Delivered Quantity" means the amount of applicable Product (in MW) actually "delivered" by Seller to Buyer by each individual Unit. As used herein, "delivered" shall mean shown in the Supply Plan and, for purposes of Section 4.1, shall include any RA Substitute Capacity under Section 3.8, and in all cases, shall not include (i) any portion of Contract 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] *[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.]*

3.2 Unit Contingent 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 Planned Outage, Force Majeure or any adjustment of the Capacity Attributes of any Unit(s), if the Unit(s) are not available to provide any portion of the Product, 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 _____ through _____, 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 3.8, and;

(b) Seller shall submit, or cause each Unit's SC to submit, written notification to Buyer, no later than fifteen (15) Business Days before the relevant deadline for any applicable Compliance Showing, that Buyer will be credited with Unit Delivered Quantity for the applicable portion of the Delivery

Period in the Unit's SC Supply Plan so that the total amount of Unit Delivered Quantity for each Unit credited equals the Unit Contract Quantity.

3.6 CAISO/CPUC Offer Requirements

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

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]*[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 3.6.

(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 3.8(b)(ii), then Seller shall reimburse Buyer for any and all Non-Availability Charges incurred by Buyer and shall pay Buyer the CPM revenue the CAISO would have paid the Buyer but for Seller failure, due to such failure or inability to utilize the Substitution Rules; provided, that if Buyer is unable to utilize the Substitution Rules because the RA Substitute Capacity does not qualify for substitution under Section 9.3.1.3.1, 9.3.1.3.2, 40.9.4.2.1(1)(i) or (ii) of the Tariff, then Seller shall not be responsible for any such Non-Availability Charges described in this Section 3.8(d) associated with such inability.

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:

$$Monthly\ Payment = \sum_{n=1}^{d} (A_n * B_n * 1000)$$

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)
January	
February	
March	
April	
May	
June	

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 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 Reliability Capacity, or their successor, and Imbalance Reserves 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 CAISO 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 [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, Buyer agrees to deliver (i) cash or (ii) a Letter of Credit, in substantially the same form as attached hereto as Appendix B in the amount of _____ to Seller 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 Buyer's damages. Seller shall return to Buyer 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 Buyer 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	
Unit NQC (MW)	
Prorated Percentage of Unit Factor	
Unit EFC (MW)	*[Comment: If the Product does not include flexible capacity, insert "Not Applicable"]*
Prorated Percentage of Unit Flexible Factor	
Resource Type	
Resource Category (MMC Bucket 1, 2, 3 or 4)	
Path 26 (North or South)	
Local Capacity Area (if any, as of Confirmation Execution Date)	
Unit Contract Quantity (MW) for Capacity Attributes (excluding Flexible RA Attributes)	
Unit Contract Quantity (MW) for Flexible RA Attributes	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	

Appendix B [If applicable]

Form of Letter of Credit

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., New York time, on the Expiration Date (as hereinafter defined).

This Letter of Credit shall be of no further force or effect upon the close of business on _____or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day, unless extended in accordance with the terms of this Letter of Credit. For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in New York, New York.

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

1. The original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings); and

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

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at_____or such other number as specified from time to time by the Bank or by electronic signature. The facsimile or electronic signature transmittal shall be deemed delivered when received. It is understood that drawings made by facsimile transmittal or electronic signature are deemed to be the operative instrument without the need of originally signed documents.

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

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

Banking charges shall be the sole responsibility of the Applicant.

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

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

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

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

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

AUTHORIZED SIGNATURE for Bank

_____

By:

Title:_____

ATTACHMENT A TO APPENDIX B
DRAWING CERTIFICATE TO [ISSUING BANK NAME]
IRREVOCABLE STANDBY LETTER OF CREDIT

Reference Number. _____
(Sample Text)

DRAWING CERTIFICATE
Bank
Bank Address

Subject: Irrevocable Standby Letter of Credit
Reference Number: _____

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

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

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

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

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:

RENEWABLE ENERGY AND ENERGY STORAGE

POWER PURCHASE AGREEMENT

between

SAN DIEGO GAS & ELECTRIC COMPANY

as Buyer

and

[INSERT NAME OF SELLER]

as Seller

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RENEWABLE ENERGY AND ENERGY STORAGE POWER PURCHASE AGREEMENT

This Renewable Energy and 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 a [insert type:] (a "Generation Facility") and [insert number] [insert type:] (the "Energy Storage System"). The Project shall 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.]**

C. Seller wishes to sell and deliver to Buyer, and Buyer wishes to purchase from Seller, Contract Capacity, Energy (including Bundled Green Energy), Resource Adequacy Benefits, Green Attributes, Ancillary Services, and all 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 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 Contract Capacity, Capacity Attributes, Delivered Energy (including Bundled Green Energy), Green Attributes, 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. During the Term, Buyer shall have the exclusive right to (i) the Contract Capacity and Capacity Attributes of the Generation Facility, and (ii) Charging Capacity, Discharging Capacity and Capacity Attributes of the Energy Storage System.

(a) Generation Facility Capacity. The Contract Capacity of the Generation Facility shall be the full generation capacity (in MW_{AC} or MW_{DC}) of the Generation Facility as specified in the Commercial Operation Certificate, which Contract Capacity shall be no greater than the Expected Generation Facility Contract Capacity and no less than [[ ] MW_{DC}].

(b) Energy Storage System Capacity. As of the Effective Date, the Contract Capacity of the Energy Storage System shall equal the Expected Energy Storage Contract Capacity of the Energy Storage System, without adjustment for temperature, pressure, humidity or other adjustment factors. The actual Contract Capacity of the Energy Storage System will be determined upon the completion of the Commercial Operation Test and Contract Capacity Test for the Energy Storage System 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 Contract Capacity of the Energy Storage System, which shall be the Contract Capacity for the Energy Storage System from and after such tests; *provided*, that in no event shall the Contract Capacity of the Energy Storage System exceed (i) PMAX for the Energy Storage System (i.e. the Contract Capacity for the Energy Storage System shall be limited to PMAX until such time as Seller gets PMAX increased to the tested Contract Capacity), (ii) the **[NOTE - based on bid: system RA quantity, local RA quantity and flex RA quantity]**, nor (iii) the Energy Storage System's Expected Energy Storage 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. During the Term, Buyer shall have the exclusive right to the Delivered Energy (including Bundled Green Energy) of each Project System.

(a) Bundled Green Energy. The quantity of Bundled Green Energy that Seller expects to be able to deliver to Buyer from the Generation Facility during each Contract Year is **[ ]** MWh ("Contract Quantity"). Throughout the Delivery Period, Seller shall be required to deliver Bundled Green Energy to Buyer from the Project (in the aggregate) no less than the Guaranteed Energy Production (as defined below) in any twenty-four (24) consecutive calendar month period during the Delivery Period ("Performance Measurement Period"). "Guaranteed Energy Production" means, for a Performance Measurement Period, an amount of Bundled Green Energy for the Project, as measured in MWh, equal to [ ].[1] Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Force Majeure events, Buyer's failure to perform, or Dispatch Down Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have produced from the Generation Facility an amount of Generation Facility Bundled Green Energy that it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure events, Buyer's failure to perform, or Dispatch Down Periods.

[1] **NTD**: This should be 70% of the Contract Quantity.

(i) GEP Damages. If Seller actually delivers Generation Facility Bundled Green Energy during a Performance Measurement Period in an amount (together with (A) any deemed amounts set forth in the last sentence of Section 1.1.2(a) above during such Performance Measurement Period, and (B) GEP Damages Credited Amounts associated with the immediately-prior Performance Measurement Period) that is less than the Guaranteed Energy Production applicable to such Performance Measurement Period ("GEP Failure Event"), Seller shall be liable to Buyer for GEP Damages associated with such GEP Failure Event, which GEP Damages shall be paid by Seller no later than thirty (30) days following an invoice therefor by Buyer; provided that Buyer may instead elect to offset GEP Damages payable by Seller against future payments to be made to Seller under this Agreement or draw on Delivery Period Security for the payment thereof.

(b) Energy Storage System Energy. Subject to the terms and conditions of this Agreement, Seller commits to make the Energy Storage System available to accept Charging Energy and to deliver any and all Stored Energy to Buyer, and Buyer shall have the exclusive rights to schedule Charging Energy to the Energy Storage System and receive any and all Stored Energy of the Energy Storage System, 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 Energy Storage System 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 Energy Storage System applicable from and after the completion of such test.

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 (PMIN) to Contract Capacity (PMAX)
Non-Spinning Reserve	Minimum Operating Level (PMIN) to Contract Capacity (PMAX)
Regulation Up	Up to Contract Capacity (PMAX) x 2
Regulation Down	Up to Contract Capacity (PMAX) x 2
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 Contract Capacity and any other Capacity Attributes 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 Benefits 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. Without in any way limiting the foregoing, with respect to Capacity Attributes:

(a) Seller shall, on a timely basis, submit, or cause the Project's SC to submit (if Buyer is not acting as the Project's SC), Annual Supply Plans and Monthly Supply Plans in accordance with the Tariff, and any other decisions or orders of the CPUC associated with providing the Capacity Attributes under this Agreement, to identify and confirm the Expected Capacity Attributes provided to Buyer for each Showing Month.

(b) Seller shall or shall cause the Project's SC to submit (if Buyer is not acting as the Project's SC) written notification to Buyer, no later than fifteen (15) Business Days before the applicable RA Compliance Showing deadlines for each Showing Month, that Buyer will be credited with the Expected Capacity Attributes for each such Showing Month in the Project's Supply Plan.

(c) Seller shall (i) execute all other documents or instruments necessary, and provide all information otherwise needed, for the Product to be shown on Supply Plans and RA Compliance Showings and to be used to satisfy RA Compliance Obligations, including providing information with respect to the amount of Flexible Capacity and Inflexible Capacity available to be included in any applicable Supply Plan and RA Compliance Showing and (ii) execute all documents or instruments necessary and provide any information requested by Buyer related to the Project that is required to be provided to the CAISO or CPUC in order for Buyer to comply with Applicable Laws.

(d) At Buyer's request, the Parties shall execute such documents and instruments, and Seller shall reasonably cooperate and cause the Project's SC to cooperate with Buyer with respect to any testing or measurements that may be reasonably required to effect recognition and transfer of Capacity Attributes, if any, to Buyer.

(e) The Parties shall use commercially reasonable efforts to cause any Resource ID and the benefitting load serving entity SC identification number to be included in all applicable Supply Plans and to communicate changes in such information to each other promptly throughout the Delivery Period.

1.1.5 Change in Electric Market Design.

(a) If a Change in Tariff renders this Agreement or any terms herein incapable of being performed or administered, then either Party, on Notice, may request the other Party to enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens and obligations set forth in this Agreement as of the Effective Date.

(b) Upon receipt of a Notice requesting negotiations, the Parties shall negotiate in good faith.

(c) If the Parties are unable, within sixty (60) days after the sending of the Notice requesting negotiations, either to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then either Party may submit issues pertaining to changes to this Agreement to the dispute resolutions procedures provided in Article 22.

(d) A change in cost will not in itself be deemed to render this Agreement or any terms therein incapable of being performed or administered, or constitute, or form the basis of, a Force Majeure.

1.1.6 Green Attributes. Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Generation Facility to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Generation Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Generation Facility.

(a) WREGIS. Prior to the initial delivery of Energy to Buyer, Seller shall register the Project in WREGIS, execute a CAISO Qualified Reporting Entity Service Agreement to allow CAISO, on the Seller's behalf, to upload generation information directly into WREGIS, and take all other actions necessary to ensure that the Green Attributes produced from the Project in an amount equal to the amount of Delivered Energy are issued and tracked for all regulatory reporting purposes, including (but not limited to) compliance with the requirements of the California Renewable Portfolio Standard and transferred to Buyer, including payment of all fees required to register the facility in WREGIS, issue WREGIS certificates, and transfer such certificates to Buyer. Within seventy-five (75) days after the initial delivery of energy to Buyer, Seller shall provide to Buyer written approval from WREGIS for Seller's generation to be reported to WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under the Agreement.

1.1.7 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.

1.1.8 Multiple-Use Application Compliance. The Parties agree that Applicable Laws includes the CPUC's Decision on Multiple-Use Application Issues, Decision No. 18-01-003 and the rules adopted thereto. In compliance with that decision, Seller acknowledges and represents and warrants that it has not sold, and will not sell during the Delivery Period except as otherwise required by Applicable Laws, any of the Capacity of the Project or any Product from the Project to any other buyer, except as otherwise permitted in this Agreement.

1.2 Project.

1.2.1 Product; Capacity. All Product provided by Seller pursuant to this Agreement shall be supplied from the Project only. Seller shall not make any alteration or modification to the Project, without Buyer's prior written consent, which results in (a) a change to the Contract Capacity of the Generation Facility that exceeds the Expected Generation Facility Contract Capacity, (b) a change to the Contract Capacity of the Energy Storage System that

exceeds the Expected Energy Storage System Contract Capacity; or (c) any other material changes to the Project without Buyer's prior written consent, which may be provided in Buyer's sole and absolute discretion. For the avoidance of doubt, any of the following shall be subject to Buyer's consent: (a) any increase in the nameplate capacity (in kWDC) of the Generation Facility above the maximum amount specified therefor in Appendix 1.2.1, (b) any change in the physical location of the site for the Project specified therefor in Appendix 1.2.1, (c) any change in the technology type of the Generation Facility specified therefor in Appendix 1.2.1, or (d) any change in the technology type of the Energy Storage Facility specified therefor in Appendix 1.2.1.

1.2.2 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.

1.2.3 Generation Facility. The Generation Facility will consist of [insert description of storage system] and additional equipment, as described on Appendix 1.2.1 attached hereto. Any changes to the Project that causes the Generation Facility to be materially different from the description of the Generation Facility as described in Appendix 1.2.1, including any changes that result in the Contract Capacity of the Generation Facility to exceed the Expected Generation Facility Contract Capacity, shall require Buyer's written consent in an amendment to be exercised in Buyer's sole discretion.

1.2.4 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 for the Energy Storage System 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, including any changes that result in the Contract Capacity of the Energy Storage System to exceed the Expected Energy Storage System Contract Capacity, shall require Buyer's written consent in an amendment to be exercised in Buyer's sole discretion.

1.2.5 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.

1.2.6 Charging Energy. During the Delivery Period, Charging Energy for the Energy Storage System may be provided by the Generation Facility or from the CAISO Grid, at Buyer's election.

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, 11, 12, 13, 18, 19, 20, 21, 22, 23, 24 and 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 shall be entitled to recover such liquidated damages owed by Seller from the Pre-Construction Security held by Buyer if Seller has not paid such liquidated damages within five (5) Business Days following receipt of Notice of such Event of Default from Buyer. 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, 11, 12, 13, 18, 19, 20, 21, 22, 23, 24 and 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 [Large/Small] Generator Interconnection Agreement providing for the construction of Interconnection Facilities necessary to maintain the "Full Capacity Deliverability Status" (as defined in the 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 Tariff) of no later than [_____] months after Seller provides the Participating Transmission Owner with the appropriate security and written authorization to proceed under its [Large/Small] Generator Interconnection Agreement for the Project; and

(b) a refundable cost for "Network Upgrades" (as defined in the 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) ***[If Applicable:*** 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 Buyer 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 upon the conclusion of the Delivery Period or upon earlier termination 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, as applicable (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 to Seller (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 [(_____) (__)] anniversary of the Initial Delivery Date occurs. The "Initial Delivery Date" shall be the first day of the first month after 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, including the [Large/Small] Generator Interconnection Agreement, required to enable parallel operation of the Project with the Participating Transmission Owner's electric system and CAISO Grid;

(g) Seller has taken all actions necessary to ensure that the Project is fully deliverable, as determined by the CAISO, for Resource Adequacy Benefits, including establishing the Net Qualifying Capacity of the Project and completing CAISO Certification, and Seller has delivered to Buyer a certification or other documentation from the CAISO that evidences that the Project is fully deliverable for the purposes of providing all such Resource Adequacy Benefits to Buyer;

(h) Seller has delivered to Buyer evidence reasonably satisfactory to Buyer confirming its compliance with the requirements of Article 4;

(i) Seller has provided Buyer Notice at least [x] days before the Initial Delivery Date;

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

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

The Parties agree that, in order for Buyer to dispatch the Project 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 Availability Notices for the Initial Delivery Date as provided Section 15.1, and Buyer's delivering Dispatch Notices 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 Project on 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; *provided*, however, in no event shall the Initial Delivery Date occur any earlier than [_____] 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 the lesser of (a) one hundred twenty (120) calendar days less the number of days of extensions of the Guaranteed Initial Delivery Date due to Force Majeure, or (b) one-hundred (100) calendar days (the "Cure Period"). 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(l).

2.10.2 Excused Delays. For all purposes under this Agreement, the Guaranteed Initial Delivery Date and the deadline to achieve each milestone listed on the Milestone Schedule will be extended on a day for day basis without imposition of any Daily Delay Damages to the extent that Seller is delayed in achieving any such milestone or achieving the Initial Delivery Date by the Guaranteed Initial Delivery Date due to any of the following events:

Force Majeure, provided that all extensions of any deadline listed on the Milestone Schedule or the Guaranteed Initial Delivery Date for the Project due to Force Majeure shall not exceed ninety (90) calendar days in the aggregate ("Maximum Force Majeure Delay") 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.

2.11 CAISO Ancillary Services Certification. Seller shall take all necessary steps within its control to enable CAISO Ancillary Services Certification to occur within thirty (30) days after the Initial Delivery Date. If the CAISO Ancillary Services Certification has not occurred within thirty (30) days after the Initial Delivery Date, Seller shall owe liquidated damages to Buyer of $15,000 per day of delay, provided that such thirty (30)-day deadline shall be extended on a day-for-day basis for reasons of Force Majeure or other events or circumstances outside of Seller's reasonable control. Each Party agrees and acknowledges that (a) the actual damages that Buyer would incur due to a delay in CAISO Ancillary Services Certification 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 Seller's delay in the CAISO Ancillary Services Certification on or before the deadline therefor.

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 ten (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 ten (10) days of receipt of Notice, or such longer period not to exceed sixty (60) days if the failure is not capable of being cured within such ten (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 ten (10) day period and such additional cure period could not reasonably be expected have a material adverse impact upon the non-Defaulting Party;

(d) Such Party becomes Bankrupt; or

(e) Such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 25.5; or

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

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

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 and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of Seller under this Agreement by operation of Law or pursuant to an agreement reasonably satisfactory to Buyer;

(c) Seller fails to comply with its obligations under Article 11, including without limitation failing to post or maintain the 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 fails to deliver or sell the Product from a Generation Facility for a period or a series of periods that is cumulatively longer than thirty (30) days, except to the extent such failure is due to one of the following:

(i) The Generation Facility is unavailable as a result of a Forced Outage that is not the result of Seller's negligence or willful misconduct;

(ii) Force Majeure;

(iii) Buyer's failure to perform;

(iv) The Generation Facility is unavailable as a result of a Scheduled Outage;

(v) A reduction in output as ordered under Dispatch Down Periods; or

(vi) Insufficient solar power for such Generating Facilities to generate energy;

(f) 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 pursuant to CAISO instruction;

(g) Seller delivers or attempts to deliver to the Energy Delivery Point for sale under this Agreement Energy from the CAISO Grid (other than, for the avoidance of doubt, any such Energy that was utilized as Charging Energy);

(h) Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period;

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

(j) During the Delivery Period, the Contract Capacity the Energy Storage System falls below seventy percent (70%) of the Expected Energy Storage Contract Capacity on average for a rolling period of twelve (12) consecutive months;

(k) During the Delivery Period, the Round-Trip Efficiency Rate Factor of the Energy Storage System is below 0.90 for more than six (6) months during any rolling period of twelve (12) consecutive months (for the avoidance of doubt, such six (6) months need not be continuous);

(l) Seller fails to achieve the Initial Delivery Date for the Project within the Cure Period following the Guaranteed Initial Delivery Date, as extended under Section 2.10.2;

(m) 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;

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

(o) 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;

(p) 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 One Billion Dollars ($1,000,000,000);

(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

(q) 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 twenty (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. 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. 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 Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute.

3.7 Suspension of Performance. Further to Section 3.3(d), 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 and in compliance with all Applicable Laws and Permit Requirements, 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;

(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 reasonable 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 thirty (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 thirty (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 meet the construction milestones set forth on Appendix 6.1(a) ("Milestone Schedule"), subject to Section 6.2. 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; *provided*, however, that Seller may redact such documents as necessary to comply with third-party confidentiality obligations. 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. Within seven (7) days after completion of each milestone in the Milestone Schedule, Seller shall provide Buyer with Notice along with accompanying documentation (including reasonably redacted copies of applicable agreements, Required Permits, and certificates) to reasonably demonstrate the achievement of such construction milestone.

6.2 Milestone Delay Damages and Recovery Plan. If Seller fails to achieve any milestone listed on the Milestone Schedule on or before the applicable deadline listed therein (prior to giving to any extension thereof by the payment of Daily Delay Damages pursuant to Section 2.10.1), Seller may cure such failure; provided, that:

6.2.1 Within five (5) Business Days prior to any such failure, Seller submits to Buyer (i) a written description of the reason for the anticipated failure, (ii) the date Seller expects it will achieve completion of the applicable milestone ("Milestone Extension Date"), (iii) a written recovery plan for completing all necessary work to achieve completion of the missed milestone, the remaining milestones, and the Initial Delivery Date by the Guaranteed Initial Delivery Date (including plans for accelerating the work, for example, by using additional shifts, overtime, additional crews or resequencing of the work, as applicable) (the "Recovery Plan") and (iv) any required Daily Delay Damages in accordance with Section 2.10.1. The Recovery Plan shall also include an updated Milestone Schedule with revised dates for each of the remaining milestones, which updated Milestone Schedule shall reflect the payment of any Daily Delay Damages in accordance with Section 2.10.1. Any such Recovery Plan shall be subject to the approval of Buyer, such approval not to be unreasonably withheld or delayed.

6.2.2 Seller shall commence the work contemplated by the Recovery Plan after approval thereof by Buyer.

6.2.3 Seller shall be solely responsible for any costs or expenses incurred by Seller as a result of the formulation and implementation of the Recovery Plan.

6.2.4 If Seller fails in any material respect, as reasonably determined by Buyer, to: (i) meet the requirements of the Recovery Plan; (ii) make sufficient progress in effecting the Recovery Plan; or (iii) achieve completion of the missed milestone by the Milestone Extension Date, such failure shall be subject to a further attempt to cure only if, in Buyer's reasonable judgment, the Initial Delivery Date can still be achieved within the Cure Period.

6.3 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 and the terms of this Agreement. While on the Site, Buyer shall be responsible for compliance with all applicable safety and security protocols established by Seller, and Buyer shall not interfere with the normal operation of the Project.

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 and each of the Generation Facility and the Energy Storage System is functioning properly and 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 provide (and 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. For the avoidance of doubt, for any Buyer Cost Test Buyer be entitled to all CAISO revenues and other revenues associated with the Energy delivered from the Energy Storage System during such test. 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; *provided*, that at Buyer's election, Buyer may provide the Charging Energy necessary for such testing, in which case, Buyer 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 Project (the "Commercial Operation Test"). Such Commercial Operation Test shall be scheduled and conducted in accordance with Appendix 7 hereto and shall be deemed a Seller Cost Test. Seller shall 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 of Energy Storage System. At least once per Contract Year after the initial Contract Year, upon no less than twenty-four (24) hours prior Notice to Seller from Buyer (or any shorter period reasonably acceptable to Buyer consistent with Accepted Electrical Practices), subject to Article 17 and the Availability Notices delivered by Seller hereunder, Seller shall schedule and complete a Contract Capacity Test for the Energy Storage System in accordance with Appendix 7. Such Contract Capacity Test shall be deemed 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 twenty-four (24 hours prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Accepted Electrical Practices) and such retest shall be a Seller Cost Test. For all purposes of this Agreement, including Section 1.1.1 and Appendix 9.2, the Contract Capacity for the Energy Storage System determined pursuant to a Contract Capacity Test shall become the new Contract Capacity for the Energy Storage System 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 of Energy Storage System. From time to time during the Delivery Period, upon no less than forty-eight (48) hours prior Notice to Seller (or any shorter period reasonably acceptable to Buyer consistent with Accepted Electrical Practices), 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). 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.

7.5 Additional Required Testing. From time to time during the Delivery Period, upon no less than twenty-four (24) hours prior Notice to Seller, Buyer, the CPUC, the CAISO or other Governmental Authority having jurisdiction may require additional tests to be performed from time to time (including tests of the Generation Facility's or Energy Storage System's Capacity for Resource Adequacy capacity requirements). Such tests 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 such additional test at any time upon twenty-four (24) hours prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Accepted Electrical Practices), and such Seller-requested retest shall be a Seller Cost Test.

7.6 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 or the Generation Facility, as applicable), that Seller deems necessary for purposes of reliably operating the Project, the Energy Storage System, or the Generation Facility, 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. 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 twenty-four (24) hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Accepted Electrical Practices).

7.7 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.

7.8 Test Results. Seller will provide all CAISO certifications (including Commercial Operation, CAISO Certification, and CAISO Ancillary Services Certification) test results for the Project, the Generating Facility, or the Energy Storage System within five (5) 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 tests required under Article 7 above, 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. 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. Seller shall ensure that any contractor or subcontractor performing maintenance, repair, inspection or other work on the Project 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.

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 Monthly Energy Payment calculated in accordance with Section 9.3. The Monthly Capacity Payment and Monthly Energy Payment 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 determined in accordance with the calculation set forth in Appendix 9.2 (the "Monthly Capacity Payment"); *provided*, that Buyer shall not be required to pay the Monthly Capacity Payment for any month in which the Equivalent Availability Factor for the Energy Storage System is less than 0.90 or the Round-Trip Efficiency Rate Factor for the Energy Storage System is less than 0.90. [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 Monthly Energy Payment. Once the Project has achieved its Initial Delivery Date, Buyer shall pay Seller a monthly energy payment determined in accordance with the calculations set forth in Appendix 9.3 (the "Monthly Energy Payment").

9.4 Additional Compensation. Except with respect to revenue derived from a Seller Cost Test as set forth in Article 7 or Availability Incentive Payments as contemplated by Section 14.4, in the event that Seller is compensated by a third party for any Product produced by the Project, including, but not limited to, compensation for Resource Adequacy or Green Attributes, Seller shall remit all such compensation directly to Buyer.

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 three (3) 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 three (3) 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 and are unpaid. 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 as required under this Agreement, and (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 One Billion Dollars ($1,000,000,000).

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 if amounts due and owing by Seller remain unpaid:

(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.

Buyer does not have and will not 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. Seller agrees that it shall not have any grounds for insecurity with respect to the creditworthiness of Buyer, and hereby waives all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines.

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. In connection with any such collateral assignment, Seller shall enter into a consent to collateral assignment of this Agreement ("Collateral Assignment Agreement") in in form and substance customary in the industry and reasonably agreed to by Buyer, Seller and Lender. Any requests for a Collateral Assignment Agreement must be received by Buyer at least forty-five (45) days in advance of the anticipated closing date for the transaction in question. Seller shall also be responsible for Buyer's reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any such assignment, including attorneys' fees.

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. 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 14.4.

13.2 Compliance with Laws and Indemnification. 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 VER Forecasting Program Requirements. Seller shall cause the Generation Facility to become a Participating Intermittent Resource, including by executing all necessary documents to become a Participating Intermittent Resource. Seller shall be responsible for all CAISO forecasting fees and related charges associated with the Generation Facility becoming a Participating Intermittent Resource and participating in the VER Forecasting Program. Seller and Buyer shall comply with the VER Forecasting Program, and all additional protocols issued by the CAISO relating to Participating Intermittent Resources, including the VER Forecasting Program, for the Delivery Period. Seller shall provide Buyer with a copy of the notice from the CAISO certifying the Generation Facility as a Participating Intermittent Resource prior to the Commercial Operation Date. In the event that the VER Forecasting Program or the Tariff and/or any protocols relating thereto are changed, amended, modified replaced or terminated, Seller and Buyer agree to comply with such revisions and, to the extent practical, to implement such revisions in a manner that maintains the relative economic positions of the Parties as of the date of this Agreement.

14.2 Buyer Scheduling Coordinator. At least thirty (30) days prior to the beginning of testing of the Generation Facility or Energy Storage System, 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 Generation Facility or Energy Storage System (as appliable) effective as of the start-up, testing and commissioning thereof. 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 may withhold all Monthly Capacity Payments and Monthly Energy Payments that would otherwise be due to Seller until Buyer is fully authorized as the Scheduling Coordinator for the Generation Facility or Energy Storage System (as appliable). Upon Buyer's reasonable determination that it is fully authorized to act as Scheduling Coordinator for the Project, Buyer shall pay all withheld Monthly Capacity Payments or Monthly Energy Payments on the next applicable payment date therefor.**[NOTE to Bidders: parties to discuss SC duties during pre-commercial operation testing.]**

14.3 Notices. Buyer shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the Tariff regarding the Project's status, including, but not limited to, all Outage Management System Outage Requests, OMS Forced Outages, or CAISO Forced Outage Reports (in each case, as defined in the Tariff). In accordance with this Article and Article 18, Buyer will cooperate with Seller to provide such notices and updates. If the web based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, or facsimile transmission to the personnel designated to receive such information.

14.4 CAISO Costs and Revenues. Except as otherwise set forth below or elsewhere 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 transmitting Charging Energy to the Energy Delivery Point and receiving Delivered Energy at the Energy Delivery Point. Except as otherwise set forth below or elsewhere in this Agreement, Buyer shall be responsible for CAISO costs (including penalties and other charges (including Negative Imbalance Energy costs or revenues)) and receive all CAISO revenues (including credits and other payments (including Positive Imbalance Energy revenues or costs)) 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 (a) Non-Availability Charges, (b) Uninstructed Imbalance Energy charges and Uninstructed Deviation Penalties, (c) Ancillary Services No-Pay charges, and (d) all CAISO charges or payments incurred as a consequence of Seller either failing to notify Buyer of outages in a timely manner as set forth in Article 17 or failing to abide by the Tariff (including deviations from Scheduled Energy that are attributable to Seller's failure to abide by the Tariff). 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.

14.4.1 Generation Facility Imbalance Energy. Seller shall use commercially reasonable efforts to deliver Energy in accordance with the Generation Facility Scheduled Energy. Buyer and Seller recognize that from time to time the amount of Generation Facility Grid Delivered Energy will deviate from the amount of Generation Facility Scheduled Energy. When Generation Facility Grid Delivered Energy minus Generation Facility Scheduled Energy is a positive amount, it shall be considered "Positive Imbalance Energy;" when Generation Facility Grid Delivered Energy minus Generation Facility Scheduled Energy is a negative amount, the absolute (i.e., positive) value of that amount shall be considered the "Negative Imbalance Energy." Buyer shall receive all Green Attributes for the Positive Imbalance Energy in all settlement intervals.

14.5 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.

14.6 Terminating Buyer's Designation as Scheduling Coordinator. The Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for each of the Generation Facility and the Energy Storage System 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 therefor 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 therefor effective as of the SC Replacement Date. Seller bears sole responsibility for locating, selecting and reaching agreement about terms with any replacement Scheduling Coordinator.

14.7 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, the Generation Facility or Energy Storage System 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.

14.8 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 the Generation Facility and the Energy Storage System. Buyer, as Scheduling Coordinator, shall not change such data without Seller's prior written consent.

ARTICLE 15
SCHEDULING, DISPATCH NOTICES and OPERATING RESTRICTIONS

15.1 Scheduling Generally. Buyer shall submit schedules to the CAISO for each of the Generation Facility and the Energy Storage System in accordance with Tariff protocols for Day-Ahead and Hour-Ahead Schedules and Supplemental Energy and Ancillary Services bids as applicable and in accordance with the Operating Procedures, 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 Energy Storage System as specified in Appendix 1.1.

15.2 System Requirements. For the Generation Facility and Energy Storage System, Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary (a) for Seller to respond and follow instructions, including an electronic signal conveying real time instructions, to operate the

Generation Facility and Energy Storage System as directed by the Buyer and/or the CAISO (including to implement a System Dispatch Down or an Economic Dispatch Down) in accordance with the then-current methodology used to transmit such instructions as it may change from time to time, and (b) for Buyer and/or the CAISO to control the quantity of Product generated or delivered by the Generation Facility and Energy Storage System, in each case, in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. As of the Effective Date, the systems required to comply with clause (a) include at a minimum the CAISO's Automatic Dispatch System (as described in the CAISO website) and the systems required to comply with clause (b) include at a minimum the CAISO'S Application Programming Interfaces (as described in the CAISO website). If at any time during the Delivery Period Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take all commercially reasonable steps necessary to become compliant as soon as possible. Seller shall be liable pursuant to Section 15.6 for failure to comply with a Dispatch Notice during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, a Dispatch Notice (including an order directing a Dispatch Down Period) provided via such systems and facilities shall have the same force and effect on Seller as any other form of communication. If an electronic submittal is not possible, Buyer and/or the CAISO may provide 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 and Seller shall maintain communications systems necessary to permit such transmittal of Dispatch Notices.

15.3 Generation Facility Scheduling and Dispatch Down. The following provisions of this Section 15.3 shall apply to the Generation Facility:

15.3.1 VER Forecasting Program Requirements. For the Generation Facility, consistent with the requirements of Section 15.1, Buyer's Schedules and any updates to such Schedules to the CAISO shall be based on the most current forecast of Generation Facility Delivered Energy consistent with the VER Forecasting Program whenever the VER Forecasting Program is available, and consistent with Buyers' best estimate based on the information reasonably available to Buyer including Buyer's forecast whenever the VER Forecasting Program is not available. In all cases, consistent with its Economic Dispatch Down curtailment rights, Buyer (as the Scheduling Coordinator) may submit a self-schedule or an economic bid in the applicable CAISO market in order to Schedule a Generation Facility's Product with the CAISO.

15.3.2 Annual Delivery Schedules. No later than forty-five (45) days before (a) the first day of the first Contract Year of the Delivery Period and (b) the beginning of each calendar year for every subsequent Contract Year during the Delivery Period, Seller shall provide a non-binding forecast of each month's average-day expected Generation Facility Delivered Energy for each Project System, by hour, for the following calendar year.

15.3.3 Monthly Delivery Schedules. No later than ten (10) Business Days before the beginning of each month during the Delivery Period, Seller shall provide a non-binding forecast of each day's average expected Generation Facility Delivered Energy for each Project System, by hour, for the following month ("Monthly Delivery Forecast").

15.3.4 Daily Delivery Schedules. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, for the Generation Facility, Seller shall provide Buyer with a non-binding forecast of the Generation Facility's Available Generation Capacity (or if the VER Forecasting Program is not available for any reason, the expected Generation Facility Delivered Energy) for each hour of the immediately succeeding day ("Day-Ahead Forecast"), it being understood that, consistent with its Economic Dispatch Down curtailment rights, Buyer (as the Scheduling Coordinator) may submit a self-schedule or an economic bid in the applicable CAISO market in order to Schedule the Generation Facility's Product with the CAISO. A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include Schedules for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of the Generation Facility's Available Generation Capacity (or if the VER Forecasting Program is not available for any reason, the expected Generation Facility Delivered Energy). Seller may not change such Schedule past the deadlines provided in this section except in the event of a Forced Outage or Schedule change imposed by Buyer or the CAISO, in which case Seller shall promptly provide Buyer with a copy of any and all updates to such Schedule indicating changes from the then-current Schedule. These notices and changes to the Schedules shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein, then for such unscheduled delivery period only Buyer shall rely on the delivery Schedule provided in the Monthly Delivery Forecast or Buyer's best estimate based on information reasonably available to Buyer and Seller shall be liable for Scheduling and delivery based on such Monthly Delivery Forecast or Buyer's best estimate.

15.3.5 Real Time Delivery Schedules. Notwithstanding anything to the contrary herein, in the event Seller makes a change to its Generation Facility Schedule on the actual date of delivery for any reason including Forced Outages (other than a scheduling change imposed by Buyer or CAISO) which results in a change to its deliveries (whether in part or in whole) from a Generation Facility, Seller shall notify Buyer immediately by calling Buyer's on-duty Scheduling Coordinator. Seller shall notify Buyer and the CAISO of Forced Outages in accordance with Article 17. Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Generation Facility during or after the end of the outage.

15.3.6 Dispatch Down Periods.

(a) Generally. Seller shall reduce delivery amounts from a Generation Facility as directed by the CAISO, the Participating Transmission Owner, Buyer, or a Transmission Provider during any Dispatch Down Period for the Generation Facility. Buyer shall have no obligation to pay Seller for any Product delivered from the Generation Facility in violation of this Section 15.3.6(a) or for any Product from the Generation Facility that Seller would have been able to deliver but for the fact of a curtailment of the Generation Facility (other than a curtailment that is the result of an Economic Dispatch Down as provided in Section 15.3.6(b) below).

(b) Economic Dispatch Down. Each of Buyer and the CAISO has the right to order Seller to curtail deliveries of Energy from a Generation Facility to the Energy Delivery Point for Economic Dispatch Down purposes, seven days per week and 24 hours per day

(including holidays), by providing Dispatch Notices and Updated Dispatch Notices to Seller electronically via the communications systems described in Section 15.2, subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each such Dispatch Notice will be effective unless and until Buyer (or the CAISO) modifies such Dispatch Notice by providing Seller with an Updated Dispatch Notice. 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 the timelines as specified in the Tariff. Seller agrees to adjust the Generation Facility Delivered Energy as set forth in a Dispatch Notice that meets the requirements of Economic Dispatch Down.

(i) Buyer Payments. Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which any such Economic Dispatch Down occurred, an amount equal to the product of (A) the amount of Deemed Generation Facility Bundled Green Energy resulting from such Economic Dispatch Down, multiplied by (B) the Energy Price, except to the extent Seller received a Sales Price for such Deemed Generation Facility Bundled Green Energy, in which case clause (B) above shall be the amount that the Energy Price exceeds such Sales Price for such Deemed Generation Facility Bundled Green Energy.

(ii) Additional Provisions. The Parties shall describe with more specificity the Economic Dispatch Down and Charging Energy process (including the automated communication process for Dispatch Notices) in the Operating Procedures.

15.4 Energy Storage System Scheduling and Dispatch. The following provisions of this Section 15.4 shall apply to the Energy Storage System:

15.4.1 Availability Notices. Subject to Section 15.7, 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 Storage Capacity that the Energy Storage System is expected to have for each hour of such schedule day (the "Availability Notice"). Seller will notify Buyer immediately if the Available Storage 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.

15.4.2 Charging Energy Responsibilities. Except as expressly set forth in this Agreement, during the Delivery Period, Seller shall be responsible, at Seller's sole cost and expense, for delivering all of the Charging Energy from the Generation Facility to the Energy Storage System in accordance with Section 15.4.3.

15.4.3 Dispatch Notices. Subject to the Availability Notices delivered by Seller hereunder, Buyer and CAISO will each have the right to dispatch the Energy Storage System for charging or discharging seven (7) days per week and twenty-four (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 15.4.3 or such other form as may be agreed to by the Parties in the Operating Procedures), and subject to the requirements and limitations set forth in this Agreement and the Operating Restrictions. Subject to Section 15.7, 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 Energy Storage System, Buyer, as Scheduling Coordinator for the Energy Storage System, shall assume a Round-Trip Efficiency Rate equal to the then most-recent Tested Round-Trip Efficiency Rate. During the Term, Seller shall not operate an Energy Storage System (including the charging and discharging of Energy) other than (a) as dispatched by Buyer or CAISO or (b) for testing of the Energy Storage System in accordance with Article 7.

15.5 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 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.

15.6 Failure to Comply with Dispatch Notices. If Seller fails to comply with a Dispatch Notice (or Updated Dispatch Notice) that is in compliance with this Agreement, then, to the extent of the deviation resulting from such failure, Seller shall pay Buyer an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for any excess Delivered Energy caused by such failure to comply (for example, the Energy Price), and (B) is all Imbalance Energy costs or charges (excluding any revenues or credits) associated therewith, and (C) is any penalties, charges, or other direct economic losses resulting from Seller's failure to comply with the Dispatch Notice.

15.7 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.

15.8 Daily Operating Report. Seller shall provide Buyer the Daily Operating Report, as attached in Appendix 15.8, the day immediately after each operating day, for the Generation Facility and Energy Storage System.

15.9 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.

15.10 Communication Protocols. Parties shall agree to the communication protocols outlined in Appendix 15.10 to facilitate exchange of information between the parties.

15.11 Operating Procedures. No later than forty-five (45) days before the Initial Delivery Date of the Project, and from time to time thereafter as reasonably determined necessary by the Parties, the Parties shall meet to address how each Party will perform its respective obligations under this Agreement, including, but not limited to: (1) the method of day-to-day communications; (2) key personnel lists for each Party; (3) procedures for Forced Outage and Scheduled Outage reporting; (4) procedures for delivery forecasting; (5) charging and discharging procedures; (6) procedures for record keeping; (7) Scheduling procedures; and (8) invoicing and payment procedures; *provided*, that the failure to agree on these operating procedures ("Operating Procedures") will not relieve the Parties of their respective obligations under this Agreement, and any failure to agree shall be resolved in accordance with the dispute resolution procedures in Article 22.

15.12 Standards of Care.

15.12.1 CAISO and WECC Standards. Each Party shall perform all generation, scheduling and transmission services in compliance with all applicable (a) operating policies, criteria, rules, guidelines, tariffs and protocols of the CAISO, (b) WECC scheduling practices and (c) Accepted Electrical Practices.

15.12.2. Reliability Standard. Seller agrees to abide by all (a) NERC, WECC and CAISO reliability requirements, including all such reliability requirements for generator owners and generator operators, and, if applicable, CPUC General Order No.167, "Enforcement of Maintenance and Operation Standards for Electrical Generating Facilities," and (ii) all applicable requirements regarding interconnection of the Project, including the requirements of the interconnected Transmission Provider.

15.13 Co-Located Projects. The Parties acknowledge that this Agreement, including Articles 15 and 16, anticipate that the Generation Facility and Energy Storage System will be "co-located" with separate resource IDs for the Generation Facility and Energy Storage System.

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 meters as necessary to ensure a separate resource ID with the CAISO for the Generation Facility and Energy Storage System, separate communication equipment for the Generation Facility and Energy Storage System, and other requirements as may be necessary to permit separate dispatch and identification of costs for the Generation Facility and Energy Storage System. 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 is increased or decreased, the revised Delivered Energy 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, they shall be recalculated using the revised amount of Delivered Energy. 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 Real-Time Telemetry. Seller shall install, activate and maintain metering, communication and telemetry equipment for the Generation Facility and Energy Storage System in a centralized system to which Buyer shall have real time access. Seller shall link its system to Buyer via an approved Buyer communication network, utilizing existing industry standard network protocol, as reasonably approved by Buyer. Seller shall correct any problems with such equipment as soon as practicable.

16.3 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. **[*Parties to discuss Station Use*]**

ARTICLE 17
OUTAGES

17.1 Scheduled Outages.

17.1.1 No later than July 1 of each calendar 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 Generation Facility and Energy Storage System 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 fifteen (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, 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 Generation Facility or Energy Storage System, as applicable, 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 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 of the Generation Facility or Energy Storage System, or if Seller has knowledge that an Unscheduled Outage thereof 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 Tariff. Seller will communicate to Buyer the estimated time of return of the Generation Facility or Energy Storage System, as applicable, 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 (but in no event more than five (5) Business Days after the occurrence of such Force Majeure), shall give the other Party written Notice describing the particulars of the occurrence; *provided*, that the failure to timely provide such Notice as required pursuant to this Section 18.2(a) shall constitute an irrevocable waiver of the right of the Claiming Party to declare a Force Majeure under this Section 18.2 with respect to any such Force Majeure for which notice is not timely provided pursuant to this Section 18.2(a);

(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 18.3, 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 and an "eligible contract participant" within the meaning of the Commodity Exchange Act;

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; and

19.1.11 As of the Effective Date, it is not subject to an event of Force Majeure.

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 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;

19.2.4 Throughout the Delivery Period that: (a) the Generation Facility and Energy Storage System 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

(b) the output of the Generation Facility and Energy Storage System delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard;

19.2.5 Throughout the Delivery Period 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 CPUC Decision 08-08-028, and as may be modified by subsequent decision of the CPUC or by subsequent legislation; and

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

19.2.7 Seller has considered long-term climate risks to the Project as required by Ordering Paragraph 14 of CPUC decision D.20-08-046.

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 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 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. 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.

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

19.5.3 Seller will not use, grant, pledge, assign or otherwise commit to deliver during the Delivery Period any Contract Capacity of the Project to meet the Resource Adequacy requirement of, or confer Resource Adequacy Benefits upon, any entity other than Buyer.

19.5.4 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 not permitted in this Agreement.

19.6.4 Buyer, in its role as Scheduling Coordinator, 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 two (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").

22.3.2 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.

22.3.3 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.

22.3.4 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.

22.3.5 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.

22.3.6 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.

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

22.3.8 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.

22.3.9 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.

22.3.10 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.

22.3.11 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") to the extent resulting from, or arising out of (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, (vi) any liens, security interests, encumbrances, or other adverse claims against the Product delivered hereunder made by, under, or through Seller, and (vii) the Project serving Station Use, 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 if 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; (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, 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, 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 Pacific Prevailing Time 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. Except as provided in Article 12 above and Sections 25.5.1 and 25.5.2 below, 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. Any assignment in violation of this Section 25.5 shall be null and void.

25.6 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.

25.7 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.

25.8 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.

25.9 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).

25.10 Entire Agreement. Except for the Security Documents, 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.

25.11 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.

25.12 Forward Contract. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code.

25.13 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).

25.14 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.

25.15 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.

25.16 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.

25.17 No Agency. This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any Agreement, or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

(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.

"Accepted Expenditures" has the meaning set forth in Section 1.5.1.

"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%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

"Agreement" means this Renewable Energy and 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, frequency regulation, 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.

"Annual Supply Plan" has the meaning set forth in the Tariff.

"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 Contract 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 Storage 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 Generation Capacity" means the capacity of the Generation Facility, expressed in MWs, that is available to generate Energy.

"Available Storage Capacity" means the amount of Charging Capacity and Discharging Capacity that is available to Buyer under this Agreement from the Energy Storage System 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 and such petition is not stayed or dismissed within 90 days thereafter, (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.

"Bundled Green Energy" means, with respect to each Project System, the Generation Facility Bundled Green Energy and Energy Storage System Bundled Green Energy for such Project System, without duplication.

"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" has the meaning set forth in the introductory paragraph hereto.

"Buyer Cost Test" means any test requested by Buyer hereunder.

"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 Certification" means the certification and testing requirements for a generating unit set forth in the Tariff, including certification and testing for all Ancillary Services (included in this Agreement) and PMAX and PMIN.

"CAISO Charges Invoice" has the meaning set forth in Section 14.4.

"CAISO Grid" means the system of transmission lines, distribution equipment and associated facilities of the Participating Transmission Owners that are within the CAISO's balancing authority.

"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) or its successor agency.

"Capacity Attributes" means any current or future defined characteristic, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific as to the location or any other attribute of the Project intended to value any aspect of the capacity of a Project System to produce or deliver Energy or ancillary services, including but not limited to any accounting construct so that the Energy Storage Capacity of the Energy Storage System or capacity of the Generation Facility may be counted toward a Resource Adequacy obligation or similar measure in respect to the capacity of the Generation Facility or Energy Storage System to generate or deliver Energy by the CPUC, the CAISO, the FERC, or any other entity vested with the authority under federal or state Law, to require Buyer to procure, or to procure at Buyer's expense, Resource Adequacy or other similar products.

"Charging Capacity" means the maximum dependable operating capability of the Energy Storage System, measured in MW_{DC}, to charge electric energy into a partially or fully discharged storage device. Charging Capacity shall be determined from information obtained from the Energy Storage System's SCADA as to whether and to the extent that the Energy Storage System is (a) in an emergency, stop, service mode or pause state; (b) in "run" status and faulted; (c) incapable of being controlled or (d) otherwise not fully operational.

"Charging Energy" means, in respect of the Energy Storage System, for a given period of time, the amount of Energy (in MWh_{DC}) used to charge (or recharge) the Energy Storage System during the period as measured by the Metering Equipment at the Charging Energy Delivery Point.

"Charging Energy Capacity" means the maximum amount of energy, in MWh_{DC}, that the Energy Storage System is capable of being charged (assuming the Energy Storage System is fully discharged).

"Charging Energy Delivery Point" means the electrical point between the Generation Facility or the CAISO Grid, as applicable, and Energy Storage System at which the Charging Energy is measured.

"Claiming Party" means the Party claiming a Force Majeure under Article 18.

"Claims" has the meaning set forth in Section 23.1(a).

"Collateral Assignment Agreement" has the meaning set forth in Section 12.1.

"Commencement of Construction" means the day on which all of the following conditions have been satisfied: (a) Seller 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; (b) Seller has issued a notification to the EPC Contractor to commence work under the EPC Contract, and the EPC Contractor has acknowledged receipt of such notification ("Notice to Proceed"); and (c) Seller has begun, or cause to begin, as part of a continuous program, either the placement, assembly, or installation of facilities or equipment comprising the Project or the conduct of significant site preparation work on the Site, including clearing excavation necessary for the placement, assembly or installation of facilities or equipment comprising the Project.

"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, (b) the Project shall have successfully passed all Commercial Operation Tests at a level that demonstrates Contract Capacity of the Generation Facility of at least the Expected Generation Facility Contract Capacity, Contract Capacity of the Energy Storage System of at least the Expected Energy Storage Contract Capacity, and a Tested Round-Trip Efficiency Rate of the Energy Storage System of at least the Guaranteed Round-Trip Efficiency Rate, and complete test reports have been submitted to Buyer, and (c) Seller shall have delivered a true, correct, and complete Commercial Operation Certificate from Seller, the EPC Contractor, and a Licensed Professional Engineer, 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, and including such executed Commercial Operation Certificate; *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.

"Commercial Operation Certificate" means the certificate of Commercial Operation of the Project to be executed by Seller, the EPC Contractor, and a Licensed Professional Engineer in the form of Appendix B.[2]

"Commercial Operation Test" has the meaning set forth in Section 7.2.

"Compliance Actions" has the meaning se forth in Section 1.5.

"Compliance Deadline" has the meaning se forth in Section 1.5.

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[2] **Note to Draft**: Buyer to provide form of certificate.

"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.

"Contract Capacity" means (a) with respect to the Generation Facility, the full generation capacity of the Generation Facility, and (b) with respect to the Energy Storage System, Charging Capacity and Discharging Capacity of the Energy Storage System, each as determined pursuant to Section 1.1.1.

"Contract Capacity Tests" means the periodic testing of the Contract Capacity of the Energy Storage System pursuant to 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 [___]°C and [___]°C during charging, and between [___]°C and [___]°C during a discharging, and (b) during the storage of Energy, between [___]°C and [___]°C.

"Contract Quantity" has the meaning set forth in Section 1.1.2(a).

"Contract Year" means a period of twelve (12) consecutive months (except in the case of the first Contract Year which may be longer) with (a) the first Contract Year commencing on the Initial Delivery Date and ending on the last day of the month that is twelve (12) months after the Initial Delivery Date, and (b) each subsequent Contract Year commencing on the anniversary of the first day of the month following the Initial Delivery Date.

"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.

"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.

"Deemed Delivery Forecast" means either (a) in the case of an Economic Dispatch Down of the type described in clause (a) of the definition of "Economic Dispatch Down", the VER Forecast amount during such Economic Dispatch Down Period (or if there is no such VER Forecast available during such Economic Dispatch Down Period, the amount of Generation Facility Bundled Green Energy that Seller could reasonably have delivered to Buyer, but was prevented as a result of Economic Dispatch Down as determined by Buyer in a commercially reasonable manner), or (b) in the case of an Economic Dispatch Down of the type described in clause (b) of the definition of "Economic Dispatch Down", the Real-Time Forecast during such Economic Dispatch Down Period.

"Deemed Generation Facility Bundled Green Energy" means, with respect to the Generation Facility, the amount of Generation Facility Bundled Green Energy that Seller could reasonably have delivered to Buyer at the Energy Delivery Point or to the Project System's Energy Storage System as Charging Energy, as applicable, but was prevented from so delivering by reason of Economic Dispatch Down during the applicable Economic Dispatch Down Period, the quantity of which shall be equal to (a) the Deemed Delivery Forecast of Energy corresponding to such Economic Dispatch Down period, less (b) any amount of Generation Facility Scheduled Energy

during such Economic Dispatch Down Period, less (c) any amount of Energy that was not delivered during such Economic Dispatch Down Period associated with any concurrent Scheduled Outage, Forced Outage, Force Majeure, System Dispatch Down, and/or CAISO fault but only to the extent the Deemed Delivery Forecast does not already reflect the foregoing amount of Energy; *provided that*, if the applicable amount calculated pursuant to the clause above for Deemed Generation Facility Bundled Green Energy is negative is negative, then such Deemed Generation Facility Bundled Green Energy amount shall be zero (0).

"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%), 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 Delivery Point Metering Equipment, expressed in MWh_{AC}. Delivered Energy shall be comprised only of Generation Facility Grid Delivered Energy and Energy Storage System Delivered Energy.

"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 Energy Storage 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 Energy Storage System, measured in MW_{AC}, to discharge energy from a partially or fully-charged storage device to the CAISO Grid.

"Discharging Energy" means the amount of energy, in MWh_{AC}, that is discharged from the Energy Storage System as measured at the Energy Storage Metering Equipment.

"Discharging Energy Capacity" means the maximum amount of energy, in MWh_{AC}, that is capable of being discharged from the Energy Storage System (assuming the Energy Storage System is Fully Charged).

"Disclosure Order" has the meaning set forth in Section 24.1.1.

"Disclosure Party" has the meaning set forth in Section 24.1.1.

"Dispatch Down Period" means, for the Generation Facility, the period of curtailment of delivery of Product from the Generation Facility resulting from System Dispatch Down or Economic Dispatch Down.

"Dispatch Notice" means the operating instruction, and any subsequent updates (an "Updated Dispatch Notice"), given by Buyer or CAISO to Seller, directing the Generation Facility or the Energy Storage System to deliver Delivered Energy at a specified megawatt output at the Energy Delivery Point or, in the case of an Energy Storage System, receive Charging Energy, in accordance with the procedures set forth in Section 15.3.

"Early Termination Date" has the meaning set forth in Section 3.3.

"Economic Dispatch Down" means curtailment of delivery of Product from the Generation Facility that is the result of any of the following:

(a) Curtailment of the Generation Facility where Buyer either (a) submits (i) a self-schedule of the Generation Facility with a binding Product quantity or (ii) an economic bid in the applicable CAISO market for either the Generation Facility or the Energy Storage System (including in order to charge the Energy Storage System or in order to deliver Ancillary Services from the Energy Storage System), or (b) fails to submit any such schedule or bid for the Generation Facility, for each of (i) and (ii) that when implemented by the CAISO results in an otherwise available Product quantity not scheduled or awarded by the CAISO, except to the extent such curtailment is concurrently the result of a System Dispatch Down, Scheduled Outage, Forced Outage, or Force Majeure, and for the avoidance of doubt Economic Dispatch Down shall include such curtailments that are the result of a Buyer Event of Default or failure by Buyer in performing a material obligation hereunder; or

(b) Curtailment of the Generation Facility resulting from Buyer bidding the delivery of Ancillary Services from the Energy Storage System and, as a result of such Ancillary Services bidding, the Generation Facility receives an order or notification from CAISO to follow the Generation Facility Scheduled Energy but does not otherwise receive a negative SUPP from the CAISO.

"Economic Dispatch Down Period" means the period of time during which there is an Economic Dispatch Down; provided, the duration of any Economic Dispatch Down Period shall be inclusive of the time required for the Generation Facility to ramp down and ramp up.

"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.

"Eligible Renewable Energy Resource" or "ERR" has the meaning set forth in California Public Utilities Code Section 399.11, *et seq.*, as amended or supplemented from time to time.

"Energy" means, with respect to each Project System, all electrical energy generated by the Generation Facility measured in kWh or MWh, or multiple units thereof. Energy shall include without limitation, Charging Energy, Stored Energy, Delivered Energy, 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 Delivery Point Metering Equipment" means, for a Project System, the meters and measuring equipment recognized by the CAISO at the Energy Delivery Point for the Project System, and which measures the Delivered Energy for such Project System delivered to the Energy Delivery Point.

"Energy Storage Capacity" means the Discharging Capacity of an Energy Storage System.

"Energy Storage System" has the meaning set forth in the Recitals.

"Energy Storage System Bundled Green Energy" means, with respect to the Energy Storage System, Energy, Green Attributes, and any other Product, the quantity of which is measured based on the amount of the Energy Storage System Delivered Energy. The quantity of Energy Storage System Bundled Green Energy shall be equal to the lesser of the quantity of (i) the Energy Storage System Delivered Energy, or (ii) the amount of Renewable Energy Credits that are delivered to Buyer in respect of the Energy Storage System Delivered Energy, unless a change in Applicable Laws occurs after the Effective Date that would, absent further action by Seller, change the methodology for determining the amount of Renewable Energy Credits delivered by the Energy Storage System such that the quantity of such Renewable Energy Credits is reduced as compared to the prior methodology, in which case the quantity of Energy Storage System Bundled Green Energy shall be equal to the Energy Storage System Delivered Energy.

"Energy Storage System Delivered Energy" means, with respect to the Energy Storage System, the portion of the Delivered Energy consisting of, or attributable to, Energy discharged from the Energy Storage System, as measured by the Metering Equipment.

"Energy Storage System Metering Equipment" means, for the Energy Storage System, the meters and measuring equipment recognized by the CAISO which measures the Charging Energy delivered to and Energy discharged from the Energy Storage System.

"Energy Storage System Scheduled Energy" means, for a Project System's Energy Storage System, the Scheduled Energy for the Energy Storage System.

"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 Capacity Attributes" means with respect to any particular day of any Showing Month, the Capacity Attributes (in MWs) for such day of such Showing Month, less any reductions to the amount of Capacity Attributes (in MWs) that must be provided for such day as specified in Appendix 1.1.1.

"Expected Energy Storage Contract Capacity" means the expected Energy Storage Capacity of the Energy Storage System, as measured in megawatts (MW_{AC}) at the location of the Energy Delivery Point, as set forth in Appendix 1.1.1.

"Expected Generation Facility Contract Capacity" means the expected maximum generation capacity of the Generation Facility, as measured in megawatts (MW_{AC}) at the location of the Energy Delivery Point, as set forth in Appendix 1.1.1.

"Expenditure" has the meaning set forth in Section 1.4.

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

"Flexible Capacity" means with respect to any particular Showing Month of the Delivery Period, the MWs of Product which are eligible to satisfy a load-serving entity's Flexible RAR.

"Flexible RAR" means the flexible capacity requirements established for load-serving entities by the CAISO pursuant to the Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

"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.

(c) 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, quarantine ordered by a Governmental Authority in response to disease epidemic, 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).

(d) 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, except to the extent Seller's

inability to obtain (or delays in obtaining) approvals is caused by an event of Force Majeure of the specific type described in any of the immediately preceding subsection (a)(i) through (a)(iii) above;

(iv) Seller's inability to obtain (or delays in obtaining) sufficient labor, equipment, materials, or other resources to build or operate the Project, except to the extent Seller's inability to obtain (or delays in obtaining) 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;

(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;

(viii) Seller's inability to obtain or maintain Site Control;

(ix) Any risks, delays or increased costs arising or resulting from any disease epidemic, other than delays caused by a quarantine or shutdown ordered by a Governmental Authority having jurisdiction in respect to such disease epidemic; or

(x) Seller's inability to obtain interconnection service under its [Large/Small] Generator Interconnection Agreement for the Project.

"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 Facility" has the meaning set forth in the Recitals.

"Generation Facility Bundled Green Energy" means, with respect to the Generation Facility, Energy, Green Attributes, and any other Product, the quantity of which is measured based on the amount of the Generation Facility Delivered Energy. The quantity of Generation Facility Bundled Green Energy shall be equal to the lesser of the quantity of (i) the Generation Facility Delivered Energy, or (ii) the amount of Renewable Energy Credits that are delivered to Buyer in respect of the Generation Facility Delivered Energy (or, if any such Generation Facility Delivered Energy is delivered to the Energy Storage System, the amount of Renewable Energy Credits that would reasonably have been expected to be delivered to Buyer in respect of such Generation Facility Delivered Energy if such Generation Facility Delivered Energy had been delivered to the Energy Delivery Point), unless a change in Applicable Laws occurs after the Effective Date that would, absent further action by Seller, change the methodology for determining the amount of Renewable Energy Credits delivered by the Generation Facility such that the quantity of such Renewable Energy Credits is reduced as compared to the prior methodology, in which case the quantity of Generation Facility Bundled Green Energy shall be equal to the Generation Facility Delivered Energy.

"Generation Facility Delivered Energy" means, with respect to the Generation Facility, (i) Generation Facility Grid Delivered Energy and (ii) any Energy generated by the Generation Facility that is delivered by the Project to the Energy Storage System to be used as Charging Energy for the Energy Storage System, as measured by the Metering Equipment in [MWh_{AC}][3].

"Generation Facility Grid Delivered Energy" means Energy generated by the Generation Facility that is delivered by the Project for Buyer's account at the Energy Delivery Point as measured by the Energy Delivery Point Metering Equipment, expressed in MWh_{AC}.

"Generation Facility Metering Equipment" means, for the Generation Facility, the meters and measuring equipment recognized by the CAISO which measures the Energy generated by the Generation Facility.

"Generation Facility Scheduled Energy" means, for the Generation Facility, the Scheduled Energy for the Generation Facility.

"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.

"GEP Damages" means, with respect to a Performance Measurement Period for which there is a GEP Failure Event, an amount equal to the product of (a) the difference of the Guaranteed Energy Production for such Performance Measurement Period, less the sum of Generation Facility Bundled Energy actually delivered to Buyer during such Performance Measurement Period, plus any deemed amounts set forth in the last sentence of Section 1.1.2(a) during such Performance

[3] **NTD**: If the Energy Storage System is DC coupled, then appropriate conversation methodology to be discussed.

Measurement Period, plus GEP Damages Credited Amounts associated with the immediately-prior Performance Measurement Period (in MWh), multiplied by (b) the Energy Price.

"GEP Damages Credited Amount" means, with respect to a Performance Measurement Period for which there is a GEP Failure Event, the amount (in MWh) calculated for clause (a) of the definition of "GEP Damages" for such Performance Measurement Period, but only to the extent that Seller paid GEP Damages associated with such amounts.

"GEP Failure" has the meaning set forth in Section 1.1.2(a)(i)."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.

"Green Attributes" means, subject to the limitations in the final sentence of this definition, 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: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) 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; and (3) 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, or any other Renewable Energy Incentives, (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.

"Guaranteed Energy Production" has the meaning set forth in Section 1.1.2(a).

"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 Energy Storage System 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.][4]

"Hour-Ahead" has the meaning set forth in the Tariff.

"Hour-Ahead Schedule" has the meaning set forth in the Tariff.

"Imbalance Energy" means, with respect to the Energy Storage System or Generation Facility, the amount of Energy, in any given settlement interval, by which the amount of Energy Storage System Delivered Energy or Generation Facility Grid Delivered Energy (as applicable) deviates from the amount of Energy Storage System Scheduled Energy or Generation Facility Scheduled Energy (as applicable).

"Industry Standards" has the meaning set forth in Section 8.1.1.

"Inflexible Capacity" means with respect to any particular Showing Month of the Delivery Period, the MWs of the Product which are not eligible to satisfy a load-serving entity's Flexible RAR.

"Initial Delivery Date" has the meaning set forth in Section 2.8.

"Initial Negotiation End Date" has the meaning set forth in Section 22.2.1.

"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 connected, 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

[4] **Note to Draft**: Buyer to provide form.

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.

"ITC" means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.

"[Large/Small] Generator Interconnection Agreement" means a [large/small] generator interconnection agreement entered into with the Transmission Provider.

"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 12.1 (subject to the Collateral Assignment Agreement, if applicable).

"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.

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

"Local RAR" means, for Projects providing Capacity Attributes, the local Resource Adequacy Requirements established for load-serving entities by the CAISO pursuant to the Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

"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 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.

"Metering Equipment" means, as applicable, the Generation Facility Metering Equipment, the Energy Storage System Metering Equipment, and the Energy Delivery Point Metering Equipment.

"Milestone Extension Date" has the meaning set forth in Section 6.2.1.

"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 Delivery Forecast" has the meaning set forth in Section 15.3.3.

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

"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.

"Monthly Supply Plan" has the meaning set forth in the Tariff.

"Moody's" means Moody's Investor Services, Inc. or its successor.

"MW" means mega-watt or mega-watts.

"Negative Imbalance Energy" has the meaning set forth in Section 14.4.1.

"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 Procedures" has the meaning set forth in Section 15.11.

"Operating Restrictions" means limitations on Buyer's ability to schedule and use Contract Capacity, Ancillary Services, and Energy that are identified in Appendix 1.1 to this Agreement.

"Outage Schedule" has the meaning set forth in Section 17.1.1.

"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 Intermittent Resource" 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 [or the owner of the distribution system 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.

"Performance Measurement Period" has the meaning set forth in Section 1.1.2(a).

"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 (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 Tariff.

"Positive Imbalance Energy" has the meaning set forth in Section 14.4.1.

"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, Capacity Attributes, Energy (including Bundled Green Energy), Green Attributes, 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.

"Project System" means the Generation Facility or the Energy Storage System, as applicable, as further described in Appendix 1.2.2.

"Protective Apparatus" means control devices (such as meters, relays, power circuit breakers and synchronizers) specified in the interconnection agreements for the Project.

"Qualified Assignee" means 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.

"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.

"RA Compliance Obligations" means RAR, Local RAR and Flexible RAR.

"RA Compliance Showings" means the (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) Flexible RAR compliance or advisory showings (or similar successor showings), in each case, an entity is required to make to the CAISO pursuant to the Tariff, to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, or to any Governmental Authority.

"Ramp Rate" means the ability of the Energy Storage System to change between power output levels, expressed in MW_{AC}/min.

"Real-Time Forecast" means the total amount of energy that the Generation Facility would have produced during an Economic Dispatch Down Period, as calculated by Seller using the best available data obtained through commercially reasonable methods and meteorological data at the Generation Facility during an Economic Dispatch Down Period, and any adjustments necessary to accurately reflect the Generation Facility's capacity to produce and deliver energy to the Energy Delivery Point, including applicable losses and manufacturers' warranted power curves, subject to Buyer's audit and approval not to be unreasonably withheld.

"Recovery Plan" has the meaning set forth in Section 6.2.1.

"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 (as defined in the Tariff) (or the output therefrom) and the CAISO.

"Renewable Energy Credit" has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision 08-08-028, as each may be amended from time to time or as further defined or supplemented by Law.

"Renewable Energy Incentives" means: (a) all federal, state, or local Tax Credits or other Tax benefits associated with the production of electricity from, or the construction, operation or the ownership of, the Project or any part thereof (including the Tax Credits and other credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits associated with the production of electricity from, or the construction, operation or the ownership of, the Project, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive available from a Governmental Authority that is associated with the production of electricity from, or the construction, operation or the ownership of, the Project; provided that Renewable Energy Incentives shall not include Renewable Energy Credits, Green Attributes, or Capacity Attributes.

"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" has the meaning set forth in the Resource Adequacy Rulings.

"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 Requirements" or "RAR" means the resource adequacy requirements applicable to an entity as established by the CAISO pursuant to the Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

"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.

"Resource ID" has the meaning set forth in the Tariff.

"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 Energy Storage System in recovering Charging Energy from the Energy Storage System, as measured at the Charging Energy Delivery Point to the Energy Delivery Point (based on 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.

"Sales Price" means (i) the price (in dollars per megawatt hour) at which Seller, acting in a commercially reasonable manner, resells any Product not Scheduled and received by Buyer, deducting from such proceeds any (a) costs (calculated in dollars per megawatt hour) reasonably incurred by Seller in reselling such Product including all costs charged by CAISO to Schedule and deliver the Product into the CAISO System, and (b) additional transmission charges (calculated in dollars per megawatt hour), if any, reasonably incurred by Seller in Scheduling and delivering such Product to the third party purchasers, or (ii) absent a sale despite commercially reasonable efforts to resell the Product, zero. The Sales Price shall also be reduced by all CAISO and other costs, charges and penalties with respect to the deviation from the Scheduled supply, in each case, resulting from Buyer's failure to take Product and calculated in dollars per megawatt hour; *provided*, however, in no event shall such price include any ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer's liability. The Sales Price may be less than zero.

"Schedule" means the actions of Seller, Buyer and/or their designated representatives, or Scheduling Coordinators, including each Party's Transmission Providers, if applicable, of

notifying, requesting and confirming to each other and the CAISO the quantity and type of Product to be delivered on any given day or days at a specified delivery point.

"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 the Energy discharged from the Energy Storage System or generated by a Generation Facility, as applicable, in either case that is 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 Project is either in whole or in part not capable of generating, charging, storing Energy or discharging Energy (as applicable) 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.

"Seller" has the meaning set forth in the introductory paragraph hereto.

"Seller Cost Test" means any test requested or required to be undertaken by Buyer hereunder.

"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.

"Showing Month" means the calendar month of the Delivery Period that is the subject of the RA Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the Tariff.

"Site" has the meaning set forth in the Recitals.

"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 an Energy Storage System in real time, expressed as a percent of Maximum Energy Capacity (e.g., 95% SOE).

"Station Use" means 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, plant lighting and control systems.

"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.

"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 (as defined in the Tariff).

"Supply Plan" has the meaning set forth in the Tariff.

"System Dispatch Down" means curtailment of delivery of Product from the Generation Facility or Energy Storage System resulting from (a) curtailment ordered by the CAISO (whether directly or through the Scheduling Coordinator or the Participating Transmission Owner), for any reason, including, but not limited to, an Exceptional Dispatch (as defined in the Tariff), any system emergency as defined in the Tariff ("System Emergency"), any warning of an anticipated System Emergency, or any warning of an imminent condition or situation which could jeopardize the CAISO's or Participating Transmission Owner's electric system integrity or the integrity of other systems to which the CAISO or Participating Transmission Owner is connected, any warning, forecast, or anticipated overgeneration conditions, including a request from CAISO to manage over-generation conditions; (b) curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner's electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected; (c) curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) as a result of scheduled or unscheduled maintenance or construction on the Participating Transmission Owner's transmission facilities or distribution operator's facilities (if interconnected to distribution or sub-transmission system) that prevents the delivery or receipt of Delivered Energy to or at the Energy Delivery Point, (d) curtailment in accordance with Seller's obligations under its interconnection agreement with the Participating Transmission Owner or distribution operator; or (e) in the case of an Energy Storage System, curtailment ordered by Buyer pursuant to a Dispatch Notice; *provided*, however, that, for purpose of this definition, System Dispatch Down for a Generation Facility shall not include Economic Dispatch Down of the Generation Facility.

"System Emergency" has the meaning set forth in the Tariff.

"System Response Time" means the amount of time for the Energy Storage System to change from an off-line state to the maximum discharge rate for the Energy Storage System and the amount of time for the Energy Storage System 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.

"Tax Credits" means the PTC, ITC, and any other state, local or federal production or other tax credit, depreciation benefit, tax deduction or investment tax credit specific to the production, sale or storage of renewable energy from, or the operation or the ownership of, the Project or any part thereof.

"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 Provider" means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Energy Delivery Point.

"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 17.1.

"VER Forecast" means the forecast of the Energy to be produced by the Generation Facility prepared by the CAISO or its agent in accordance with the VER Forecasting Program and communicated to the Scheduling Coordinator, which forecast is the last such forecast prepared by the CAISO that does not reflect curtailed production as a result of Economic Dispatch Down periods. As of the Effective Date, such VER Forecast is the CAISO forecast generated through its Resource Specific VER Forecast Usage Report.

"VER Forecasting Program" has the meaning set forth in the Tariff.

"Waiver Denial Periods" has the meaning set forth in the Tariff.

"WECC" means the Western Electricity Coordinating Council, or any successor thereto.

APPENDIX B

COMMERCIAL OPERATION CERTIFICATE

This certification ("Certification") of Commercial Operation is delivered by _____[*licensed professional engineer*] ("Engineer") to San Diego Gas & Electric Company ("Buyer") in accordance with the terms of that certain Renewable Energy and Storage Power Purchase Agreement dated _____ ("Agreement") by and between Owner and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of date below, Engineer hereby certifies and represents to Buyer the following:

1. We have read the Agreement, and we understand the requirements for Commercial Operation under the Agreement.

2. We have reviewed the material and data made available to us by the Owner.

3. We have reviewed all governmental approvals and permits identified by the Owner as being required for the construction and operation of the Project and are of the opinion that the Project as completed is in compliance in all material respects with the environmental and technical requirements contained therein.

4. Based on our review of the aforementioned information and of information provided to us by others which we have not independently verified, we are of the opinion that the following have been met:

(a) Except for punch list items that would not materially affect the performance, reliability or safe operation of the Project, the construction and installation of the Project has been completed in accordance with the specifications set forth in Appendix 1.2.1 of the Agreement and is ready for commercial operation in compliance with all Applicable Laws, Required Permits, and Accepted Electrical Practices;

(b) Each of the Generation Facility and the Energy Storage System has successfully passed all performance tests;

(c) The Energy Storage System has successfully passed all Commercial Operation Tests at a level that demonstrates Contract Capacity of at least the Expected Energy Storage System Contract Capacity and a Tested Round-Trip Efficiency Rate of at least the Guaranteed Round-Trip Efficiency Rate;

(d) Authorization to parallel the Project with the CAISO Grid has been obtained;

(e) The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Transmission Provider as appropriate on _____[DATE]_____;

(f) The CAISO has provided notification supporting Commercial Operation (which for avoidance of doubt does not need to include CAISO Ancillary Services Certification), in accordance with the CAISO Tariff on _____[DATE]_____;

(g) The interconnection facilities have been completed in accordance with applicable specifications, tariffs, laws and governmental approvals to enable power generated by the Project to be received at the Energy Delivery Point;

(h) Owner has obtained all governmental approvals (including all Required Permits) necessary for the continuous commercial operation of the Project and the Project is in compliance with all such governmental approvals, Required Permits and all other Applicable Laws; and

(i) The Generation Facility has a Contract Capacity of [___] MW_{AC} and the Energy Storage System has a Contract Capacity of [___] MW_{AC} and a Tested Round-Trip Efficiency Rate of [___]%.

EXECUTED this _____ day of _____, 20__.

Engineer

[_____],
a [_____]

By:_____
Name: _____
Title:_____

APPENDIX 1.1

OPERATING RESTRICTIONS[5]

[To be inserted by the Parties]

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.

5 **Note to Draft**:

APPENDIX 1.1.1

CONTRACT CAPACITY, ROUND TRIP EFFICIENCY AND EXPECTED CAPACITY ATTRIBUTES[6]

Expected Generation Facility Contract Capacity: ___ MW_{AC}

Expected Energy Storage Contract Capacity: ___ MW_{AC}

Guaranteed Round-Trip Efficiency Rate = _____.00%

Expected Capacity Attributes: _____ MW_{AC}

6 **Note to Draft**:

APPENDIX 1.2.2

PROJECT DESCRIPTION[7]

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:

[7] **Note to Draft**:

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[8]

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*	

*Critical items subject to Daily Delay Damages if not achieved by above dates (as may be extended pursuant to Section 6.1 of the Agreement).

8 **Note to Draft**: Under Buyer review.

APPENDIX 6.1(b)

MONTHLY PROGRESS REPORT[9]

Monthly Progress Report

of

[INSERT SELLER'S NAME]

provided to

San Diego Gas & Electric Company

[Date]

9 **Note to Draft**: Under Buyer review.

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 Major[10] activities to be performed for each of the following aspects of the Project during the current calendar month:

[10] 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[11]

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, and (iv) other Project tests required by CAISO, CPUC or any other Governmental Authority having jurisdiction ("Other Required Tests"). 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

[11] **Note to Draft**:

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 calbration 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 Energy Storage System and from an off-line state to the maximum discharging rate of the Energy Storage System.

C. Test Showing. For satisfactory complietion of the Initial Compliance Tests, Seller must demonstrate to Buyer's reasonable satisfaction, that the Energy Storage System 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 be performed consistent with and in accordance with the requirements set forth by the CPUC and the CAISO at the time of such test for determining the portion of the Energy Storage System's Capacity that is eligible and can be counted to satisfy Resource Adequacy capacity requirements established for load-serving entities by the CAISO (unless otherwise set forth in this Agreement or this Appendix or as agreed to by Buyer in writing in its sole discretion). 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 from 0% State of Energy to the earlier of 100% State of Energy or maximum State of Energy at which the BMS begins to limit charging capacity. Charging Capacity shall be calculated by dividing total Charging Energy by the duration for this charging portion of the Contract Capacity Test.

2. Measurement of the Project's maximum Discharging Capacity over four (4) continuous hours of discharging from 100% State of Energy to the earlier of 0% State of Energy or the minimum State of Energy at which the BMS begins to derate Discharging Capacity. Discharging Capacity shall be calculated as dividing the total Discharging Energy during this discharging portion of the Contract Capacity Test by 4 hours.

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 [20%] State of Energy, which Stored Energy amount ("Stored $\text{Energy}_{\text{test,0}}$") 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 [80%] State of Energy, at the then-applicable Contract Capacity, which Charging Energy amount ("Charging $\text{Energy}_{\text{test}}$") and Stored Energy amount at the end of such charging ("Stored $\text{Energy}_{\text{test,1}}$") 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 $\text{Energy}_{\text{test}}$ multiplied by the Guaranteed Round-Trip Efficiency Rate. The Delivered Amount at the end of such discharging ("Delivered $\text{Energy}_{\text{test}}$") and the Stored Energy amount at the end of such discharging ("Stored $\text{Energy}_{\text{test,2}}$") shall be recorded.

4. The Tested Round-Trip Efficiency Rate (TRTER) shall be calculated as follows:

$$\text{TRTER} = \left(\frac{Stored\ Energy_{test,1} - Stored\ Energy_{test,0}}{Charging\ Energy_{test}}\right) \times \left(\frac{Delivered\ Energy_{test}}{Stored\ Energy_{test,1} - Stored\ Energy_{test,2}}\right) \times 100\%$$

APPENDIX 9.2

MONTHLY CAPACITY PAYMENT[12]

The Monthly Capacity Payment for each month of the Delivery Period shall be equal to the sum of the Monthly Capacity Payment for each Project System, as 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 for a Project System 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 a Project System 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 of the Energy Storage System in effect during month *m*, expressed in kW_{AC}, rounded to the nearest 100 kW_{AC}. If the Contract Capacity of the Energy Storage System changes during such month, then the Monthly Capacity Payment of the Energy Storage System for such month shall be prorated based on the applicable Contract Capacity of the Energy Storage System before such change and the applicable Contract Capacity of the Energy Storage System from and after such change.

CR is the Capacity Rate expressed in Dollars per kW_{AC}-year,

CR = $[XXX]/$kW_{AC}$-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

[12] **Note to Draft**: Under Buyer review.

Month	Monthly Shaping Factor (%)
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" of the Energy Storage System for month m is the equivalent availability factor computed as follows:

$$\text{EAF}_{\text{m}} = \sum_{i}^{p} \frac{\text{Availability}_i}{p}$$

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 of (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 Energy Storage System 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 of the Energy Storage System applicable for such hour; or

(b) if the Energy Storage System 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 of the Energy Storage System 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" of the Energy Storage System 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:

$$\text{RTERF}_m = \frac{Tested\ Round\text{-}Trip\ Efficiency\ Rate_m}{Guaranteed\ Round\text{-}Trip\ Efficiency\ Rate}$$

Where:

Tested Round-Trip Efficiency Rate$_m$ is the Tested Round-Trip Efficiency Rate for the Energy Storage System in effect during month *m*;

Provided that if the Round-Trip Efficiency Rate Factor of the Energy Storage System for month *m* exceeds 1.00 under this clause (a), then the Round-Trip Efficiency Rate Factor of the Energy Storage System 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 = Tested Round-Trip Efficiency Rate$_m$ divided by 0.[___];

Provided that if the Round-Trip Efficiency Rate Factor of the Energy Storage System for month *m* exceeds 1.[___] under this clause (b), then the Round-Trip Efficiency Rate Factor of the Energy Storage System for month *m* shall be deemed to be 1.[____] for purposes of this clause (b).

(c) If the Round-Trip Efficiency Rate for an Energy Storage System changes during such month, then the Monthly Capacity Payment for the applicable Project System for such month shall be prorated based on the applicable Tested Round-Trip Efficiency Rate (and resulting Round-Trip Efficiency Rate Factor) of the Energy Storage System before such change and the applicable Tested Round-Trip Efficiency Rate (and resulting Round-Trip Efficiency Rate Factor) for the Energy Storage System from and after such change.

APPENDIX 9.3

MONTHLY ENERGY PAYMENT

The Monthly Energy Payment for each month of the Delivery Period shall be equal to the sum of the Monthly Energy Payment for each Project System, as determined as follows:

1. Monthly Energy Payment. The Monthly Energy Payment for a Project System shall equal the sum for each hour in the month of the product of (a) the Energy Price times (b) Generation Facility Bundled Green Energy for such Project System in such hour.

2. Energy Price. The price for the Generation Facility Bundled Green Energy that is delivered to Buyer in each Contract Year shall be as follows ("Energy Price"):

Contract Year	Energy Price ($/MWh)

Provided, however, that:

(a) if Seller delivers Generation Facility Bundled Green Energy in the aggregate for any CAISO settlement interval (not to exceed one hour) in excess of the product of the Contract Capacity for the Generation Facility times the length of such settlement interval, expressed in hours, then the Energy Price for such excess Generation Facility Bundled Green Energy in such settlement interval shall be reduced to zero dollars ($0), and if the real time Locational Marginal Price for the Delivery Point during such settlement interval is less than zero dollars ($0), Seller shall pay to Buyer an amount equal to the absolute value of such negative Locational Marginal Price times such excess Generation Facility Bundled Green Energy; and

(b) if Seller delivers Generation Facility Bundled Green Energy in the aggregate for any Contract Year during the Delivery Period in excess of one hundred five percent (105%) of the annual Contract Quantity, then for any such portion of such Generation Facility Bundled Green Energy (i) in excess of one hundred five percent (105%) of the annual Contract Quantity up to one hundred ten percent (110%) of the annual Contract Quantity, the Energy Price for such excess Generation Facility Bundled Green Energy for the remainder of that Contract Year shall be reduced to the lesser of (x) the Energy Price multiplied by fifty percent (50%) and (y) the real time Locational Marginal Price for the Delivery Point during the CAISO settlement interval when such Generation Facility Bundled Green Energy was delivered and (ii) in excess of one hundred ten percent (110%) of the annual Contract Quantity, the Energy Price for such excess Generation Facility Bundled Green Energy for the remainder of that Contract Year shall be reduced to zero dollars ($0); and, in each case, for each CAISO settlement interval during the time in which the real time Locational Marginal Price for any such excess Generation Facility Bundled Green Energy is less than zero dollars ($0), Seller shall pay to Buyer an amount equal to the absolute value of such negative Locational Marginal Price times the Generation Facility Bundled Green Energy delivered during such settlement interval.

APPENDIX 11.3

LETTER OF CREDIT FORM[13]

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

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[13] **Note to Draft**: Under Buyer review.

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[14]

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				

[14] **Note to Draft**: Under Buyer review.

20:00				
21:00				
22:00				
23:00				
0:00				

Comments:_____

_____

_____

_____

_____

_____

APPENDIX 15.3
DISPATCH AND UPDATED DISPATCH NOTICES[15]

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					

15 **Note to Draft**: Under Buyer review.

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 15.8
DAILY OPERATING REPORT[16]

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 15.8 of the Agreement.

16 **Note to Draft**: Under Buyer review.

APPENDIX 15.8
COMMUNICATIONS PROTOCOLS[17]

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

[17] **Note to Draft**: Under Buyer review.

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	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				

LONG FORM CONFIRMATION
FOR RESOURCE ADEQUACY CAPACITY PRODUCT
Resource Adequacy Contract Number: _____

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

Name: Party A / Buyer

All Notices:
San Diego Gas & Electric Company
8315 Century Park Court CP 21D
San Diego CA 92123-1593
Attn: Contract Administration
Telephone: (858) 650-6176
Duns: 006911457
Federal Tax ID Number: 95-1184800

Invoices:
San Diego Gas & Electric Company
8315 Century Park Court
San Diego CA 92123-1593
Attn: Energy Accounting Manager
Telephone: (858) 650-6177

Name: Party B / 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: (___) ___-____

Scheduling:
San Diego Gas & Electric Company
8315 Century Park Court, CP 21D
San Diego, CA 92123-1593
Attn: Transaction Scheduling Manager
Day Ahead: (858) 650-6168
Real Time: (858) 650-6160

Scheduling:
< company name >
< street address >
< city/state/zip >
Attn: _____
Day Ahead: (___) ___-____
Real Time: (___) ___-____
Facsimile: (___) ___-____

Payments:
San Diego Gas & Electric Company
8315 Century Park Court
San Diego CA 92123-1593
Attn: Energy Accounting Manager
Telephone: (858) 650-6177

Payments:
< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: (___) ___-____
Facsimile: (___) ___-____

Wire Transfer:
Union Bank of California
445 South Figueroa Street
Los Angeles CA 90071
ABA Routing Number: 122000496
Payee: San Diego Gas & Electric Company
Account Number: 4430000352
Confirmation: SDG&E – Major Markets

Wire Transfer:
< bank street address >
< bank city/state/zip >
ABA Routing Number: _____
Payee: _____
Account Number: _____
Confirmation: _____
Facsimile: (___) ___-____

Credit and Collections:
San Diego Gas & Electric Company
8315 Century Park Court CP 21C
San Diego, CA 92123
Attn: Energy Risk Manager
Telephone: (858) 650-6190
Email: sdge_mmcredit@sdge.com

Credit and Collections:
< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: (___) ___-____
Facsimile: (___) ___-____

With additional Notices of an Event of Default or Potential Event of Default to:
San Diego Gas & Electric Company
8330 Century Park Ct.
San Diego, California 92123
Attn: General Counsel
Telephone: (858) 650-6141

With additional Notices of an Event of Default or Potential Event of Default to:
< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: (___) ___-____
Facsimile: (___) ___-____

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

Article Two
Transaction Terms and Conditions

☐ Optional provision in Section 2.4.
If not checked, inapplicable.

Article Four
Remedies for Failure to Deliver or Receive

☒ Accelerated Payment of Damages.
If not checked, inapplicable.

Article Five
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: [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

(d) Downgrade Event:
☒ Not Applicable
☐ Applicable

(e) Guarantor for Party B: N/A
Guarantee Amount: N/A

8.2 Party B Credit Protection

(a) Financial Information:
☐ Option A
☐ Option B Specify: _____
☐ Option C Specify: _____

(b) Credit Assurances:
☒ Not Applicable
☐ Applicable

(c) Collateral Threshold:
☒ Not Applicable
☐ Applicable
If applicable, complete the following:
Party A Collateral Threshold: $_____; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: $_____
Party A Rounding Amount: $_____

(d) Downgrade Event:
☒ Not Applicable
☐ Applicable
If applicable, complete the following:

☐ It shall be a Downgrade Event for Party A if Party A 's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party A is not rated by either S&P or Moody's

☐ Other:
Specify: _____

(e) Guarantor for Party A: N/A

Guarantee Amount: N/A

Article 10
Confidentiality

☒ Confidentiality Applicable If not checked, inapplicable.

Schedule M

☐ Party A is a Governmental Entity or Public Power System
☐ Party B is a Governmental Entity or Public Power System
☐ Add Section 3.6. If not checked, inapplicable
☐ Add Section 8.4. If not checked, inapplicable

Other Changes

1. The modifications to Section 1.12, 1.50 and 5.2 of the Master Agreement specified in that certain Errata published by the Edison Electric Institute (version 1.1, July 18, 2007) are hereby incorporated herein as if set forth in full.

2. Section 1.23 is deleted in its entirety and replaced with the following:

"Force Majeure" means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under this Agreement but only to the extent (1) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (2) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party's ability to perform its obligations under this Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (3) such event is not the direct or indirect result of the fault or negligence of the Party seeking to have its performance obligations excused thereby.

(a) Subject to the foregoing, events that could qualify as Force Majeure include, but are not limited to the following:

(i) acts of God, flooding, lightning, landslide, earthquake, fire, drought, explosion, epidemic, quarantine, storm, hurricane, tornado, volcano, other natural disaster or unusual or extreme adverse weather-related events;

(ii) war (declared or undeclared), riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockade, insurrection, revolution, expropriation or confiscation;

(iii) except as set forth in subpart (b)(vi) below, strikes, work stoppage or other labor disputes (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable); or

(b) Force Majeure shall not be based on:

(i) Buyer's inability economically to use or resell the Product purchased hereunder;

(ii) Seller's ability to sell the Product at a price greater than the price set forth in this Agreement;

(iii) Seller's inability to obtain governmental approvals or other approvals of any type for the construction, operation, or maintenance of the Unit;

(iv) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the

Unit, except to the extent Seller's inability to obtain sufficient labor, equipment, materials, or other resources is caused by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iii) above;

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

(vi) a strike, work stoppage or labor dispute that is directed specifically at Seller, Seller's Affiliates, or the Unit

(vii) delays or increased costs arising or resulting from the COVID-19 epidemic, or

(viii) any equipment failure except to the extent such equipment failure is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) though (a)(iv) above.

3. Section 1.60 is amended by inserting the words "in writing" immediately following the words "agreed to".

4. Section 2.3 is deleted in its entirety and replaced with the following:

   "2.3 No Oral Agreements or Modifications. Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Transactions may not be orally amended, supplemented or modified and any such amendment, supplement or modification shall only be effective pursuant to a writing signed by both Parties."

5. Section 2.4 is hereby amended by deleting the words "either orally or" in the seventh line.

6. The following new Sections 5.1(i) and 5.1(j) are inserted immediately after Section 5.1(h):

   "(i) Seller's failure to deliver a Remedial Action Plan if such failure is not remedied within five (5) Business Days after receipt of Buyer's Notice of such failure.

   (j) Seller's failure to (i) achieve any individual Critical Milestone by the date that is forty-five (45) days after the corresponding milestone date set forth in Appendix B, subject to extension on a day-for-day basis pursuant to Section 3.3(d)(2), and (ii) deliver a Remedial Action Plan that demonstrates to Buyer's reasonable satisfaction that Seller can achieve the

Initial Delivery Date by the end of the Cure Period following the Guaranteed Initial Delivery Date, if such failure is not remedied within five (5) Business Days after receipt of Buyer's Notice of such failure."

7. Section 5.2 is amended by adding the following at the end of that section:

   "Notwithstanding any provision in this Agreement to the contrary, if the Non-Defaulting Party's aggregate Gains exceeds its aggregate Losses and Costs, if any, resulting from the termination of the Terminated Transaction, the Settlement Amount shall be zero."

8. Section 6.8 is deleted it in its entirety.

9. 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.

10. Section 10.5 of the Master Agreement shall be deleted in its entirety and replaced with the following:

    "Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided that either Party may assign this Agreement to an Affiliate without the other Party's consent (and thereby relieving itself from further liability hereunder) so long as (a) the assignee is as creditworthy as the assigning party, or better, (b) the assigning Party notifies the other Party no later than thirty (30) Business Days before the effective date of the assignment and the assignee assumes in writing all of the assigning Party's obligations and liabilities hereunder. For purposes hereof, the transfer of more than fifty percent (50%) of the equity ownership or voting interest of Seller (or any parent entity holding directly or indirectly at least fifty percent (50%) of the equity ownership or voting interest of Seller if such interest constitutes more than twenty percent (20%) of the fair market value of the assets of such parent entity) to a person that is not an Affiliate of Seller shall also constitute an assignment of this Agreement requiring Buyer's prior written consent. Notwithstanding the foregoing, Buyer may, without the consent of the Seller (and thereby relieving itself from further liability hereunder), assign this Agreement to any legal entity that is established by statute or by the CPUC to serve load as a central procurement entity. Buyer may also assign this Agreement (and thereby relieve itself from further liability hereunder), to a

Qualified Assignee, so long as Buyer notifies Seller no later than thirty (30) days before the effective date of the assignment and the assignee assumes in writing all of Buyer's obligations and liabilities hereunder. "Qualified Assignee" shall mean: any community choice aggregation entity formed in the State of California with a Credit Rating of BBB- or better. Notwithstanding the foregoing, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), transfer, sell, pledge, encumber, or assign this Agreement or the accounts, revenues or proceeds hereof to its financing providers. In connection with any financing or refinancing of the Unit by Seller, Buyer shall in good faith negotiate and agree upon a consent to collateral assignment of this Agreement in a form that is commercially reasonable and customary in the industry.

11. 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."

12. Section 10.11 of the Master Agreement shall be deleted in its entirety and replaced with the following:

10.11 Neither Party shall disclose the non-public terms or conditions of this Agreement or any transaction hereunder to a third party, other than (i) the Party's Affiliates and its and their officers, directors, employees, lenders or potential lenders, contractors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential, (ii) for disclosure to the Buyer's Procurement Review Group, as defined in CPUC Decision (D) 02-08-071, subject to a confidentiality agreement, (iii) to the CPUC under seal for purposes of review, (iv) in order to comply with any Applicable Law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in clause (vi); (v) to a Qualified Assignee

subject to an appropriate non-disclosure agreement; or (vi) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the Federal Energy Regulatory Commission. In connection with requests made pursuant to clause (iv) of this Section 10.11 ("Disclosure Order"), each Party shall, to the extent practicable, use reasonable efforts to prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be (i) prohibited from complying with a Disclosure Order or (ii) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. Except as otherwise agreed to in this Section 10.11, no announcement, publicity, advertising, press release, promotional or marketing materials regarding the arrangement contemplated under this Agreement, including the existence hereof, shall be made by either Party without the prior written approval of the other Party, which approval shall not be unreasonably withheld or delayed.

13. The following is added to the Master Agreement as a new Section 10.12:

    10.12 Standard of Review. No Party shall seek to revise the rates, terms or conditions of service of this Agreement pursuant to the provisions of Section 205, 206 or 306 (or any other provision) of the Federal Power Act. Absent the agreement of all Parties to a proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S., 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by NRG Power Marketing LLC v. Maine Pub. Util. Comm'n, 558 U.S. (2010) (commonly known as the "Mobile-Sierra" doctrine).

14. Schedule P: Products and Related Definitions shall be deleted in its entirety.

1. Definitions

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

1.2 "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.

1.3 "Availability Incentive Payments" has the meaning set forth in the Tariff [and includes any similarly defined payments under the Tariff in respect of Flexible RA Attributes] *[Comment: Include bracketed language if the Product includes flexible capacity]*.

1.4 "Availability Standards" has the meaning set forth in the Tariff [and includes any similarly defined standards under the Tariff in respect of Flexible RA Attributes] *[Comment: Include bracketed language if the Product includes flexible capacity]*.

1.5 "Buyer" has the meaning specified in the introductory paragraph.

1.6 "CAISO" means the California Independent System Operator Corporation, or any successor entity performing the same functions.

1.7 "CAISO Grid" means the system of transmission lines and associated facilities of the Participating Transmission Owners that have been placed under the CAISO's operational control.

1.8 "Capacity Attributes" means (a) the Local RA Attributes, (b) the RA Attributes, *[Comment: Include bracketed language if the Product includes flexible capacity]* [(c) the Flexible RA Attributes, and (c/d)] any other current or future defined characteristics (including the ability to generate at a given capacity level, provide ancillary services, ramp up or down at a given rate, and flexibility or dispatch-ability attributes), certificates, tags, credits, howsoever entitled, including any account construct applied to any Compliance Obligations, based on the applicable Unit's electric generation capacity.

1.9 "Capacity Price" means the price specified in the Capacity Price Table in Section 4.1.

1.10 "Capacity Replacement Price" means (a) the actual rate per kW-day paid for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) including any penalties, fines, transaction costs and expenses reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of Replacement Capacity, any penalties, fines, transaction costs and expenses plus the per kW-day market price for the Product not delivered by Seller under this Confirmation. Buyer shall determine such market prices in a commercially reasonable manner. For purposes of

Section 1.51 of the Master Agreement, "Capacity Replacement Price" shall be deemed the "Replacement Price" for this Transaction.

1.11 "Compliance Obligations" means the RAR, Local RAR, Flexible RAR, and other resource adequacy requirements associated with a generating unit's Capacity Attributes established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.

1.12 "Compliance Showing" means one or more of the following: (a) Local RAR Showing, (b) RAR Showing, (c) Flexible RAR Showing, or (d) other Capacity Attributes compliance or advisory filing (or similar or successor showing or filing), in each case, that an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.

1.13 "Confirmation" has the meaning specified in the introductory paragraph.

1.14 "Confirmation Effective Date" has the meaning specified in Section 2.2.

1.15 "Confirmation Execution Date" has the meaning specified in the introductory paragraph.

1.16 "Contract Price" means, for any day in any Monthly Delivery Period, the Capacity Price for such period.

1.17 "Contract Quantity" means the quantity of Product (in MW) as set forth in Section 3.4.

1.18 "Contract Term" has the meaning set forth in Section 2.1.

1.19 "Construction Period Security" has the meaning specified in Section 9.1(b).

1.20 "CPUC" means the California Public Utilities Commission.

1.21 "CPUC Approval" means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:

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

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

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

1.22 "CPUC Approval Security" has the meaning specified in Section 9.1(a).

1.23 "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.

1.24 "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.

1.25 "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.

1.26 "Critical Milestone" means each of the milestones indicated as such in Schedule B.

1.27 "Daily Delay Damages" means liquidated damages paid by Seller to Buyer in the amount of [INSERT] ($XX,XXX) per day for each day of delay.

1.28 "Delivery Period" has the meaning specified in Section 3.3.

1.29 "Delivery Period Security" has the meaning specified in Section 9.1(c).

1.30 "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.

1.31 "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.

1.32 "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.

1.33 "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.

1.34 "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.

1.35 "GADS" means the Generating Availability Data System, or its successor.

1.36 "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.

1.37 "Guaranteed Initial Delivery Date" has the meaning specified in Section 3.3(a).

1.38 "Initial Delivery Date" has the meaning set forth in Section 3.3(b).

1.39 "Initial Showing Month" has the meaning set forth in Section 3.3(b).

1.40 "Interconnection Agreement" means the interconnection agreement entered into by Seller and/or Seller's Affiliates pursuant to which the Project will be interconnected with the Participating Transmission Owner's or other utility owned or managed electric system or to the CAISO Grid, and pursuant to which the Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

1.41 "Interconnection Facilities" means all apparatus installed to interconnect the Project to the Participating Transmission Owner's or other utility owned or managed electric system or to the CAISO Grid to make available to Buyer the Contract Quantity, including, without limitation, connection, transformation, switching, metering, communications, control, and safety equipment, such as equipment required to protect (a) the Participating Transmission Owner's electric system (or other system to which the Participating Transmission Owner's electric system is connection, including the CAISO Grid) and Buyer's customers from faults occurring at the Project, and (b) the Project from faults occurring on the Participating Transmission Owner's electric system or on the systems of others to which the Participating Transmission Owner's electric system is directly or indirectly connected. Interconnection Facilities also include any necessary additions and reinforcements to the Participating Transmission Owner's electric system or CAISO Grid required as a result of the interconnection of the Project to the Buyer electric system, the CAISO Grid or electric systems of others to which the Buyer electric system is directly or indirectly connected.

1.42 "Interest Rate" means, for purposes of this Transaction, for any date the rate per annum equal to the Commercial Paper (prime, 3 months) rate as published the prior month in the Federal Reserve Statistical Release, H.15. Should publication of the interest rate on Commercial Paper (prime, 3 months) be discontinued, then the interest rate on commercial paper, which most closely approximates the discontinued rate, published the prior month in the Federal Reserve Statistical Release, H.15, or its successor publication.

1.43 "Letter of Credit" means an irrevocable standby letter of credit in substantially the form of Appendix C attached hereto issued by a commercial bank chartered under the laws of the United States or a U.S. branch of a foreign commercial bank in each case with a Credit Rating of at least "A-" by S&P or "A3" by Moody's.

1.44 "Local Capacity Area" has the meaning set forth in the Tariff.

1.45 "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.

1.46 "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.

1.47 "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.

1.48 "LSE" means load-serving entity.

1.49 "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)).

1.50 "Master Agreement" has the meaning specified in the introductory paragraph.

1.51 "Milestone Schedule" has the meaning specified in Section 2.3.

1.52 "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.

1.53 "Monthly Payment" has the meaning specified in Section 4.1.

1.54 "Monthly Progress Report" has the meaning specified in Section 2.3.

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

1.56 "NERC" means the North American Electric Reliability Corporation, or its successor.

1.57 "NERC/GADS Protocols" means the GADS protocols established by NERC, as may be updated from time to time.

1.58 “Net Qualifying Capacity” has the meaning set forth in the Tariff.

1.59 “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]*.

1.60 “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.

1.61 “Participating Transmission Owner” means the transmission owner that has released to the CAISO operational control of its transmission facilities to which the Project is interconnected. As of the Confirmation Execution Date, the Participating Transmission Owner is [INSERT].

1.62 “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.

1.63 “Product” has the meaning specified in Section 3.1.

1.64 “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.

1.65 “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.

1.66 “Qualified Assignee” has the meaning set forth in the new Section 10.5 of the Master Agreement.

1.67 “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.

1.68 “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.

1.69 “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.

1.70 “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.

1.71 “Remedial Action Plan” has the meaning specified in Section 2.3.

1.72 "Replacement Capacity" means capacity which has equivalent Capacity Attributes, including qualification as incremental to the list of resources that form the baseline of the need determination conducted in Rulemaking 20-05-003 as such list is set forth as of the Confirmation Execution Date at https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/integrated-resource-plan-and-long-term-procurement-plan-irp-ltpp/d2106035_baseline_gen_list_20220902, as the portion of the Product not provided by the Units committed to Buyer as of the Confirmation Execution Date.

1.73 "Replacement Unit" means a generating unit providing Replacement Capacity.

1.74 "Resource Category" shall be as described in the CPUC Filing Guide.

1.75 "RMR Contract" has the meaning set forth in the Tariff.

1.76 "S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc. or its successor).

1.77 "Scheduling Coordinator" or "SC" has the meaning set forth in the Tariff.

1.78 "Seller" has the meaning specified in the introductory paragraph.

1.79 "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.

1.80 "Substitution Rules" has the meaning set forth in Section 3.8(b).

1.81 "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]*.

1.82 "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.

1.83 "Transaction" has the meaning specified in the introductory paragraph.

1.84 "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.

1.85 "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.

1.86 "Unit Delivered Quantity" means the amount of applicable Product (in MW) actually "delivered" by Seller to Buyer by each individual Unit. As used herein, "delivered" shall mean shown in the Supply Plan and, for purposes of Section 4.1, shall include any RA Substitute Capacity under Section 3.8, and in all cases, shall not include (i) any portion of Contract Quantity for which Buyer is required under the Compliance Obligations or

the Tariff to procure Replacement Capacity, and (ii) any portion of Contract Quantity for which Seller is required hereunder, but fails, to provide Replacement Quantity to Buyer.

1.87 "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.

1.88 "Unit NQC" means the Net Qualifying Capacity established by the CAISO for the applicable Unit.

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.

2.2 Conditions Precedent; Binding Nature

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

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

2.3 Milestone Schedule.

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

or issues of which it is aware which could materially impact its ability to meet the Milestone Schedule. If Seller misses a milestone listed in the Milestone Schedule by more than ten (10) days, except as the result of Force Majeure, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone Schedule completion date, a remedial action plan ("Remedial Action Plan"), which will describe in detail (a) any delays (actual or anticipated) beyond the scheduled Milestone Schedule dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), and (b) Seller's detailed description of its proposed course of action to achieve the missed milestones and all subsequent milestones by the Guaranteed Initial Delivery Date or the end of the Cure Period following the Guaranteed Initial Delivery Date.

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] ***[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) ***[Insert if to be used if the Product includes flexible capacity:*** The Parties agree that (i) the Contract Price for the Product shall not change if the CAISO, CPUC or other Governmental Body defines new or re-defines existing Flexible RAR, Capacity Attributes related to Flexible RAR, or attributes of the Unit related to Flexible RAR, that results in a decrease or increase in the amount of Capacity Attributes related to Flexible RAR provided hereunder, and (ii) if the event in Section 3.1(c)(i) occurs then the Product shall include such Capacity Attributes related to Flexible RAR.***]***

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 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

(a) Guaranteed Initial Delivery Date. Subject to Section 3.3(d)(1), Seller shall achieve the Initial Delivery Date by [INSERT], as such date may be extended pursuant to Section 3.3(d)(2) ("Guaranteed Initial Delivery Date").

(b) The "Delivery Period" shall be the period during which the Product is available to Buyer, and will commence at 12:01 a.m. PPT on the first day of the first Showing Month for which the Product is included in a Supply Plan (the "Initial Showing Month") and shall continue until midnight on the date that is the last day of the month in which the [INSERT] ([XX]) anniversary of the Initial Showing Month occurs; provided, however that the Initial Showing Month shall not be earlier than [INSERT MONTH, YEAR. Within [thirty-five (35)] days after the Initial Delivery Date, Seller shall submit a Supply Plan for the first month of the Delivery Period. The "Initial Delivery Date" shall be the date upon which Seller has completed Seller's obligations set forth in this Section 3.3(b), below, in order to bring the Project, or designated portion thereof, into full operation:

1) Seller has completed the Milestones according to the Milestone Schedule in Appendix A, in order to bring the Project, or designated portion thereof, into full operation as contemplated by this Agreement;

2) the Project has been constructed and installed in accordance with the Agreement and is ready for commercial operation in compliance with all Applicable Laws, Required Permits, and Accepted Electrical Practices;

3) the Project shall have successfully passed all commercial operation tests at a level that demonstrates at least one hundred percent (100%) of the Contract Quantity, and complete test reports have been submitted to Buyer, as set forth in a written notice from Seller to Buyer;

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

5) Seller has executed the Participating Generator Agreement and the Meter Service Agreement required by the CAISO or any Participating Transmission Owners with respect to the Project (and delivered true and complete copies of all such forms and agreements to Buyer);

6) Seller has achieved and been granted "Full Capacity Deliverability Status" for the interconnection capacity applicable to the Project for a fraction of the Project at least equal to the Contract Quantity, and entered into and complied with all obligations under all interconnection agreements required to enable parallel operation of the Project with the Participating Transmission Owner's electric system and CAISO Grid; and

7) Seller has delivered to Buyer the required Delivery Period Security and related documents and instruments as set forth in Section 9.1(c).

(c) Seller Initial Delivery Date Representation. As of the Initial Delivery Date, Seller represents that it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement.

(d) Delayed Initial Delivery Date.

1) Daily Delay Damages. If Seller has not satisfied the conditions precedent set forth in Section 3.3(b) for the Initial Delivery Date of the Project by the Guaranteed Initial Delivery Date, Seller shall owe to Buyer the applicable Daily Delay Damages for each day of delay, up to a maximum of the lesser of (I) [one hundred twenty (120) days], minus the number of days of extension for Force Majeure pursuant to Section 3.3(d)(2)(C), or (II) one hundred (100) days, of delay (the "Cure Period"). Buyer shall be entitled to recover the Daily Delay Damages owed by Seller from the Construction Period Security held by Buyer if Seller fails to pay the Daily Delay Damages in accordance with this Agreement. Each Party agrees and acknowledges that (A) the actual damages that Buyer would incur due to a delay in achieving the Initial Delivery Date on or before the Guaranteed Initial Delivery Date would be difficult or impossible to predict with certainty, (B) the Daily Delay Damages set forth in this section are a reasonable and appropriate approximation of such damages, and (C) the Daily Delay Damages set forth in this section are the sole and exclusive remedy for Seller's delay in achieving the Initial Delivery Date on or before the Guaranteed Initial Delivery Date but shall not otherwise act to limit any of Buyer's rights or remedies arising from any other Event of Default by Seller.

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

A. Delay by the Participating Transmission Owner or the CAISO in installing the Interconnection Facilities for which it is responsible in accordance with the schedule set forth in the Interconnection Agreement. For clarity, Seller shall not be excused and shall be required to pay Daily Delay Damages if the Guaranteed Initial Delivery Date has not been achieved due to the Participating Transmission Owner or the CAISO installing the Interconnection Facilities within the schedule set forth in the Interconnection Agreement. Seller acknowledges and agrees that nothing in this Agreement is intended to abrogate, amend or modify the terms of the Interconnection Agreement between it and the Participating Transmission Owner, or any other agreement between it and the Participating Transmission Owner. Except as may be set forth in such electrical interconnection agreements, the Participating Transmission Owner has not made and makes no, and Seller is not relying on any, representations or warranties of any kind or nature, express or implied,

with respect to the electrical interconnection, including, but not limited to, any representations or warranties concerning the costs, construction schedule, or permitting of, or any other matter related to, the electrical interconnection for the Project. Seller's sole and exclusive remedy under this Agreement for any delay by the Participating Transmission Owner or the CAISO in completing the Interconnection Facilities for which it is responsible is an extension of the Guaranteed Initial Delivery Date in accordance with this Section 3.3(d)(2)(A).

B. 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.

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

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

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
	[INSERT]	All Showing Months in Delivery Period		
* *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 3.8, and;

(b) Seller shall submit, or cause each Unit's SC to submit, written notification to Buyer, no later than fifteen (15) Business Days before the relevant deadline for any applicable Compliance Showing, that Buyer will be credited with Unit Delivered Quantity for the applicable portion of the Delivery Period in the Unit's SC Supply Plan so that the total amount of Unit Delivered Quantity for each Unit credited equals the Unit Contract Quantity.

3.6 CAISO/CPUC Offer Requirements

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

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

Interconnection

(a) The Parties acknowledge and agree that certain of the Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Transmission Provider, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements ("Shared Facilities"); *provided*, such agreements provide for separate metering of the Project.

(b) For the Contract Term, the Interconnection Agreement shall provide for interconnection capacity with full capacity deliverability status for a fraction of the Project at least equal to the Contract Quantity. If there is a partial outage of the Shared Facilities, any associated reduction in capacity shall be allocated pro rata between the Project and the other generating facilities and energy storage projects utilizing the Shared Facilities for purposes of Section 3.2.

(c) Seller shall secure through the CAISO the CAISO Resource ID that is to be used solely for this Project.***]***

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]*[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 3.6.

(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 3.8(b)(ii), then Seller shall reimburse Buyer for any and all Non-Availability Charges incurred by Buyer and shall pay Buyer the CPM revenue the CAISO would have paid the Buyer but for Seller failure, due to such failure or inability to utilize the Substitution Rules; provided, that if Buyer is unable to utilize the Substitution Rules because the RA Substitute Capacity does not qualify for substitution under Section 9.3.1.3.1, 9.3.1.3.2, 40.9.4.2.1(1)(i) or (ii) of the Tariff, then Seller shall not be responsible for any such Non-Availability Charges described in this Section 3.8(d) associated with such inability.

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:

$$Monthly\ Payment = \sum_{n=1}^{d}(A_n * B_n * 1000)$$

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)
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 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, Residual Unit Commitment (RUC) Availability Payments or Reliability Capacity, or their successor, and Imbalance Reserves or its successor but excluding payments described in Section 4.3(a)(i)-(iv).

(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.

4.5 Audit

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

5. Seller's Failure to Deliver Contract Quantity

5.1 Seller's Duty to Provide Replacement Capacity

Seller will be excused if it is unable to provide any portion of the Contract Quantity for the reasons set forth in Section 3.2. For all other replacements, if Seller is unable to

provide the Contract Quantity from any Unit(s) for any day in any Monthly Delivery Period and Replacement Capacity is required under Section 3.2, then:

(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 (less any reductions permitted pursuant to Section 3.2).

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

5.2 Damages for Failure to Provide Replacement Capacity

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

(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 Quantity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver the capacity to another party, and such arrangements shall be considered the procurement of Replacement Capacity. Buyer shall act in a commercially reasonable manner in purchasing any Replacement Capacity, and;

(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 times 1,000 kW/MW, plus (B) the Capacity Replacement Price times the portion of Contract Quantity not provided by Seller nor purchased by Buyer pursuant to Section 5.2(a) for such day times 1,000 kW/MW, and (ii) the portion of Contract Quantity not provided for the applicable day in the applicable Monthly Delivery Period times the Contract Price for that day times 1,000 kW/MW.

5.3 Indemnities for Failure to Deliver Contract Quantity

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

(a) Seller's failure to provide any portion of the Contract Quantity 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 Quantity;

(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 CAISO 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.

6.3 ***[For a project with a delivery Term in excess of 12 years:*** Climate Risk

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

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 [NOTE to respondents: Amount to be determined by SDG&E credit department]

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 from the Confirmation Execution Date of this Agreement until the return date specified in Section 9.2(a) below; and

(b) Construction Period Security in the amount of [$_____] in the form of cash or a Letter of Credit from five (5) Business Days after the Confirmation Effective Date until the return date specified in Section 9.2(b) below; and

(c) Delivery Period Security in the amount of [$_____] in the form of cash or a Letter of Credit from the commencement of the Delivery Period until the return date specified in Section 9.2(c) below.

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

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

Construction Period Security, as applicable, and (B) termination of the Agreement.

(b) 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.

(c) 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).

9.3 Collateral Posting.

(a) 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.

9.4 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 thirty (30) days prior to the expiration of the outstanding Letter of Credit. If Seller fails to renew or cause the renewal of any outstanding Letter of Credit on a timely basis as provided in this section, Buyer shall have the right to draw the entire amount of such Letter of Credit.

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

remain liable (i) for any failure to provide sufficient Performance Assurance or (ii) for any amounts owing to Buyer and remaining unpaid after the application of the amounts so drawn by Buyer.

(c) 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.

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

(a) 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;

(b) 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;

(c) 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;

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

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

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

10. <u>Declaration of an Early Termination Date and Calculation of Settlement Amounts</u>

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

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

respect to determining and paying any Settlement Amount or Termination Payment, and any dispute resolution provisions with respect thereto, shall survive the termination of this Transaction and shall continue until after those penalties or fines are finally ascertained."

[Signature page follows]

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

_____	SAN DIEGO GAS & ELECTRIC COMPANY
a _____	a California corporation
By: _____	By:_____
Name:_____	Name:_____
Title:_____	Title:_____

APPROVED as to legal form _____

APPENDIX A

Unit Information

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

APPENDIX B

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

MILESTONE SCHEDULE

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

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

Appendix C [If applicable]

Form of Letter of Credit

LETTER OF CREDIT FORM

Reference Number:_____ Transaction Date:

BENEFICIARY:

San Diego Gas & Electric Company

_____

_____

_____

Ladies and Gentlemen:

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

This Letter of Credit shall be of no further force or effect upon the close of business on _____or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day, unless extended in accordance with the terms of this Letter of Credit. For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in New York, New York.

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

1. The original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings); and

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

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at_____ or such other number as specified from time to time by the Bank or by electronic signature. The facsimile or electronic signature transmittal shall be deemed delivered when received. It is understood that drawings made by facsimile transmittal or electronic signature are deemed to be the operative instrument without the need of originally signed documents.

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

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

Banking charges shall be the sole responsibility of the Applicant.

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

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

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

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

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

AUTHORIZED SIGNATURE for Bank

_____

By:

Title:_____

ATTACHMENT A TO APPENDIX C
DRAWING CERTIFICATE TO [ISSUING BANK NAME]
IRREVOCABLE STANDBY LETTER OF CREDIT

Reference Number. _____
(Sample Text)

DRAWING CERTIFICATE
Bank
Bank Address

Subject: Irrevocable Standby Letter of Credit
Reference Number:

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

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

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

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

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

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

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.

APPENDIX B

FORM OF MONTHLY PROGRESS REPORT

Monthly Progress Report
of
[INSERT SELLER'S NAME]

provided to
San Diego Gas & Electric Company

[Date]

Instructions.

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

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

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

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

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

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

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

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

Design

Engineering

Major Equipment procurement

Construction

Milestone report

Permitting

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

Design

Engineering

Major Equipment procurement

Construction

Milestone report

Permitting

Overall assessment of the Project status.

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

Design

Engineering

Major Equipment procurement

Construction

Milestone report

Permitting

Exhibit 1: Progress Curve.

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

Exhibit 2: Photos.

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

Safety and Health Reports

Any work stoppage from the previous calendar month:

Work stoppage impact on construction of the Project:

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

By:_____

Name:_____

Title:_____

Date:_____

[Form of PPA for As-Available, Baseload, Peaking or Dispatchable Product]

[Standard contract terms and conditions that "may not be modified" per CPUC D.04-06-014 and subsequent decisions are shown in red shaded text and standard contract terms and conditions that may be modified per CPUC D.04-06-014 and subsequent decisions are shown in green shaded text.]

POWER PURCHASE AGREEMENT

Between

SAN DIEGO GAS & ELECTRIC COMPANY
(as "Buyer")

and

_____
(as "Seller")

POWER PURCHASE AGREEMENT

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COVER SHEET

This Power Purchase Agreement is made as of the following date: [_____]. This Power Purchase Agreement and all exhibits, schedules, appendices, and any written supplements hereto, any designated collateral, credit support or margin agreement or similar arrangement between the Parties as well as all written and signed amendments and modifications thereto shall be a part of, and shall be referred to as, the "Agreement." The Parties to this Agreement (hereinafter individually a "Party" and collectively the "Parties") are the following:

Name:_____("Seller")

All Notices:
Street: _____
City: _____ Zip:_____
Attn: Contract Administration
Phone: _____
Facsimile: _____
Duns: _____
Federal Tax ID Number: _____

Invoices:
_____
_____
_____
Attn: _____
Phone: _____
Facsimile: _____

Scheduling:
_____
_____
_____
Attn: _____
Phone: _____
Facsimile: _____

Payments:
_____
_____
_____
Attn: _____
Phone: _____
Facsimile: _____

Wire Transfer:
BNK: _____
ABA: _____
ACCT: _____
Confirmation: _____
FAX: _____

Credit and Collections:
_____
_____
_____
Attn: _____

Name: San Diego Gas & Electric Company ("Buyer")

All Notices:
Street: 8315 Century Park Court
City: San Diego, CA Zip: 92123
Attn: Electric & Fuel Procurement - Contract Administration
Phone: (858) 636-5536
Facsimile: (858) 650-6190
Duns: 006911457
Federal Tax ID Number: 95-1184800

Invoices:
San Diego Gas & Electric Company
8315 Century Park Ct.
San Diego, California 92123-1593
Attn: Electric & Fuel Procurement – Invoicing and Reporting
Phone: (858) 650-6187
Facsimile: (858) 650-6190

Scheduling:
San Diego Gas & Electric Company
8315 Century Park Ct.
San Diego, California 92123-1593
Attn: Transaction Scheduling Manager
Phone: (858) 650-6160
Facsimile: (858) 650-6191

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
Confirmation: SDG&E, Major Markets
FAX:(213) 244-8316

Credit and Collections:
San Diego Gas & Electric Company, Major Markets
555 W. Fifth Street, ML 18A3
Los Angeles, CA 90013-1011

Phone: _____
Facsimile: _____

With additional Notices of an Event of Default or Potential Event of Default to:

_____
_____
_____
Attn: _____
Phone: _____
Facsimile: _____

Attn.: Major Markets, Credit and Collections Manager
Fax No.: (213) 244-8316
Phone: (213) 244-4343

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

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

1.1 General. The following terms shall have the following meaning for purposes of this Agreement.

"[AAA][JAMS]" means [the American Arbitration Association] [JAMS, Inc.].

"Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

"Agreement" has the meaning set forth in the preamble to the Cover Sheet.

"Arbitration" has the meaning set forth in Section 12.3.

[For As-Available Product only: "As-Available" means a Product for which, subject to the terms of this Agreement, Seller is excused from selling and delivering the Product to Buyer, and Seller shall not be liable to Buyer for any damages determined pursuant to Section 3.1(h) of the Agreement, in the event that Seller fails to deliver the Product to Buyer for any of the following reasons:

(a) if the Project is unavailable as a result of a Forced Outage and such Forced Outage is not the result of Seller's negligence or willful misconduct;

(b) Force Majeure;

(c) by the Buyer's failure to perform;

(d) by a Planned Outage of the Project;

(e) a reduction in output as ordered under Dispatch Down Periods; or

(f) [the unavailability of landfill gas which was not anticipated as of the Execution Date, which is not within the reasonable control of, or the result of negligence of, Seller or the party supplying such landfill gas to the Project, and which by the exercise of reasonable due diligence, Seller is unable to overcome or avoid or causes to be avoided.] OR [insufficient wind power for the Project to generate energy as determined by the best wind speed and direction standards utilized by other wind producers or purchasers in the vicinity of the Project or if wind speeds exceed the Project's technical specifications.] OR [the unavailability of water or the unavailability of sufficient pressure required for operation of the hydroelectric turbine-generator as reasonably determined by Seller within its operating procedures, neither of which was anticipated as of the

Execution Date, which is not within the reasonable control of, or the result of negligence of, Seller or the party supplying such water to the Project, and which by the exercise of due diligence, such Seller or the party supplying the water is unable to overcome or avoid or causes to be avoided.] OR [insufficient solar power for the Project to generate energy as determined by the best solar standards utilized by other solar producers or purchasers in the vicinity of the Project.]

[For Dispatchable Product only: "Availability Adjustment Factor" has the meaning set forth in Section 4.1(b)***.]***

"Availability Incentive Payments" shall mean Availability Incentive Payments as defined in FERC filing ER09-1064 or such other similar term as modified and approved by FERC thereafter to be incorporated in the CAISO Tariff or otherwise applicable to CAISO.

[For Dispatchable Product only: "Availability Notice" has the meaning set forth in Section 3.3([f/g]).]

"Availability Standards" shall mean Availability Standards as defined in FERC filing ER09-1064 or such other similar term as modified and approved by FERC thereafter to be incorporated in the CAISO Tariff or otherwise applicable to CAISO.

"Bankrupt" means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of sixty (60) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) 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 (f) is generally unable to pay its debts as they fall due.

[For Baseload Product only: "Baseload" means a Unit Firm Product for which the delivery levels are uniform twenty-four (24) hours per day, seven (7) days per week.]

"Bundled Green Energy" means Energy, Green Attributes, and any other Product, the quantity of which is measured based on the amount of Delivered Energy, in each case, that are produced by or associated with the Project. The quantity of Bundled Green Energy shall be equal to the lesser of the quantity of (i) ***[When Seller is SC for the Project or when Buyer is SC but Project is not in the VER Forecasting Program:*** Contract Energy**]** ***[When SDG&E is SC for the Project and Project is in the VER Forecasting Program:*** Delivered Energy**]** (ii) Green Attributes that are delivered to Buyer, and (iii) any other Product that is delivered to Buyer, the quantity of which is measured based on the amount of Delivered Energy. For example, if the quantity of Renewable Energy Credits that are delivered to Buyer is less than the quantity of the ***[When Seller is SC for the Project or when Buyer is SC but Project is not in the VER Forecasting Program:*** Contract Energy**]** ***[When SDG&E is SC for the Project and Project is in the VER Forecasting Program:*** Delivered Energy**]**, then the quantity of Bundled Green Energy shall be equal to the quantity of Renewable Energy Credits that are delivered to Buyer.

"Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday and shall be between the hours of 8:00 a.m. and 5:00 p.m. local time for the relevant Party's principal place of business where the relevant Party, in each instance unless otherwise specified, shall be the Party 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 on the Cover Sheet.

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

[When SDG&E is the SC for the Project: "CAISO Charges Invoice" has the meaning set forth in Section 3.3([a/b])(iv).***]***

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

"CAISO Tariff" means the CAISO Operating Agreement and Tariff, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

"California Renewables Portfolio Standard" means the Renewables Portfolio Standard of California under California Senate Bills 1078 and 107, as codified in California Public Utilities Code Sections 387, 390.1, and Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1, as such provisions are amended or supplemented from time to time.

"Capacity Attributes" means any current or future defined characteristic, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific as to the location or any other attribute of the Project intended to value any aspect of the capacity of the Project to produce Energy or ancillary services, including but not limited to any accounting construct so that the Contract Capacity of the Project may be counted toward a Resource Adequacy obligation or similar measure in respect to the capacity of the Project to generate Energy by the CPUC, the CAISO, the FERC, or any other entity vested with the authority under federal or state Law, to require Buyer to procure, or to procure at Buyer's expense, Resource Adequacy or other similar products.

[For Dispatchable Product only: "Capacity Price" has the meaning set forth in Section 4.1(a).]

[For Baseload, Peaking, or Dispatchable Product only: "Capacity Test" shall be the complete capacity testing procedure for the Project that is reasonably acceptable to Buyer that Seller shall develop no later than thirty (30) days prior to the initial capacity testing of the Project prior to the Commercial Operation Date. The capacity testing procedure shall describe in detail the testing standard(s) to be used for the technology of the Project, the conditions under which testing shall take place, the average summer ambient conditions to which the results will be corrected, and the testing procedures. The same capacity testing procedure shall be applied to all subsequent Capacity Tests.]

"CEC" means the California Energy Commission or its successor agency.

"CEC Certification and Verification" means that the CEC has certified (or, with respect to periods before the Project has been constructed, that the CEC has pre-certified) that the Project is an ERR for purposes of the California Renewables Portfolio Standard and that all Energy produced by the Project qualifies as generation from an ERR for purposes of the Agreement.

"Claims" has the meaning set forth in Section 11.2(a).

"Commercial Operation" means that (a) the Project is operating and able to produce and deliver the Product to Buyer pursuant to the terms of this Agreement; (b) Seller shall have satisfied the requirements set forth in the Commercial Operation Certificate in the form attached as Exhibit E; (c) Seller shall have delivered a true, correct, and complete Commercial Operation Certificate from Seller, the Renewable Generation Equipment Supplier, the EPC Contractor, and a Licensed Professional Engineer; (d) Seller shall have delivered to Buyer the Delivery Term Security required under Article 8; (e) Seller has received all local, state and federal Governmental Approvals and other approvals as may be required by Law for the construction, operation and maintenance of the Project, including approvals, if any, required under the California Environmental Quality Act for the Project and related interconnection facilities; ***[For Baseload, Peaking, Dispatchable Product only:*** and (f) Seller shall have successfully completed the initial Capacity Test and delivered to Buyer a true, correct, and complete report documenting the results of Seller's initial Capacity Test as required under Section 3.1(f)].

"Commercial Operation Date" means the date on which Seller achieves Commercial Operation for the Project.

"Conditions Precedent" has the meaning set forth in Section 2.3.

"Construction Period Security" shall mean the Performance Assurance that Seller is required to maintain during the period and as otherwise specified in Section 8.4(a)[(ii)/(iii)] to secure performance of its obligations hereunder.

"Contract Capacity" has the meaning set forth in Section 3.1(f).

[When Seller is SC for the Project or when Buyer is SC but Project is not in the VER Forecasting Program: "Contract Energy" means the lower of Delivered Energy or Scheduled Energy for any given period in each case net of all Electrical Losses.**]**

"Contract Quantity" has the meaning set forth in Section 3.1(e).

"Contract Year" means a period of twelve (12) consecutive months (except in the case of the first Contract Year which may be longer) with the first Contract Year commencing on the Commercial Operation Date and each subsequent Contract Year commencing on the anniversary of the first day of the month following the Commercial Operation Date.

"Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into

new arrangements which replace a Terminated Transaction; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with such Terminated Transaction.

"Cover Sheet" means the document that precedes Article 1: General Definitions to this Agreement.

"CP Satisfaction Date" shall mean the date on which all of the Conditions Precedent have been satisfied (or waived in writing by the Party described in Section 2.4).

"CPUC" or "Commission or successor entity" means the California Public Utilities Commission, or successor entity.

"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 Buyer's requested relief contained in the approval filing and 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. ***[For Agreements for the purchase and sale of TRECS only, use STC REC-3 instead of the foregoing]***

[For Agreements with Delivery Terms greater than two years: "CPUC Approval Date" shall mean the date on which the Conditions Precedent set forth in Section 2.3(a) have been satisfied (or waived in writing by the beneficiary Party described in Section 2.4).]

[For Agreements with Delivery Terms greater than two years: "CPUC Approval Security" shall mean the Performance Assurance that Seller is required to maintain during the period and as otherwise specified in Section 8.4(a)(i) to secure performance of its obligations hereunder.]

"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) by S&P or Moody's.

"Daily Delay Damages" means an amount equal to (a) the Construction Period Security amount required hereunder, divided by (b) the number of days in the Project Cure Period.

"Day-Ahead Forecast" has the meaning set forth in Section 3.3([d/e]).

[*For As-Available and Baseload Products only:* "Deemed Bundled Green Energy" means the amount of Bundled Green Energy that Seller could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of Economic Dispatch Down. The quantity of Deemed Bundled Green Energy shall be equal to **[*For As-Available Products:*** (a) the Deemed Delivery Forecast of Energy corresponding to the applicable Economic Dispatch Down periods, whether or not Seller is participating in the VER Forecasting Program during such events, less the amount of Energy scheduled under Economic Dispatch Down as specified in the Dispatch Notice during such periods, and less any amount of Energy that was not delivered associated with any concurrent Planned Outage, Forced Outage, Force Majeure, System Dispatch Down, and/or CAISO fault but only to the extent the Deemed Delivery Forecast does not already reflect the foregoing *provided that*, if the applicable amount calculated pursuant to this clause (a) is negative, the Deemed Bundled Green Energy shall be zero (0), or (b) if there is no such Deemed Delivery Forecast available during the applicable Economic Dispatch Down periods or if the Bundled Green Energy amount has historically not been determined based on clause (i) of the definition of Bundled Green Energy, the amount of Bundled Green Energy that Seller could reasonably have delivered to Buyer but was prevented from delivering to Buyer as a result of Economic Dispatch Down as determined by Buyer in a commercially reasonable manner, which amount shall not include any amount of Energy that was not delivered associated with any concurrent Planned Outage, Forced Outage, Force Majeure, System Dispatch Down, and/or CAISO fault.] **[*For Baseload Products:*** the amount of Bundled Green Energy that Seller could reasonably have delivered to Buyer but was prevented from delivering to Buyer during the applicable Economic Dispatch Down periods, as determined by Buyer in a commercially reasonable manner, which amount shall not include any amount of Energy that was not delivered associated with any concurrent Planned Outage, Forced Outage, Force Majeure, System Dispatch Down, and/or CAISO fault.]]

[For As-Available only: "Deemed Delivery Forecast" means the forecast of the Energy to be produced by the Project prepared by the CAISO or its agent in accordance with the VER Forecasting Program and communicated to the Scheduling Coordinator, which forecast is the last such forecast prepared by the CAISO that does not reflect curtailed production as a result of Economic Dispatch Down periods. As of the Execution Date, such Deemed Delivery Forecast is the CAISO forecast generated through its Resource Specific VER Forecast Usage Report].

[Dispatchable Product only: "Default Availability Factor" means, for any period, the amount determined according to the following formula:

Default Availability Factor = (PH - (EDH - EEDH)) / PH

Where:

PH is the number of period hours;

EDH is the number of equivalent derate hours calculated as the sum, for each derate, of the product of the number of hours of full or partial derate hours times the size of the reduction from the initial Contract Capacity (as of the Commercial Operation Date) divided by the initial Contract Capacity. For the purposes of this calculation, a derate includes all

outages for any reason, including without limitation, Forced Outages, Force Majeure events, Dispatch Down Periods, Planned Outages, Buyer's failure to perform, and other times when any portion of the Contract Capacity is not available and when the Delivered Energy of the Project is less than the amount of Energy dispatched by Buyer; and

EEDH is the number of equivalent excused derate hours solely due to either Force Majeure events, Dispatch Down Periods or Buyer's failure to perform (and for no other reason), calculated as the sum, for each excused derate, of the product of the number of hours of full or partial derate hours times the size of the reduction from the initial Contract Capacity, divided by the initial Contract Capacity.]

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

"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.

"Delivered Energy" means all Energy produced from the Project and delivered to Buyer at the Delivery Point as measured in MWh at the CAISO revenue meter of the Project based on a power factor of precisely one (1) and net of all Electrical Losses.

"Delivery Point" means the point at which Buyer receives Seller's Product, as set forth in Section 3.1(d).

"Delivery Term" has the meaning set forth in Section 3.1(c).

"Delivery Term Security" shall mean the Performance Assurance that Seller is required to maintain during the period and as otherwise specified in Section 8.4(a)[(iii)/(iv)] to secure performance of its obligations hereunder.

"Development Period Security" shall mean the Performance Assurance that Seller is required to maintain during the period and as otherwise specified in Section 8.4(a)[(i)/(ii)] to secure performance of its obligations hereunder.

"Disclosing Party" has the meaning set forth in Section 13.1(a).

"Disclosure Order" has the meaning set forth in Section 13.1(a).

"Dispatch Down Period" means the period of curtailment of delivery of Product from the Project resulting from System Dispatch Down ***[For all Products other than Dispatchable Product:*** or Economic Dispatch Down***]***.

"Dispatch Notice" means the operating instruction, and any subsequent updates given either by Buyer to Seller or by the CAISO to Seller, directing Seller to operate the Project at a specified megawatt output for the period of time set forth in such order.

[For Dispatchable Product only: "Dispatchable" means a Unit Firm Product for which Seller makes available capacity for Buyer to Schedule and dispatch up or down at Buyer's option in accordance with Section 3.3([g/h]).]

"Distribution Upgrades" has the meaning set forth in the CAISO Tariff.

"DUNS" means the Data Universal Numbering System, which is a unique nine character identification number provided by Dun and Bradstreet.

[For Projects located outside of the CAISO: "Dynamic Scheduling Agreement" means the agreement between the CAISO and Buyer or Seller, as Scheduling Coordinator (as applicable), with respect to the duties and responsibilities of the Scheduling Coordinator with respect to facilities located outside the CAISO balancing area and whose product is dynamically transferred via a pseudo-tie to the CAISO, in form and substance reasonably acceptable to the parties thereto.***]***

"Early Termination Date" has the meaning set forth in Section 5.2.

[For all Products other than Dispatchable Product: "Economic Dispatch Down" means curtailment of delivery of Product from the Project that is the result of economic curtailment where Buyer (as the Scheduling Coordinator) or a third party Scheduling Coordinator (in accordance with Buyer's directions) either submits a self-schedule with a binding Product quantity or an economic bid in the applicable CAISO market or fails to submit any such schedule or bid, in either case, that when implemented by the CAISO results in an otherwise available Product quantity not being scheduled or awarded in such CAISO market and such curtailment is not concurrently the result of a Planned Outage, Forced Outage, Force Majeure, System Dispatch Down, and/or CAISO fault.

"Electrical Losses" means all electrical losses associated with the transmission of Product to the Delivery Point, including if applicable, but not limited to, any transmission or transformation losses between the CAISO revenue meter and the Delivery Point.

"Electrical Interconnection Upgrades" means the facilities to which Seller shall be able to interconnect and deliver Energy from the Project to and at the Delivery Point and Buyer shall be able to transmit Energy from the Delivery Point and the facilities that protect the Participating Transmission Owner's, Transmission Provider's, distribution operator's, ***[For Projects located outside of the CAISO:*** Native Balancing Authority's,***]*** or other affected system owner's, as applicable, electric system (or other systems to which such electric systems are connected, including the CAISO Grid) and the Participating Transmission Owner's, Transmission Provider's, distribution operator's, ***[For Projects located outside of the CAISO:*** Native Balancing Authority's,***]*** or other affected system owner's, as applicable, customers from faults occurring at the Project, including, but not limited to, all network, distribution, connection, transformation, switching, metering, communications, control, and safety equipment, as such equipment may be required pursuant to Good Industry Practices or in accordance with the Participating Transmission Owner's, Transmission Provider's, distribution operator's, ***[For Projects located outside of the CAISO:*** Native Balancing Authority's,***]*** or other affected system owner's, as applicable, facility connection requirements. Such Electrical Interconnection Upgrades include all Network Upgrades, Distribution Upgrades, Interconnection Facilities, and other network upgrades, distribution upgrades, or interconnection facilities ***[For Projects located outside of the CAISO:***

Native Balancing Authority's, or***]*** on any other affected system owner's electrical system that are determined to be necessary by the CAISO, Participating Transmission Owner, ***[For Projects located outside of the CAISO:*** Native Balancing Authority's, or***]*** other affected system owner, as applicable, to physically and electrically interconnect the Project to ***[For Projects located outside of the CAISO:*** Native Balancing Authority's system and***]*** the Participating Transmission Owner's electric system so as to allow Seller to deliver Energy from the Project to the Delivery Point and Buyer to be able to transmit Energy from the Delivery Point.

"Eligible Renewable Energy Resource" or "ERR" has the meaning set forth in California Public Utilities Code Section 399.11, *et seq*., as amended or supplemented from time to time.

"Energy" means electric energy measured in MWh and net of Station Service (unless otherwise specified).

"Energy Price" has the meaning set forth in Section 4.[1/2](a).

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

"EPC Contractor" means an engineering, procurement, and construction contractor, selected by Seller, with substantial experience in the engineering, procurement, and construction of power plants of the same type of facility as Seller's.

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

[For Dispatchable Product only: "Equivalent Availability Factor" or "EAF" has the meaning set forth in Section 4.1(b).]

"Event of Default" has the meaning set forth in Section 5.1.

"Execution Date" means the date hereof as set forth in the preamble of the Cover Sheet.

"Executive(s)" has the meaning set forth in Section 12.2(a).

"FERC" means the Federal Energy Regulatory Commission or any successor government agency.

"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)(vii) 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) a lack of wind, sun or other fuel source of an inherently intermittent nature;

(v) 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;

(vi) Seller's failure to obtain financing or other 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;

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

(viii) any equipment failure except if such equipment failure is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) though (a)(iii) above.

"Force Majeure Extension Period" has the meaning set forth in Section 3.9(c)(ii).

"Forced Outage" means any unplanned reduction or suspension of production of Product from the Project or unavailability of the Project in whole or in part that is not a Planned Outage or a willful withholding of Product when the Project is otherwise capable of delivering Product under Good Industry Practices.

"GAAP" has the meaning set forth in Section 13.4.

"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 for the remaining Delivery Term, determined in a commercially reasonable manner, subject to Section 5.2 hereof. Factors used in determining economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties, 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 market referent prices for renewable power set by the CPUC, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining term of this Agreement and include the value, if any, of Capacity Attributes, and Green Attributes.

"Good Industry Practice" means those practices, methods and acts that would be implemented and followed by prudent operators of electric transmission facilities (with respect to Buyer) or prudent operators of electric generation facilities similar to the Project (with respect to Seller) in the Western United States during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety, and shall include, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with manufacturers' warranties, restrictions in this Agreement, and the requirements of Governmental Authorities, WECC standards, the CAISO ***[For Projects located outside of the CAISO:*** Native Balancing Authority,***]*** and applicable Law. Good Industry Practice is not intended to be the optimum practice, method or act to the exclusion of all others, but rather is intended to be any of the practices, methods and/or actions generally accepted in the region.

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

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

"Governmental Charges" has the meaning set forth in Section 9.2.

"Green Attributes" means, subject to the limitations in the final sentence of this definition, 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: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) 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] and (3) 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. If the Project is a biomass 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 and for all electric generation using biomethane as fuel, Seller shall transfer to Buyer sufficient Green Attributes of biomethane production and capture to ensure that there are zero net emissions associated with the production of electricity from the Project using the biomethane.

"Guaranteed Commercial Operation Date" or "GCOD" means [*insert date*], as may be extended pursuant to Section 3.9(c)(ii).

"Guaranteed Energy Production" has the meaning set forth in Section 3.1(e).

"Guarantor" means, with respect to Seller, any person that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably

[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.

acceptable to Buyer, (c) has a Credit Rating of [____] or better from S&P or a Credit Rating of [____] or better from Moody's, (d) has a tangible net worth of at least [_____], (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of Buyer substantially in the form attached hereto as Exhibit D. ***[SDG&E will consider accepting a Guaranty based on the Project, the amount of Performance Assurance, and the identity of the Seller and Guarantor]***

"Guaranty" means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached hereto as Exhibit D. ***[SDG&E will consider accepting a Guaranty based on the Project, the amount of Performance Assurance, and the identity of the Seller and Guarantor]***

"Imbalance Energy" means the amount of Energy, in any given settlement period, by which the amount of Delivered Energy deviates from the amount of Scheduled Energy.

"Initial Negotiation End Date" has the meaning set forth in Section 12.2(a).

[For Projects located outside of the CAISO: "Interconnected Balancing Authority Agreement" means an agreement between the Native Balancing Authority and the CAISO to govern operation of their interconnected electric systems, including the dynamic transfer of Project output via a pseudo-tie from the Native Balancing Authority and the CAISO, in form and substance reasonably acceptable to the parties thereto.***]***

"Interconnection Facilities" has the meaning set forth in the CAISO Tariff.

"Interest Amount" means, with respect to an Interest Period, the amount of interest derived from the product of (a) the sum of (i) the principal amount of Performance Assurance in the form of cash held by Buyer during that Interest Period, and (ii) the sum of all accrued and unpaid Interest Amounts accumulated prior to such Interest Period; multiplied by (b) the Interest Rate in effect on the first day of the Interest Period; multiplied by (c) the number of days in that Interest Period; divided by (d) 360.

"Interest Payment Date" means the date on which cash held as Performance Assurance is returned pursuant to the terms of this Agreement.

"Interest Period" means the monthly period beginning on the first day of each month and ending on the last day of each month or the shorter period during which Performance Assurance in the form of cash is held by Buyer.

"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 rate 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.

"[Large/Small] Generator Interconnection Agreement" has the meaning set forth in the CAISO Tariff.

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

"Letter(s) of Credit" means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least [A-] with an outlook designation of "stable" from S&P or [A3] with an outlook designation of "stable" from Moody's, in substantially the form as contained in Exhibit C to this Agreement.

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

"Locational Marginal Price" has the meaning set forth in the CAISO Tariff.

"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 a Terminated Transaction for the remaining term of this Agreement, determined in a commercially reasonable manner. Factors used in determining the loss of economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties 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, market referent prices for renewable power set by the CPUC, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g. NYMEX), all of which should be calculated for the remaining term of this Agreement and include the value, if any, of Capacity Attributes, and Green Attributes.

"Manager" has the meaning set forth in Section 12.2(a).

"Milestones" has the meaning set forth in Section 3.9(b)(i).

[For Dispatchable Product only: "Monthly Capacity Payment" has the meaning set forth in Section 4.1(b).]

"Monthly Energy Payment" has the meaning set forth in Section 4.[1/2]([b/c]).

[For Dispatchable Product only: "Monthly Shaping Factor" has the meaning set forth in Section 4.1(b).]

"Moody's" means Moody's Investor Services, Inc., or its successor.

"MWh" means megawatt-hour.

[For Projects located outside of the CAISO: "Native Balancing Authority" means the balancing authority for the balancing authority area where the Project is physically interconnected to the electric system. As of the Execution Date, the Native Balancing Authority is [***insert name***].***]***

[For Projects located outside of the CAISO: "NBA Generator Agreement" means the agreement between the Native Balancing Authority and Seller with respect to Seller's obligations to the Native Balancing Authority in connection with the Native Balancing Authority's duties and obligations under the Interconnected Balancing Authority Agreement, in form and substance reasonably acceptable to the parties thereto.***]***

"Negative Imbalance Energy" has the meaning set forth in Section 4.[2/3].

"NERC" means the North American Electric Reliability Corporation or a successor organization that is responsible for establishing reliability criteria and protocols.

"NERC Holiday" means any of the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Three of these days, Memorial Day, Labor Day, and Thanksgiving Day, occur on the same day each year. Memorial Day is the last Monday in May; Labor Day is the first Monday in September; and Thanksgiving Day is the fourth (4^{th}) Thursday in November. New Year's Day, Independence Day, and Christmas Day occur on the same date each year, but in the event any of these holidays occur on a Sunday, the "NERC Holiday" is celebrated on the Monday immediately following that Sunday; and if any of these holidays occur on a Saturday, the "NERC Holiday" remains on that Saturday.

"Network Upgrades" has the meaning set forth in the CAISO Tariff.

"Non-Availability Charges" shall mean Non-Availability Charges as defined in FERC filing ER09-1064 or such other similar term as modified and approved by FERC thereafter to be incorporated in the CAISO Tariff or otherwise applicable to CAISO.

"Non-Defaulting Party" has the meaning set forth in Section 5.2.

"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).

"Notice to Proceed" or "NTP" means the notice provided by Seller to the EPC Contractor following execution of the EPC Contract between Seller and such EPC Contractor and satisfaction of all conditions precedent to performance of such contract, by which Seller authorizes such EPC Contractor to commence and complete full performance of the work under the EPC Contract without any delay or waiting periods.

"Outage Notification Form" means the completed document from Seller notifying Buyer of an outage of the Project substantially in the form attached hereto as Exhibit G. Buyer reserves the right to reasonably revise or change the form upon Notice to Seller.

[For intermittent As-Available Product: "Participating Intermittent Resource" shall have the meaning set forth in the CAISO Tariff.]

"Participating Transmission Owner" or "Participating TO" means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities that are interconnected to the Delivery Point and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid. As of the Execution Date, the Participating Transmission Owner is ***[San Diego Gas & Electric Company].***

"Party" or "Parties" means the Buyer or Seller individually, or to both collectively.

[For Peaking Product only: "Peaking" means a Unit-Firm Product for which Energy must be delivered during hours ending 1200-1900 (11:00 am to 7:00 pm) on Monday-Friday, excluding NERC Holidays, for the months July through October and during hours ending 1400-2100 (1:00 pm to 9:00 pm) on Monday-Friday, excluding NERC Holidays, for the months November and December.] ***[Note: Buyer will consider other firm products such as 6x16:*** "6x16 Block" means a Unit-Firm Product for which Energy must be delivered during hours ending 0700-2200 (6:00 am to 10:00 pm) on Monday-Saturday throughout the Delivery Term.]

"Performance Assurance" means collateral provided by Seller to Buyer to secure Seller's obligations hereunder and includes ***[For Agreements with Delivery Terms greater than two years:*** CPUC Approval Security,] Development Period Security, Construction Period Security, and Delivery Term Security.

[For As-Available, Baseload, Peaking Product: "Performance Measurement Period" has the meaning set forth in Section 3.1(e).]

"Planned Outage" means any planned reduction or suspension of the electrical output from the Project or unavailability of the Project in whole or in part as a result of the inspection, maintenance, or repair of equipment that is scheduled in accordance with Section 3.7(a).

"PNode" has the meaning set forth in the CAISO Tariff.

"Positive Imbalance Energy" has the meaning set forth in Section 4.[2/3].

"Product" has the meaning set forth in Section 3.1(a).

[For Projects receiving PTCs: "Production Tax Credit" or "PTC" means the tax credit for electricity produced from certain renewable generation resources described in Section 45 of the Internal Revenue Code of 1986, as it may be amended from time to time.***]***

"Project" means all of the *[insert technology]* electric generating units, the Site at which the generating facility is located, the utility interconnection facilities up to the point of change in

ownership to the applicable utility's facilities, and the other assets, tangible and intangible, that compose the generation facility as more particularly described on Exhibit A.

"Project Cure Period" has the meaning set forth in Section 3.9(c)(i).

"Qualified Assignee" has the meaning set forth in Section 13.2.

"Quarterly Progress Report" means the report similar in form and content attached hereto as Exhibit F, as may be modified from time to time to meet applicable CPUC requirements.

[For Projects located outside of the CAISO: "Pseudo Participating Generator Agreement" means an agreement between CAISO and Seller that is the equivalent of a Participating Generator Agreement (as defined in the CAISO Tariff) for generators interconnected to a Native Balancing Authority other than CAISO and whose output is dynamically transferred via a pseudo-tie to the CAISO, in form and substance reasonably acceptable to the parties thereto.***]***

[For Projects located outside of the CAISO: "Pseudo Tie Agreements" means the Interconnected Balancing Authority Agreement, the Dynamic Scheduling Agreement, the Pseudo Participating Generator Agreement, and the NBA Generator Agreement, or equivalent agreements that may be adopted by the CAISO or included in the CAISO Tariff, which are intended to permit and facilitate the dynamic transfer of the output of the Project via a pseudo-tie from its Native Balancing Authority to the CAISO.***]***

"Recording" has the meaning set forth in Section 13.6.

"Reductions" has the meaning set forth in Section 3.2(c).

"Referral Date" has the meaning set forth in Section 12.2(a).

"Remedial Action Plan" has the meaning provided in Section 3.9(b)(ii).

"Renewable Energy Credit" has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision 08-08-028, as each may be amended from time to time or as further defined or supplemented by Law.

"Renewable Generation Equipment Supplier" means the supplier of the [electric generating [wind] [gas] [steam] turbine(s)] [solar electric generating equipment] for the Project, selected by Seller.

"Replacement Price" means the price (in dollars per megawatt hour) at which Buyer, acting in a commercially reasonable manner, purchases for delivery at the Delivery Point (or any other reasonably equivalent delivery point for Buyer) a replacement for any Product (including its associated Green Attributes) that was not Scheduled and delivered by Seller, plus (a) costs (calculated in dollars per megawatt hour) reasonably incurred by Buyer in purchasing such replacement Product and (b) additional transmission charges (calculated in dollars per megawatt hour), if any, reasonably incurred by Buyer for such replacement Product, or absent a purchase, the market price at the Delivery Point (or any other reasonably equivalent delivery point for Buyer) for such replacement Product for the hours impacted by such failure to Schedule or deliver such

Product as determined by Buyer in a commercially reasonable manner. The Replacement Price also shall include all CAISO ***[For Projects located outside of the CAISO:*** , Native Balancing Authority,***]*** and other charges and penalties calculated in dollars per megawatt hour with respect to the deviation from the Scheduled supply resulting from Seller's failure to Schedule or deliver; provided, however, in no event shall such price include any ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller's liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party. If for any reason a Replacement Price is unavailable when Seller fails to deliver or Schedule Product, then the Replacement Price for the hours when a Replacement Price is unavailable shall be the last available Replacement Price together with any charges and penalties allocated to Buyer during such time.

"Resource Adequacy" means the procurement obligation of load serving entities, including Buyer, as such obligations are described in 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, 12-06-025, 13-06-024, and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time in the CPUC Resource Adequacy Rulemakings (R.) 04-04-003 and (R.) 05-12-013 or by any successor proceeding, and all other Resource Adequacy obligations established by any other entity, including the CAISO.

"Sales Price" means the price (in dollars per megawatt hour) at which Seller, acting in a commercially reasonable manner, resells any Product not Scheduled and received by Buyer, deducting from such proceeds any (a) costs (calculated in dollars per megawatt hour) reasonably incurred by Seller in reselling such Product including all costs charged by CAISO ***[For Projects located outside of the CAISO:*** and the Native Balancing Authority,***]*** to Schedule and deliver the Product into the CAISO System ***[For Projects located outside of the CAISO:*** or the Native Balancing Authority's system***],*** and (b) additional transmission charges (calculated in dollars per megawatt hour), if any, reasonably incurred by Seller in Scheduling and delivering such Product to the third party purchasers, or absent a sale despite commercially reasonable efforts to resell the Product, zero. The Sales Price shall also be reduced by all CAISO and other costs, charges and penalties with respect to the deviation from the Scheduled supply, in each case, resulting from Buyer's failure to take Product and calculated in dollars per megawatt hour; provided, however, in no event shall such price include any ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer's liability. The Sales Price may be less than zero.

"S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

"Schedule" means the actions of Seller, Buyer and/or their designated representatives, or Scheduling Coordinators, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other and the CAISO the quantity and type of Product to be delivered on any given day or days at a specified Delivery Point.

"Scheduling Coordinator" or "SC" means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff, for the purposes of undertaking the functions specified in "Responsibilities of a Scheduling Coordinator," of the CAISO Tariff, as amended from time-to-time.

"Scheduled Energy" means the Energy that clears under the applicable CAISO market based on the final Schedule developed in accordance with this Agreement, the operating procedures developed by the Parties pursuant to Section 3.10, and the applicable CAISO Tariff, protocols and Scheduling practices.

"SEC" means the U.S. Securities and Exchange Commission.

"Seller" shall have the meaning set forth on the Cover Sheet.

"Settlement Amount" means, with respect to the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such Party incurs as a result of the liquidation of a Terminated Transaction pursuant to Sections 5.2 and 5.3.

"Site" shall mean the location of the Project as described in Exhibit A.

"Station Service" means the electric energy produced by the Project that is used within the Project to power the lights, motors, control systems and other auxiliary electrical loads that are necessary for operation of the Project.

"System Dispatch Down" means curtailment of delivery of Product from the Project resulting from (a) curtailment ordered by the CAISO (whether directly or through the Scheduling Coordinator or the Participating Transmission Owner), for any reason, including, but not limited to, an Exceptional Dispatch (as defined in the CAISO Tariff), any system emergency as defined in the CAISO Tariff ("System Emergency"), any warning of an anticipated System Emergency, or any warning of an imminent condition or situation which could jeopardize the CAISO's or Participating Transmission Owner's electric system integrity or the integrity of other systems to which the CAISO or Participating Transmission Owner is connected, any warning, forecast, or anticipated overgeneration conditions, including a request from CAISO to manage over-generation conditions; (b) curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner's electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected; (c) curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) as a result of scheduled or unscheduled maintenance or construction on the Participating Transmission Owner's transmission facilities or distribution operator's facilities (if interconnected to distribution or sub-transmission system) that prevents the delivery or receipt of Delivered Energy to or at the Delivery Point, (d) curtailment in accordance with Seller's obligations under its interconnection agreement with the Participating Transmission Owner or distribution operator, ***[If the Project is located***

outside of the CAISO: or Native Balancing Authority; or (e) curtailment ordered by the Transmission Provider provided, that Seller has contracted for firm transmission with such Transmission Provider for the Product to be delivered to the Delivery Point and such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff***]***; ***[For Dispatchable Product only:*** or ([e/f]) curtailment ordered by Buyer pursuant to a Dispatch Notice.***]*** ***[For all Products other than Dispatchable:*** provided, however, that System Dispatch Down shall not include Economic Dispatch Down].

"Terminated Transaction" means the termination of this Agreement in accordance with Section 5.2 of this Agreement.

"Termination Payment" has the meaning set forth in Section 5.2.

"Transmission Provider" means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point.

[For Baseload, Peaking, or Dispatchable Product only: "Unit Firm" means, with respect to a Product, that the Product is intended to be supplied from the Project, and subject to the terms of this Agreement, Seller is excused from selling and delivering the Product to Buyer, and Seller shall not be liable to Buyer for any damages determined pursuant to Section 3.1(h) of the Agreement, in the event that Seller fails to deliver the Product to Buyer for any of the following reason:

(a) if the Project is unavailable as a result of a Forced Outage and such Forced Outage is not the result of Seller's negligence or willful misconduct;

(b) Force Majeure;

(c) by the Buyer's failure to perform;

(d) by a Planned Outage of the Project; or

(e) a reduction in output as ordered under Dispatch Down Periods.

The following products shall be considered "Unit Firm" products: Peaking, Baseload, and Dispatchable.]

[For an intermittent As-Available Product only: "VER Forecasting Program" means the rules, protocols, procedures and standards for Participating Intermittent Resources under the CAISO's Eligible Intermittent Resource Protocol, as may be amended from time to time, as set forth in the CAISO Tariff.]

"WECC" means the Western Electricity Coordinating Council or successor agency.

"WREGIS" means the Western Renewable Energy Generating Information System or any successor renewable energy tracking program.

1.2 Interpretation. The following rules of interpretation shall apply:

(a) 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.

(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.

(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 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.

(h) All references to dollars are to U.S. dollars.

ARTICLE 2: EFFECTIVENESS OF AGREEMENT; CONDITIONS PRECEDENT

2.1 Effectiveness of Agreement Prior to CP Satisfaction Date. Commencing on the Execution 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 Article 2, including, as it relates to Article 2, the rights and obligations under Articles 1, 5, 7, 8, 9, 10, 11, 12, and 13.

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

(a) 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 [___], (ii) diligently pursue development of the Project in accordance with Section 3.9, (iii) comply with Section 3.9(b) in achieving the applicable Milestones that have due dates occurring prior to the CP Satisfaction Date, reporting completion of such Milestones, and delivering Remedial Action Plans in respect of missed Milestones as more fully described therein, (iv) deliver the Quarterly Progress Report in accordance with Section 3.9(a), and (v) otherwise comply with its obligations, covenants, representations, and warranties under Articles 7-13. ***[For Agreements with Delivery Terms greater than two years:*** Upon an Event of Default of Seller prior to the CPUC Approval Date, Buyer may terminate this Agreement in which case Seller shall owe Buyer liquidated damages in the amount of the CPUC Approval Security.] Upon an Event of Default of Seller ***[For Agreements with Delivery Terms greater than two years:*** on or after the CPUC Approval Date but] prior to the CP Satisfaction Date, Buyer may terminate this Agreement in which case Seller shall owe Buyer liquidated damages in the amount of the Development Period 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.

(b) 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 Sections 2.3(a), and (ii) otherwise comply with its obligations, covenants, representations, and warranties under Articles 7-13. ***[For Agreements with Delivery Terms greater than two years:*** Upon an Event of Default of Buyer prior to the CPUC Approval Date, Seller may terminate this Agreement in which case Buyer shall owe Seller liquidated damages in the amount of the CPUC Approval Security.] Upon an Event of Default of Buyer ***[For Agreements with Delivery Terms greater than two years:*** on or after the CPUC Approval Date but] prior to the CP Satisfaction Date, Seller may terminate this Agreement in which case Buyer shall owe Seller liquidated damages in the amount of the Development Period Security. Each Party agrees and acknowledges that (a) the actual damages that Seller would incur due to an Event of Default of Buyer 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 Buyer prior to the CP Satisfaction Date.

2.3 Conditions Precedent. Subject to Section 2.1, the effectiveness of the remainder of this Agreement is conditioned upon the satisfaction (or waiver by the Party described in Section 2.4) 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:

(a) CPUC Approval. 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) Electrical Interconnection. No later than [_____], Seller shall have entered into a [Large/Small/Rule 21/Native Balancing Authority] Generator Interconnection Agreement ***[For Projects located outside of the CAISO:*** along with any supplemental arrangements with the CAISO as an affected system owner***]*** providing for the construction of the Electrical Interconnection Upgrades necessary to maintain the "[Full Capacity] [Energy Only] Deliverability Status" (as defined in the CAISO Tariff) of the Project and setting forth:

(i) 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 [Large/Small/Rule 21/Native Balancing Authority] Generator Interconnection Agreement for the Project ***[For Projects located outside of the CAISO:*** and its supplemental arrangements with the CAISO as an affected system owner],

(ii) a 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 as provided thereunder not exceeding $[_____], and [***Note: Seller may propose additional provisions whereby Seller can satisfy this Condition Precedent by buying down the Network***

Upgrade costs that exceed the foregoing cost cap in a manner that is mutually acceptable to the Parties.]

(iii) a nonrefundable cost that Seller would be obligated to pay thereunder not exceeding $[_____] (or such greater amount as Seller may approve, in its sole discretion).

(c) ***[Others, Major Governmental Approvals, Financing, etc.]***

2.4 Failure to Meet All Conditions Precedent.

(a) Beneficiary Party.

(i) Both of the Parties are the beneficiaries of the Conditions Precedent set forth in Sections 2.3(a), 2.3(b)(i)-(ii) ***[Others]***, and in order for a waiver of non-satisfaction of such Conditions Precedent to be effective, both of the Parties must waive (in their sole discretion) non-satisfaction by the deadline date therefor.

(ii) Buyer shall be the sole beneficiary of the Conditions Precedent set forth in Sections ***[List]***, and in order for a waiver of non-satisfaction of such Conditions Precedent to be effective, Buyer alone must waive (in its sole discretion) non-satisfaction by the deadline date therefor.

(iii) Seller shall be the sole beneficiary of the Conditions Precedent set forth in Sections 2.3(b)(iii) ***[Others]***, and in order for a waiver of non-satisfaction of such Conditions Precedent to be effective, Seller alone must waive (in its sole discretion) non-satisfaction by the deadline date therefor.

(b) Termination. If any of the Conditions Precedent is not satisfied or waived in writing by the beneficiary Parties thereto on or before the date that is fifteen (15) days after the applicable deadline date therefor, then this Agreement shall automatically terminate with no further obligation to either Party (other than as set forth in Sections 2.4(b)(i)-(ii) below and any other payment obligations which are accrued and payable at the time of termination).

(i) Upon a termination of this Agreement for any reason under Section 2.4 other than as described in Section 2.4(b)(ii) below, Seller shall forfeit to Buyer an amount equal to the Performance Assurance then required to be delivered to Buyer hereunder. Buyer may retain such Performance Assurance to pay such amount.

(ii) Upon a termination of this Agreement under this Section 2.4 as a result of the failure of the Conditions Precedent set forth in Sections 2.3(a) to be satisfied (or waived by both Parties) or as a result of

the failure of the Conditions Precedent set forth in Sections 2.3(b)(i)-(ii) to be satisfied or waived by Buyer, Buyer shall return to Seller the Performance Assurances then held by Buyer.

2.5 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 Term 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 Term, the Settlement Amount, indemnification payments or other damages (whether directly or indirectly such as through set-off or netting) and (ii) the undrawn portion of the ***[For Agreements with Delivery Terms greater than two years:*** CPUC Approval Security,] Development Period Security, Construction Period Security, or Delivery Term Security, as applicable, is released and/or returned as applicable (if any is due). All indemnity rights shall survive the termination or expiration of this Agreement for the longer of twelve (12) months or the expiration of the statute of limitations period of the claim underlying the indemnity obligation.

ARTICLE 3: OBLIGATIONS AND DELIVERIES

3.1 Transaction.

(a) Product. The "Product" to be delivered and sold by Seller and received and purchased by Buyer under this Agreement is ***[Seller to select:*** As-Available, Baseload, Peaking, or Dispatchable***]*** Energy, Capacity Attributes, Green Attributes, and other ancillary products, services or attributes similar to the foregoing which are or can be produced by or associated with the Project (net of Station Service) in accordance with the terms hereof.

(b) Transaction. Unless specifically excused by the terms of this Agreement during the Delivery Term, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Product at the Delivery Point, and Buyer shall pay Seller for the Product in accordance with the terms hereof. In no event shall Seller have the right to procure any element of the Product from sources other than the Project for sale or delivery to Buyer under this Agreement ***[If the Project is located outside of the CAISO:*** except with respect to Imbalance Energy from the Transmission Provider***]***.

(c) Delivery Term. The Parties agree that the period of Product delivery is [_____] Contract Years. As used herein, "Delivery Term" shall mean the period of Contract Years specified above beginning on the Commercial Operation Date and continuing until the end of the last Contract Year unless terminated earlier as provided by the terms of this Agreement.

(d) Delivery Point. The Delivery Point shall be [the point of interconnection of the Project to the CAISO Grid] ***[For Projects located outside of the CAISO, insert:*** "The Delivery Point shall be the point on the CAISO Grid where the Native Balancing Authority's grid is interconnected to the CAISO Grid at the ***[identify the local CAISO substation to which the Project has firm transmission rights]*** Substation (and, for payment purposes, the corresponding PNode for the Project, or if none exists, the PNode corresponding to the point on the CAISO Grid where the Native Balancing Authority's grid is interconnected to the CAISO Grid at the Delivery Point)."***]*** The Delivery Point shall be [the point of interconnection of the Project to the CAISO Grid] ***[Seller may specify another delivery point; for a Project located outside the CAISO Grid, the Delivery Point should be a CAISO Scheduling Point as defined by the CAISO]*** and for financial settlement purposes under the applicable CAISO market, the PNode corresponding to such point.

(e) ***[For Baseload, Peaking, As-Available Product:*** Contract Quantity and Guaranteed Energy Production. The quantity of Bundled Green Energy that Seller expects to be able to deliver to Buyer during each Contract Year is **[_____]** MWh ("Contract Quantity"). Throughout the Delivery Term, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production (as defined below) in any [twelve (12)] [twenty-four (24)] consecutive calendar month period during the Delivery Term ("Performance Measurement Period"). "Guaranteed Energy Production" means an amount of Bundled Green Energy, as measured in MWh, equal to [two times] [_____]% of the Contract Quantity. Notwithstanding the excuses to performance set forth in the definition of the Product type (as such Product type is specified in Section 3.1(a)), Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Force Majeure events, Buyer's failure to perform, or Dispatch Down Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer an amount of Bundled Green Energy that it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure events, Buyer's failure to perform, or Dispatch Down Periods.] ***[For Dispatchable Product:*** Contact Quantity. The quantity of Bundled Green Energy that Seller expects to be able to deliver to Buyer during each Contract Year is **[_____]** MWh ("Contract Quantity").]

(f) Contract Capacity. The "Contract Capacity" is the full generation capacity of the Project net of all Station Service which shall be ***[For As-Available Product:*** no less than [____] MW and no greater than [____] MW] ***[For Baseload, Peaking, or Dispatchable Product only:*** an amount determined periodically pursuant to a Capacity Test as set forth below]. Throughout the Delivery Term, Seller shall sell and Schedule

all Product associated with the Contract Capacity of the Project solely to Buyer, except in the case of an Event of Default of Buyer ***[If the Project is located outside of the CAISO:*** or the sale of Imbalance Energy to the Transmission Provider]. ***[For Dispatchable Product:*** Throughout the Delivery Term, Seller shall make the Contract Capacity available solely to Buyer at all times, except in the case of an Event of Default of Buyer ***[If the Project is located outside of the CAISO:*** or the sale of Imbalance Energy to the Transmission Provider].]

(i) ***[For Baseload, Peaking, Dispatchable Product:*** Initial Capacity Testing. Upon no less than fourteen (14) days prior Notice to Buyer, Seller shall schedule and complete a Capacity Test prior to the Commercial Operation Date for the Project. Such initial Capacity Test shall establish the Contract Capacity for the Project for the first Contract Year.]

(ii) ***[For Baseload, Peaking, Dispatchable Product:*** Annual Capacity Testing. Thereafter, at least once per Contract Year within the first quarter of each Contract Year, upon no less than 14 days prior Notice to Buyer, Seller shall schedule and complete a Capacity Test. In addition, Buyer shall have the right to require a retest of the Capacity Test at any time upon five (5) days prior written Notice to Seller if Buyer reasonably believes that the actual Contract Capacity has varied materially from the results of the most recent tests. Seller shall have the right to run a retest of the Capacity Test at any time upon two (2) days prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Good Industry Practices).]

(iii) ***[For Baseload, Peaking, Dispatchable Product:*** Witness at Capacity Tests. Buyer shall have the right to send one or more representative(s) to witness all Capacity Tests.]

(iv) ***[For Baseload, Peaking, Dispatchable Product:*** Capacity Test Reporting. No later than fourteen (14) days following any Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include meter readings and plant log sheets verifying the operating conditions and output of the Project. The Contract Capacity determined pursuant to a Capacity Test shall become the new Contract Capacity at the beginning of the day following the completion of the test for all purposes under this Agreement.]

(v) ***[For Baseload, Peaking, Dispatchable Product:*** Capacity Test Costs and Payments. Buyer shall pay the [Monthly Energy Payment] in respect of the Product produced during the initial Capacity Test prior to the Commercial Operation Date and each

annually scheduled Capacity Test thereafter. In addition, Buyer shall pay the [Monthly Energy Payment] in respect of the Product produced during any other Buyer requested test unless the results of such test demonstrate that the actual Contract Capacity has varied by more than two percent (2%) from the results of the most recent tests, in which case Buyer shall pay the lesser of the [Monthly Energy Payment] in respect of the Product produced during such test and the applicable CAISO real-time hourly average energy price. In addition, Buyer shall pay the lesser of the [Monthly Energy Payment] in respect of the Product produced during any Seller requested test and the applicable CAISO real-time hourly average energy price]. Buyer is responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing Capacity Testing. All other costs of any Capacity Tests shall be borne by Seller.]

(g) Project. All Product provided by Seller pursuant to this Agreement shall be supplied from the Project only ***[If the Project is located outside of the CAISO:*** except with respect to Imbalance Energy from the Transmission Provider**]**. Other than maintenance in accordance with Good Industry Practices, Seller shall not make any alteration or modification to the Project which results in a change to the Contract Capacity of the Project or any other material changes to the Project without Buyer's prior written consent. The Project is further described in Exhibit A.

(h) Performance Excuses.

(i) Seller Excuses. The performance of Seller to Schedule, deliver, and sell the Product shall be excused only for the reasons set forth in the definition of ***[Seller to select:*** "As-Available" or "Unit Firm"***]***. If Seller fails to Schedule, deliver, or sell all or part of the Product, and such failure is not excused as described above, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred an amount for such Product deficiency equal to the positive difference, if any, obtained by subtracting (A) the product of the Energy Price

(ii) Buyer Excuses. The performance of Buyer to Schedule, receive, and pay for the Product shall be excused only (A) during periods of Force Majeure, (B) by Seller's failure to perform or (C) during Dispatch Down Periods ***[For all Products other than Dispatchable Product:*** (except that Buyer shall not be excused from paying for the Product as required under Section 3.4 during periods of Economic Dispatch Down)***]***. If Buyer fails to Schedule, receive, or purchase all or part of the Product and such failure is not excused as described above, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which

the failure occurred an amount for such Product deficiency equal to the positive difference, if any, obtained by subtracting (Y) the product of the Sales Price times the Product deficiency from (Z) the product of the Energy Price times the Product deficiency. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

(i) 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. For all electric generation using biomethane as fuel, neither Buyer nor Seller may make a marketing, regulatory, or retail claim that asserts that a procurement contract to which that entity was a party resulted, or will result, in greenhouse gas reductions related to the destruction of methane if the capture and destruction is required by Law. If the capture and destruction of the biomethane is not required by Law, neither Buyer nor Seller may make a marketing, regulatory, or retail claim that asserts that a procurement contract to which that entity was a party resulted, or will result, in greenhouse gas reductions related to the destruction of methane, unless the environmental attributes associated with the capture and destruction of the biomethane pursuant to that contract are transferred to Buyer and retired on behalf of the retail customers consuming the electricity associated with the use of that biomethane, or unless Seller's procurement contract with the source of biomethane prohibits the source of biomethane from separately marketing the environmental attributes associated with the capture and destruction of the biomethane sold pursuant to that contract, and such attributes have been retired.

(j) Resource Adequacy. During the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Project's Contract Capacity, including Capacity Attributes, from the Project for Buyer to use in meeting its Resource Adequacy or successor program requirements, as the CPUC, CAISO or other regional entity may prescribe. Seller understands that the CPUC is currently in the process of developing requirements for Resource Adequacy and these requirements and the implementation thereof have not been finalized. Seller agrees that it shall take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to enable Buyer to use all of the Contract Capacity, including Capacity Attributes, to be committed by Seller to Buyer pursuant to this Agreement for the Resource Adequacy requirements of Buyer, including

for necessary deliverability Network Upgrades. Seller agrees that the Project is subject to the terms of the Availability Standards. ***[For Projects located outside of the CAISO, insert:*** Seller acknowledges that in order for the Project, as a generator that is dynamically transferred via a pseudo-tie to the CAISO, to qualify its Capacity Attributes as Resource Adequacy capacity, Seller will need, among other things, to maintain firm transmission service to the Delivery Point or equivalent arrangements, to maintain as effective the Pseudo-Tie Agreements, to establish a "Qualifying Capacity" (or its equivalent) periodically with the CPUC, to establish a "Net Qualifying Capacity" (or its equivalent) periodically with the CAISO, and to submit through Seller's Scheduling Coordinator a Resource Adequacy supply plan periodically to the CAISO. Seller acknowledges that (i) Buyer may allocate its share of import capability on the CAISO Grid to any CAISO import scheduling point on the CAISO Grid as it deems appropriate in its sole discretion, and (ii) Buyer may allocate its share, if any, of import capability at the CAISO import scheduling point corresponding to the Delivery Point to any resource at such CAISO import scheduling point as it deems appropriate in its sole discretion, even if, in either case, Buyer's allocation of such import capability, if any, to the CAISO import scheduling point corresponding to the Delivery Point or to the Project may not be sufficient for the Capacity Attributes from the Project to be accepted and approved by the CPUC and the CAISO as qualifying for the determination of, and as satisfying Buyer's requirement for demonstrating its procurement of, Resource Adequacy capacity. If there are determined to be deliverability Network Upgrade costs on the CAISO Grid as an affected system of the Native Balancing Authority as a result of this Project, Buyer can request that Seller elect to fund or elect not to fund all deliverability Network Upgrades. If Seller elects to fund any such deliverability Network Upgrades after Buyer's request that Seller not fund such deliverability Network Upgrades, Buyer shall have the right to declare a termination, and Seller shall owe Buyer a Termination Payment. If Buyer requests that Seller fund certain deliverability Network Upgrades, but Seller does not fund such deliverability Network Upgrades, Buyer shall have the right to declare a termination, and Seller shall owe Buyer a Termination Payment. If the Seller is required to provide Resource Adequacy hereunder, Seller agrees that the Project is subject to the terms of the Availability Standards.***]***

(k) WREGIS. Prior to the initial delivery of Energy to Buyer, Seller shall register the Project in WREGIS, execute a CAISO Qualified Reporting Entity Service Agreement to allow CAISO, on the Seller's behalf, to upload generation information directly into WREGIS, and take all other actions necessary to ensure that the Green Attributes produced from the Project in an amount equal to the amount of Delivered Energy are issued and tracked for purposes of satisfying the requirements of the California Renewable Portfolio Standard and transferred to Buyer, including

payment of all fees required to register the facility in WREGIS, issue WREGIS certificates, and transfer such certificates to Buyer. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under the Agreement.

(l) Prevailing Wage. To the extent applicable, Seller shall comply with the prevailing wage requirements of California Public Utilities Code Section 399.13, subdivision (h).

3.2 Transmission.

(a) Seller's Transmission Service Obligations. During the Delivery Term, Seller shall arrange and be responsible for transmission service for delivery of the Product to and at the Delivery Point and bear all risks and costs associated with such transmission service, including, but not limited to, all Transmission Provider costs and charges, electric transmission losses, and any transmission outages or curtailment, except as provided otherwise in this Agreement in respect of Dispatch Down Periods. ***[For Projects located outside of CAISO:*** Seller shall obtain and maintain during the Delivery Term firm transmission service to deliver the Product from the Site to the Delivery Point from all intermediary Transmission Providers between the Site and the Delivery Point. At Buyer's request, Seller shall provide to Buyer a copy of all firm transmission service agreements and any amendments thereto.***]*** Seller shall fulfill all contractual, metering and applicable interconnection requirements, including those set forth in ***[For Projects located outside of CAISO:*** the Native Balancing Authority's applicable tariffs,***]*** Participating Transmission Owner's applicable tariffs, the CAISO Tariff and implementing CAISO standards and requirements, including, but not limited to, executing applicable interconnection agreements, Participating Generator Agreement and Meter Service Agreement ***[For Projects located outside of CAISO:*** (or equivalent arrangements (such as a Pseudo-Participating Generator Agreement) for projects located outside the CAISO whose output is dynamically transferred via a pseudo-tie to the CAISO)***]*** so as to be able to deliver Energy to the CAISO Grid. ***[For Project located within the CAISO:*** Seller shall arrange for any interconnection agreement with the CAISO (or the Participating Transmission Owner, for distribution level interconnections).***]*** ***[For Projects located outside of CAISO:*** Seller shall arrange for and maintain, or cause to be maintained, during the Delivery Term appropriate interconnection agreements with the Native Balancing Authority and appropriate Pseudo Tie Agreements among the parties thereto that permit and facilitate the dynamic transfer of the output of the Project via a pseudo-tie from the Native Balancing Authority to the CAISO.] Any and such interconnection agreement is separate and not a part of this Agreement.

(b) Buyer's Transmission Service Obligations. During the Delivery Term, Buyer shall arrange and be responsible for transmission service for delivery of the Product from the Delivery Point and bear all risks and costs associated with such transmission service, including, but not limited to, all Transmission Provider costs and charges, electric transmission losses, and any transmission outages or curtailment, except as provided otherwise in this Agreement in respect of Dispatch Down Periods.

(c) Congestion Charges. Seller shall be responsible for all costs of congestion for transmission of the Product up to and at the Delivery Point. Buyer shall be responsible for all costs of congestion for transmission of the Product from the Delivery Point. To the extent that Seller is reimbursed for or receives any refunds, credits, or benefits from the CAISO for congestion charges or losses in respect of transmission of the Product from the Delivery Point, whether due to differences between the locational marginal pricing at the Delivery Point and Buyer's load aggregation point or any other point downstream of the Delivery Point, congestion revenue rights associated with any transmission path downstream of the Delivery Point, or any other hedging instruments associated with the transmission of the Product from the Delivery Point (collectively, any such refunds, credits or benefits are referred to as "Reductions"), then, at Buyer's option, either (i) Seller shall transfer any such Reductions and their related rights to Buyer; or (ii) Buyer shall reduce payments due to Seller under this Agreement in amounts equal to the Reductions and Seller shall retain the Reductions.

3.3 Scheduling.

(a) ***[For As-Available intermittent Product only:*** VER Forecasting Program Requirements. Seller shall cause the Project to become a Participating Intermittent Resource including executing all necessary documents to become a Participating Intermittent Resource. Seller shall be responsible for all CAISO forecasting fees and related charges associated with the Project becoming a Participating Intermittent Resource and participating in the VER Forecasting Program. Seller and Buyer shall comply with the VER Forecasting Program, and all additional protocols issued by the CAISO relating to Participating Intermittent Resources, including the VER Forecasting Program, for the Delivery Term. Seller shall provide Buyer with a copy of the notice from the CAISO certifying the Project as a Participating Intermittent Resource prior to the Commercial Operation Date. In the event that the VER Forecasting Program or the CAISO Tariff and/or any protocols relating thereto are changed, amended, modified replaced or terminated, Seller and Buyer agree to comply with such revisions and, to the extent practical, to implement such revisions in a manner that maintains the relative economic positions of the Parties as of the date of this Agreement.]

(b) Scheduling Coordinator.

[When Seller is SC for the Project, include the following two paragraphs:

(i) Seller as Scheduling Coordinator for the Project. During the Delivery Term, Seller shall be its own Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with its Transmission Provider to Schedule and deliver the Product to the Delivery Point and Buyer shall be its own Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with its Transmission Provider to Schedule and receive the Product at the Delivery Point. Throughout the Delivery Term, Buyer and Seller shall submit inter-SC trades for scheduling all Product from the Project at the Delivery Point (including Energy, Integrated Forward Market Load Uplift Obligations in respect of self-scheduled Energy, and other Product from time to time contemplated under the CAISO Tariff to be subject to inter-SC trades), based on a final Schedule developed in compliance with this Agreement. During the Delivery Term, each Party or each Party's SC shall conduct all Scheduling in accordance with the operating procedures developed by the Parties pursuant to Section 3.10 and in full compliance with the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, or real time basis, as determined by Buyer. ***[For As-Available intermittent Product only:*** Whenever the VER Forecasting Program is available, Seller shall submit Schedules and any updates to such Schedules to the CAISO based on the most current forecast of Delivered Energy consistent with the VER Forecasting Program.**]** In all cases, ***[For all Products other than Dispatchable:*** consistent with its Economic Dispatch Down curtailment rights,**]** Buyer may direct the Scheduling Coordinator to submit, and Seller shall cause the Scheduling Coordinator to submit in accordance with such Buyer's directions, a self-schedule or an economic bid in the applicable CAISO market in order to Schedule the Product with the CAISO. It is the intent of the Parties that neither Party be subject to a double payment or a double charge for Product from the Project through this Agreement and CAISO settlement process and that the more detailed Scheduling and operating procedures developed pursuant to Section 3.10 complement the CAISO settlement process to produce a final economic result between them that is consistent with the fundamental transaction of this Agreement.

(ii) CAISO Costs and Revenues. Seller shall be responsible for CAISO costs (including penalties and other charges) and shall be entitled to all CAISO revenues (including credits and other payments) as the Scheduling Coordinator for the Project, in each case, associated

with Imbalance Energy, including all CAISO charges or penalties incurred as a consequence of the Project not being available, the Seller not notifying the CAISO and Buyer of outages in a timely manner (in accordance with the CAISO Tariff and as set forth in Section 3.7), any other failure by Seller to abide by the CAISO Tariff, and any other deviations between Delivered Energy and Scheduled Energy that are attributable to Seller, the Project, or any event, circumstance, act, or incident occurring prior to or at the Delivery Point, including without limitation uninstructed deviation penalties. 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 or other CAISO charges associated with the Project not providing sufficient Resource Adequacy capacity are the responsibility of the Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, the cost of the sanctions or penalties shall be the Seller's responsibility. Buyer shall be entitled to all credits, payments, or revenues from the CAISO in respect of the Product Scheduled or delivered from the Project, including revenues associated with CAISO dispatches, inter-SC trade credits, and bid cost recovery.

[When SDG&E is SC for the Project, include the following seven paragraphs:

(iii) Buyer as Scheduling Coordinator for the Project. [During the Delivery Term] [Upon initial synchronization of the Project to the CAISO Grid], Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Project for both the delivery and the receipt of the Product at the Delivery Point. At least thirty (30) days prior to the [Commercial Operation Date of the Project] [initial synchronization of the Project to the CAISO Grid], 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 beginning of the Delivery Term] [initial synchronization of the Project to the CAISO Grid]. [During the Delivery Term] [On and after initial synchronization of the Project to the CAISO Grid], 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 (as Seller's SC) shall submit Schedules to the CAISO based on the final Schedule developed in accordance with this Agreement, the operating procedures developed by the Parties pursuant to Section 3.10, and

the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, or real time basis, as determined by Buyer. ***[For As-Available intermittent Product only:*** Buyer (as Seller's SC) shall submit Schedules and any updates to such Schedules to the CAISO based on the most current forecast of Delivered Energy consistent with the VER Forecasting Program whenever the VER Forecasting Program is available, and consistent with Buyers' best estimate based on the information reasonably available to Buyer including Buyer's forecast whenever the VER Forecasting Program is not available.] In all cases, ***[For all Products other than Dispatchable:*** consistent with its Economic Dispatch Down curtailment rights,**]** Buyer (as the Scheduling Coordinator) may, or may direct the third party Scheduling Coordinator to, submit a self-schedule or an economic bid in the applicable CAISO market in order to Schedule the Product with the CAISO.

(iv) Notices. Buyer (as Seller's SC) shall provide Seller with access to a web based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Project's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. In accordance with Section 3.7 and this Section 3.2, Seller will cooperate with Buyer to provide such notices and updates. If the web based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, or facsimile transmission to the personnel designated to receive such information.

(v) CAISO Costs and Revenues. Except as otherwise set forth below, ***[For all Products other than Dispatchable Product:*** in Section 3.4(c)(ii),***]*** and elsewhere in this Agreement, Buyer (as Seller's SC) shall be responsible for CAISO costs (including penalties, ***[For As-Available Product VER Forecasting Program Participants only:*** Negative Imbalance Energy costs or revenues,] and other charges) and shall be entitled to all CAISO revenues (including credits, ***[For As-Available Product VER Forecasting Program Participants only:*** Positive Imbalance Energy revenues or costs,] and other payments) as the Scheduling Coordinator for the Project, including revenues associated with CAISO dispatches, bid cost recovery, inter-SC trade credits, or other credits in respect of the Product Scheduled or delivered from the Project. ***[For As-Available Product VER Forecasting Program Participants only:*** Seller shall be responsible for all CAISO charges or penalties net of credits and payments (including without limitation all Imbalance Energy costs), in each case, resulting from the Seller not notifying the

CAISO and Buyer (as Seller's SC) of outages or other unavailability of Project capacity in a timely manner (in accordance with the CAISO Tariff and as set forth in Section 3.7) or any other failure by Seller to abide by the CAISO Tariff.***]*** ***[For all Products other than As-Available Product VER Forecasting Program Participants:*** Seller shall be responsible for all CAISO charges or penalties net of credits and payments, in each case, resulting from the Project not being available, the Seller not notifying the CAISO and Buyer (as Seller's SC) of outages in a timely manner (in accordance with the CAISO Tariff and as set forth in Section 3.7), any other failure by Seller to abide by the CAISO Tariff, and deviations between Delivered Energy and Scheduled Energy that are attributable to Seller, the Project, or any event, circumstance, act, or incident occurring prior to or at the Delivery Point, including without limitation uninstructed deviation penalties.**]** 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 or other CAISO charges associated with the Project not providing sufficient Resource Adequacy capacity are the responsibility of the Seller and for Seller's account. In addition, if during the Delivery Term, 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.

(vi) CAISO Settlements. Buyer (as Seller's SC) shall be responsible for all settlement functions with the CAISO related to the Project. Buyer shall render a separate invoice to Seller for any CAISO charges or penalties ("CAISO Charges Invoice") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after 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 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.

(vii) Dispute Costs. Buyer (as Seller's SC) may be required to dispute CAISO settlements in respect of the Project. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees, including reasonably allocated costs of in-house counsel of the Buyer) associated with its involvement with such CAISO disputes. In no event shall Buyer (or its third party designee, as Scheduling Coordinator) be liable to Seller for the actions, inactions, errors, or omissions of the CAISO or its agents in the performance of their scheduling functions and/or market operations.

(viii) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, 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 such expiration date.

(ix) Master File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master File and Resource Data Template (or successor data systems) for this Project consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.**]**

(c) Annual Delivery Schedules. No later than forty-five (45) days before (A) the first day of the first Contract Year of the Delivery Term and (B) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month's average-day expected Delivered Energy, by hour, for the following calendar year.

(d) Monthly Delivery Schedules. Ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide a non-binding forecast of each day's average expected Delivered Energy, by hour, for the following month ("Monthly Delivery Forecast").

(e) Daily Delivery Schedules. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall ***[When Seller is SC for the Project:*** cause its Scheduling Coordinator to**]** provide Buyer with a ***[For As-Available intermittent Product only:*** non-binding forecast of the Project's available capacity (or if the VER Forecasting Program is not available for any reason, the expected Delivered Energy)] ***[For all Products other than As-Available intermittent:*** binding forecast of the expected Delivered Energy] for each hour of the immediately succeeding day ("Day-Ahead Forecast") ***[For all Products other than As-Available intermittent: [When Seller is SC for the Project:*** concurrent with delivery to the CAISO**]** ***[When SDGE***

is SC for the Project: and Buyer shall submit a Schedule to the CAISO consistent with such Day-Ahead Forecast**]**, it being understood that, ***[For all Products other than Dispatchable:*** consistent with its Economic Dispatch Down curtailment rights,**]** Buyer (as the Scheduling Coordinator) may, or may direct the third party Scheduling Coordinator to, submit a self-schedule or an economic bid in the applicable CAISO market in order to Schedule the Product with the CAISO]. A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include Schedules for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of ***[For As-Available intermittent Product only:*** the Project's available capacity (or if the VER Forecasting Program is not available for any reason, the expected Delivered Energy)] ***[For all Products other than As-Available intermittent:*** the expected Delivered Energy]. Seller may not change such Schedule past the deadlines provided in this section except in the event of a Forced Outage or Schedule change imposed by Buyer or the CAISO, in which case Seller shall promptly provide Buyer with a copy of any and all updates to such Schedule indicating changes from the then-current Schedule. These notices and changes to the Schedules shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein, then for such unscheduled delivery period only Buyer shall rely on the delivery Schedule provided in the Monthly Delivery Forecast or Buyer's best estimate based on information reasonably available to Buyer and Seller shall be liable for Scheduling and delivery based on such Monthly Delivery Forecast or Buyer's best estimate.

(f) Real Time Delivery Schedules. Notwithstanding anything to the contrary herein, in the event Seller makes a change to its Schedule on the actual date of delivery for any reason including Forced Outages (other than a scheduling change imposed by Buyer or CAISO) which results in a change to its deliveries (whether in part or in whole), Seller shall notify Buyer immediately by calling Buyer's on-duty Scheduling Coordinator. Seller shall notify Buyer and the CAISO of Forced Outages in accordance with Section 3.7. Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Project during or after the end of the outage.

(g) ***[For Dispatchable Product Only:*** Availability Notices. During the Delivery Term, 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 capacity that the Project is expected to have available 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 developed by the Parties under Section 3.10 by (in order of preference) electronic mail, facsimile transmission or, telephonically to Buyer personnel designated to receive such communications.]

(h) ***[For Dispatchable Product Only:*** Dispatch Notices. Buyer or the CAISO will have the right to dispatch the Project, seven days per week and 24 hours per day (including holidays), by providing Dispatch Notices and updated Dispatch Notices to Seller electronically, subject to the requirements and limitations set forth in this Agreement, including the system requirements under Section 3.4(b) and the Project operating restrictions set forth in Exhibit H. Each Dispatch Notice will be effective unless and until Buyer modifies such Dispatch Notice by providing Seller with an updated Dispatch Notice. 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 the timelines as specified in the CAISO Tariff.]

3.4 Dispatch Notices.

(a) General. Seller shall reduce delivery amounts as directed by the CAISO, the Participating Transmission Owner, Buyer, or a Transmission Provider during any Dispatch Down Period.

(b) System Requirements. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary (i) for Seller to respond and follow instructions, including an electronic signal conveying real time instructions, to operate the Project as directed by the Buyer and/or the CAISO, including to implement a System Dispatch Down or an Economic Dispatch Down in accordance with the then-current methodology used to transmit such instructions as it may change from time to time, and (ii) for Buyer and/or the CAISO to control the quantity of Product generated by the Project in order to implement a System Dispatch Down or an Economic Dispatch Down, in each case, in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. As of the Execution Date, the systems required to comply with clause (i) include at a minimum the CAISO's Automatic Dispatch System (as described in the CAISO website) and the systems required to comply with clause (ii) include at a minimum the CAISO'S Application Programming Interfaces (as described in the CAISO website). If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take all commercially reasonable steps necessary to become compliant as soon as possible. Seller shall be liable

pursuant to Section ***[For all Products other than Dispatchable Product:*** 3.4(c)(ii)***] [For Dispatchable Product:*** 3.3(b)[(ii)/(iii)]***]*** for failure to comply with an order directing a Dispatch Down Period, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, an order directing a Dispatch Down Period via such systems and facilities shall have the same force and effect on Seller as any other form of communication. If an electronic submittal is not possible, Buyer and/or the CAISO may provide 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 and Seller shall maintain communications systems necessary to permit such transmittal of Dispatch Notices. The Parties shall describe with more specificity the Economic Dispatch Down process (including the automated communication process for Dispatch Notices) in the operating procedures developed by the Parties pursuant to Section 3.10.

(c) ***[For all Products other than Dispatchable Product:*** Economic Dispatch Down. Each of Buyer and the CAISO has the right to order Seller to curtail deliveries of Energy from the Project to the Delivery Point for Economic Dispatch Down purposes, seven days per week and 24 hours per day (including holidays), by providing Dispatch Notices and updated Dispatch Notices to Seller electronically via the communications systems described in Section 3.4(b), subject to the requirements and limitations set forth in this Agreement, including the Project operating restrictions set forth in Exhibit H. Each Dispatch Notice will be effective unless and until Buyer (or the CAISO) modifies such Dispatch Notice by providing Seller with an updated Dispatch Notice. 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 the timelines as specified in the CAISO Tariff. Seller agrees to adjust the Project's Delivered Energy as set forth in a Dispatch Notice that meets the requirements of Economic Dispatch Down.]

(i) [Buyer Payments. Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which any such Economic Dispatch Down occurred an amount equal to the positive difference, if any, of (Y) the product of the Energy Price, times, minus (Z) the product of the positive value of the Sales Price, if received, times the amount of Deemed Bundled Green Energy resulting from such Economic Dispatch Down.

(ii) [Failure to Comply. If Seller fails to comply with a Dispatch Notice that is in compliance with this Agreement, then, for the deviation between the Delivered Energy and the amount set forth in the Dispatch Notice, Seller shall pay Buyer an amount equal to the sum

of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for any Delivered Energy in excess of the amount set forth in the Dispatch Notice (for example, the Energy Price adjusted by TOD Factors), and (B) is all Imbalance Energy costs or charges (excluding any revenues or credits), and (C) is any penalties or other charges resulting from Seller's failure to comply with the Dispatch Notice.]

3.5 Standards of Care.

(a) General Operation. Seller shall comply with all applicable requirements of Law, the CAISO, NERC and WECC relating to the Project (including those related to safety, construction, ownership and/or operation of the Project).

(b) CAISO and WECC Standards. Each Party shall perform all generation, scheduling and transmission services in compliance with all applicable (i) operating policies, criteria, rules, guidelines, tariffs and protocols of the CAISO, (ii) WECC scheduling practices and (iii) Good Industry Practices.

(c) Reliability Standard. Seller agrees to abide by all (i) NERC, WECC and CAISO reliability requirements, including all such reliability requirements for generator owners and generator operators, and, if applicable, CPUC General Order No.167, "Enforcement of Maintenance and Operation Standards for Electrical Generating Facilities," and (ii) all applicable requirements regarding interconnection of the Project, including the requirements of the interconnected Transmission Provider.

3.6 Metering.

(a) CAISO Revenue Meter. All output from the Project per the terms of this Agreement must be delivered through a single CAISO revenue meter and that meter must be dedicated exclusively to the Project described herein. All Product purchased under this Agreement must be measured by the Project's CAISO revenue meter to be eligible for payment under this Agreement. Seller shall bear all costs relating to all metering equipment reasonably necessary to accommodate the Project. In addition, Seller hereby agrees to provide all meter data to Buyer in a form acceptable to Buyer, and consents to Buyer obtaining from the CAISO the CAISO meter data applicable to the Project and all inspection, testing and calibration data and reports. Seller shall grant Buyer the right to retrieve the meter reads from the CAISO meter reporting website and/or directly from the CAISO meter(s) at the Project site. If the CAISO makes any adjustment to any CAISO meter data for a given time period, Seller agrees that it shall submit revised monthly invoices, pursuant to Section 6.2, covering the entire applicable time period in order to conform fully

such adjustments to the meter data. Seller shall submit any such revised invoice no later than thirty (30) days from the date on which the CAISO provides to Seller such binding adjustment to the meter data.

(i) 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 Good Industry Practice and the CAISO 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.

(ii) 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 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 was determined pursuant to a test required by Buyer, Seller shall bear the expense of any such test.

(iii) Delivered 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 is increased or decreased, the revised Delivered Energy 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, they shall be recalculated using the revised amount of Delivered Energy. 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 6.2.

(b) Real Time Telemetry. Seller shall install, activate and maintain metering, communication and telemetry equipment for the Project in a centralized system to which Buyer shall have real time access. Seller shall link its system to Buyer via an approved Buyer communication network, utilizing existing industry standard network protocol, as

reasonably approved by Buyer. Seller shall correct any problems with such equipment as soon as practicable.

(c) ***[The following section is for As-Available Intermittent Products only]*** Meteorological Station. Seller, at its own expense, shall install and maintain such stand-alone meteorological stations at the Project as may be required under the VER Forecasting Program and the CAISO Tariff to monitor and report weather data to both the CAISO and Buyer's weather station data collection system. Each station shall be equipped with instruments and equipment that meet the specifications of the VER Forecasting Program and shall measure, collect, record, format, and communicate the data required under the VER Forecasting Program. Seller shall submit to Buyer for review and approval, which shall not be unreasonably withheld, its technical specifications for the meteorological station along with a site plan showing the location of the station within the Project. Seller shall correct any problems with such equipment as soon as practicable.

3.7 Outage Notification.

(a) Planned Outages. Seller shall schedule Planned Outages for the Project in accordance with Good Industry Practices and with the prior written consent of Buyer, which consent may not be unreasonably withheld or conditioned. The Parties acknowledge that in all circumstances, Good Industry Practices shall dictate when Planned Outages should occur. Seller shall notify Buyer of its proposed Planned Outage schedule for the Project for the following calendar year by submitting a written Planned Outage schedule no later than October 1st of each year during the Delivery Term. The Planned Outage schedule is subject to Buyer's approval, which approval may not be unreasonably withheld or conditioned. Buyer shall promptly respond with its approval or with reasonable modifications to the Planned Outage schedule and Seller shall use its best efforts in accordance with Good Industry Practices to accommodate Buyer's requested modifications. Notwithstanding the submission of the Planned Outage schedule described above, Seller shall also submit a completed Outage Notification Form to Buyer no later than fourteen (14) days prior to each Planned Outage and all appropriate outage information or requests to the CAISO in accordance with the CAISO Tariff. Seller shall contact Buyer with any requested changes to the Planned Outage schedule if Seller believes the Project must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Good Industry Practices. Seller shall not change its Planned Outage schedule without Buyer's approval, not to be unreasonably withheld or conditioned. Seller shall use its best efforts in accordance with Good Industry Practices not to schedule Planned Outages during the months of July, August, September and October. At Buyer's request, Seller shall use commercially

reasonable efforts to reschedule Planned Outage so that it may deliver Product during CAISO declared or threatened emergency periods. Seller shall not substitute Energy from any other source for the output of the Project during a Planned Outage.

(b) Forced Outages. Within ***[When Seller is the SC for the Project:*** Within two hours of any Forced Outage,**]** ***[When SDG&E is the SC for the Project:*** Within one-half of the notification time prescribed under the CAISO Tariff for Forced Outages,**]** Seller shall submit a completed Outage Notification Form to the Buyer in accordance with the instructions shown on the form and shall submit outage information to the CAISO in accordance with the CAISO Tariff ***[When SDG&E is the SC for the Project:*** and Section 3.3(b)(ii) above**]**. Seller shall not substitute Energy from any other source for the output of the Project during a Forced Outage.

(c) Coordination with CAISO. Seller shall be responsible ***[When SDG&E is SC for the Project:*** in accordance with Section 3.3(b)(ii)**]** for all outage coordination communications with the CAISO. Buyer shall cooperate with Seller in arranging and coordinating all Project outages with the CAISO.

3.8 Operations Logs and Access Rights.

(a) Operations Logs. Seller shall maintain a complete and accurate log of all material operations and maintenance information on a daily basis. Such log shall include, but not be limited to, information on power production, fuel consumption, efficiency, availability, maintenance performed, outages, results of inspections, manufacturer recommended services, replacements, electrical characteristics of the generators, control settings or adjustments of equipment and protective devices. Seller shall maintain this information for at least two (2) years and shall provide this information electronically to Buyer within one day of Buyer's request.

(b) Access Rights. Buyer, its authorized agents, employees and inspectors shall have the right of ingress to and egress from the Project during normal business hours upon reasonable advance Notice and for any purposes reasonably connected with this Agreement.

3.9 New Generation Facility.

(a) Project Development. Seller, at no cost to Buyer, shall:

(i) Design and construct the Project.

(ii) Perform all studies, pay all fees, obtain all necessary approvals and execute all necessary agreements with the CAISO and the

Participating Transmission Owner for the Electrical Interconnection Upgrades to Schedule and deliver the Product from the Project [***For Projects Providing Resource Adequacy:*** under "Full Capacity Deliverability Status" (as defined in the CAISO Tariff)]. Following satisfaction or waiver of the Conditions Precedent set forth in Section 2.3(b), Seller shall not request from the CAISO or the Participating Transmission Owner any changes to its plan of interconnection that are inconsistent with the plan of interconnection that was evaluated in connection with the satisfaction or waiver of the Conditions Precedent in Section 2.3(b) without Buyer's prior written consent.

(iii) Acquire all Governmental Approvals and other approvals necessary for the construction, operation, and maintenance of the Project.

(iv) Complete all environmental impact studies necessary for the construction, operation, and maintenance of the Project, including all environmental analysis required under the California Environmental Quality Act for the Project and related interconnection facilities.

(v) At Buyer's request, provide to Buyer Seller's electrical specifications and design drawings pertaining to the Project.

(vi) Within fifteen (15) days after the close of each calendar quarter following the Execution Date until the Commercial Operation Date, provide to Buyer a Quarterly Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The Quarterly Progress Report shall identify the Milestones and indicate whether Seller has met or is on target to meet such Milestones.

(vii) Provide access to Buyer, its authorized agents, employees and inspectors for purpose of inspecting the Project's construction site or on-site Seller data and information pertaining to the Project during normal business hours upon reasonable advance Notice.

(viii) At Buyer's request, provide information to Buyer relating to Seller's or Seller's contractor's use, during Project construction, of "Women-Owned Businesses" or "Minority-Owned Businesses" or "Disabled Veteran Business Enterprises" as defined in CPUC General Order 156, and the number of new employees hired by Seller or Seller's contractors and the number of women, minority, and disabled veterans trained or hired by Seller or Seller's contractor's as contemplated under Cal. Public Utilities Code

§910(a)(8), as each such group of entities and individuals may be amended from time to time or further defined, supplemented, or superseded by applicable Law or replaced with similar designations or certifications. [*Include other covenants related to "women-owned business" or "minority-owned business" as may be applicable to the Seller's RFO bid.*]

(b) Construction Milestones.

(i) The Parties agree time is of the essence in regards to this Agreement. As such, the Parties also agree certain milestones for the construction of the Project as set forth in the Milestone schedule attached hereto as Exhibit B ("Milestones") must be achieved in a timely fashion or Buyer will suffer damages.

(ii) Within seven (7) days after completion of each Milestone, Seller shall provide Buyer with Notice along with accompanying documentation (including reasonably redacted copies of applicable agreements, Governmental Approvals, and certificates) to reasonably demonstrate the achievement of such Milestone. If Seller misses the deadline date for three (3) or more Milestones or misses the deadline date for any one Milestone by more than ninety (90) days, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan ("Remedial Action Plan") that describes in detail a reasonable course of action and plan (including accelerating the work, for example, by using additional shifts, overtime, additional crews or resequencing of the work, as applicable) to achieve the missed Milestones and all subsequent Milestones no later than the Guaranteed Commercial Operation Date (as it may be extended under Section 3.9(c)(i)-(ii)); provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to meet any subsequent Milestones and the Guaranteed Commercial Operation Date.

(c) Daily Delay Damages.

(i) COD. Seller shall cause the Project to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date; provided, however, that the Commercial Operation Date shall not occur more than one hundred eighty (180) days prior to the Guaranteed Commercial Operation Date***. [NOTE to bidders: To be changed to 30 days for 2021 online date bids.]*** Seller may elect to extend the Guaranteed Commercial Operation Date for no more than a total of [_____] days (the "Project Cure Period") by providing Buyer with Notice of its election to extend the Guaranteed Commercial Operation Date by no later than 5:00

p.m. on the Business Day prior to the Guaranteed Commercial Operation Date along with Seller's estimate of the duration of the extension and its payment of Daily Delay Damages for each day or portion of a day that the Guaranteed Commercial Operation Date is extended. Seller may further extend the Guaranteed Commercial Operation Date beyond the already extended Guaranteed Commercial Operation Date subject to the same terms applicable to the original extension; provided, however, that the total of all extensions under this clause (i) shall not exceed the Project Cure Period. The Daily Delay Damages payments are in addition to, and not a part of, the Construction Period Security. Seller will be entitled to a refund (without interest) of any estimated Daily Delay Damages payments paid by Seller that exceed the amount required to cover the number of days or partial days by which the Commercial Operation Date occurred after the original Guaranteed Commercial Operation Date (where the original Guaranteed Commercial Operation Date excludes any extensions under this Section 3.9(c)(i) but includes any extensions under Section 3.9(c)(ii)). In addition, Seller shall submit a Remedial Action Plan within ten (10) days after each extension of the Guaranteed Commercial Operation Date if the Project has not then achieved the Commercial Operation Date. Each Party agrees and acknowledges that (a) the actual damages that Buyer would incur due to a delay in achieving the Commercial Operation Date on or before the original Guaranteed Commercial Operation Date (where the original Guaranteed Commercial Operation Date excludes any extensions under this Section 3.9(c)(i) but includes any extensions under Section 3.9(c)(ii)) 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 Commercial Operation Date for the length of the extensions paid for in advance by Seller up to the Project Cure Period 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 Commercial Operation Date altogether.

(ii) Extensions. The Guaranteed Commercial Operation Date and the deadline dates for Milestone numbers [_____] as set forth in Exhibit B shall be extended on a day for day basis for up to ninety (90) ***[NOTE: to be changed to 30 days for 2021 online bids.]*** calendar days in the aggregate ("Force Majeure Extension Period") without imposition of any Daily Delay Damages to the extent Seller is actually and demonstrably delayed in its critical path to achieving the Commercial Operation Date by the Guaranteed Commercial Operation Date as a result of Force Majeure; provided, however,

any such delay in excess of this period shall be subject to Daily Delay Damages pursuant to Section 3.9(c)(i).

3.10 Operating Procedures. No later than forty-five (45) days before the Commercial Operation Date, and from time to time as reasonably determined necessary by the Parties, the Parties shall meet to address how each Party will perform its respective obligations under this Agreement, including, but not limited to: (1) the method of day-to-day communications; (2) key personnel lists for each Party; (3) procedures for Forced Outage and Planned Outage reporting; (4) procedures for delivery forecasting; (5) procedures for record keeping; (6) Scheduling procedures; and (7) invoicing and payment procedures; provided, that the failure to agree on these operating procedures will not relieve the Parties of their respective obligations under this Agreement, and any failure to agree shall be resolved in accordance with the dispute resolution procedures in Article 12.

ARTICLE 4: COMPENSATION; MONTHLY PAYMENTS

4.1 ***[For Dispatchable Product Only:*** Capacity Payment.

(a) Capacity Price.

Contract Year	Capacity Price ($/KW)
1	

(b) Monthly Capacity Payment. For each month, Buyer shall pay Seller for the Product the amount calculated as follows ("Monthly Capacity Payment"):

MCP = CC x CP x SF x AAF

Where:

MCP is the Monthly Capacity Payment expressed in Dollars for such month of the Delivery Term.

CC is the Contract Capacity, expressed in kW, rounded to the nearest 100 kW.

CP is the Capacity Price expressed in Dollars per kW-year, for the applicable month.

SF is the Monthly Shaping Factor for the applicable month, 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

AAF is the Availability Adjustment Factor for each month, expressed as a three-place decimal and determined as follows:

(a) If the Equivalent Availability Factor ("EAF") for the month is less than or equal to 0.980, then the AAF equals EAF / 0.98.

(b) If the EAF for the month is greater than 0.980 but less than 0.990, then the AAF equals 1.0.

(c) If the EAF for the month is greater than or equal to 0.990, then the AAF equals EAF / 0.99.

EAF is the Equivalent Availability Factor for each month determined as follows:

EAF = (PH - (EDH - EEDH)) / PH

Where:

PH is the number of period hours;

EDH is the number of equivalent derate hours calculated as the sum, for each derate, of the product of the number of hours of full or partial derate hours times the size of the reduction from the Contract Capacity divided by the Contract Capacity for the month. For the purposes of this calculation, a derate includes all outages for any reason, including without limitation, Forced Outages, Force

Majeure events, Dispatch Down Periods, Planned Outages, Buyer's failure to perform, and other times when any portion of the Contract Capacity is not available and when the Delivered Energy of the Project is less than the amount of Energy dispatched by Buyer; and

EEDH is the number of equivalent excused derate hours solely due to either Dispatch Down Periods or Buyer's failure to perform (and for no other reason), calculated as the sum, for each excused derate, of the product of the number of hours of full or partial derate hours times the size of the reduction from the Contract Capacity, divided by the Contract Capacity for the month.

4.2 Energy Payment. ***[NOTE: for this IRP RFO, contract price shall be adjusted based on NQC provided. Formula for such adjustments will be provided based on bid.]***

(a) Energy Price. The price for the Bundled Green Energy that is delivered to Buyer in each Contract Year shall be as follows ("Energy Price"):

Contract Year	Energy Price ($/MWh)

provided, however, that:

(i) if Seller delivers Bundled Green Energy in the aggregate for any CAISO settlement interval (not to exceed one hour) in excess of the product of the Contract Capacity times the length of such settlement interval, expressed in hours, then the Energy Price for such excess Bundled Green Energy in such settlement interval shall be reduced to zero dollars ($0), and if the real time Locational Marginal Price for the Delivery Point during such settlement interval is less than zero dollars ($0), Seller shall pay to Buyer an amount equal to the absolute value of such negative Locational Marginal Price times such excess Bundled Green Energy;

(ii) if Seller delivers Bundled Green Energy in the aggregate for any Contract Year during the Delivery Term in excess of one hundred fifteen percent (110%) of the annual Contract Quantity, then the Energy Price for such excess Bundled Green Energy for the remainder of that Contract Year shall be reduced to zero dollars ($0), and for each CAISO settlement interval during that time in which the real time Locational Marginal Price is less than zero dollars ($0), Seller shall pay to Buyer an amount equal to the absolute value of such negative Locational Marginal Price times

the Bundled Green Energy delivered during such settlement interval;

(b) Monthly Energy Payment. For each month, Buyer shall pay Seller for the Product an amount equal to the sum for each hour in the month of the product of the Energy Price times the Bundled Green Energy in each hour ("Monthly Energy Payment").

Monthly Energy Payment = ∑ Energy Price x Bundled Green Energy

For any period where the quantity of Bundled Green Energy is less than the quantity of Delivered Energy and the quantity of Bundled Green Energy cannot practicably be determined for each settlement interval during such period (for example, where WREGIS does not specify in which settlement periods Renewable Energy Credits were delivered or not delivered), then the quantity of Bundled Green Energy for any settlement interval during the entire period shall be equal to the product of the quantity of Delivered Energy for a settlement interval multiplied by the quotient of the aggregate quantity of Green Attributes that are delivered to Buyer during such entire period divided by the aggregate quantity of Delivered Energy that is delivered to Buyer during such entire period.

4.3 Imbalance Energy. Seller shall use commercially reasonable efforts to deliver Energy in accordance with the Scheduled Energy. Buyer and Seller recognize that from time to time the amount of Delivered Energy will deviate from the amount of Scheduled Energy. When Delivered Energy minus Scheduled Energy is a positive amount, it shall be considered "Positive Imbalance Energy;" when Delivered Energy minus Scheduled Energy is a negative amount, the absolute (i.e., positive) value of that amount shall be considered the "Negative Imbalance Energy." ***[When Seller is SC for the Project or when Buyer is SC but Project is not in the VER Forecasting Program:*** Seller shall be responsible for settlement of Imbalance Energy with the CAISO and all fees, liabilities, assessments, or similar charges assessed by the CAISO in connection with Imbalance Energy.] Buyer and Seller shall cooperate to minimize charges and imbalances associated with Imbalance Energy to the extent possible. Seller shall promptly notify Buyer as soon as possible of any material imbalance that is occurring or has occurred. ***[When SDG&E is SC for the Project and Project is in the VER Forecasting Program:*** Buyer shall receive all Green Attributes for the Positive Imbalance Energy in all settlement intervals.**]**

[When Seller is SC for the Project or when Buyer is SC but Project is not in the VER Forecasting Program, include the following two paragraphs:

(a) Positive Imbalance Energy (Over Deliveries). In the event that Delivered Energy for any CAISO settlement interval is equal to or greater than Scheduled Energy for such CAISO settlement interval, Buyer shall have no payment obligation in respect of the Positive Imbalance Energy. Buyer shall receive all Green Attributes for the Positive Imbalance Energy in such CAISO settlement interval regardless as to whether it was sold into the CAISO. Seller shall be entitled to all payments or credits from the CAISO to Seller's SC and Seller shall make all payments to the CAISO in respect of the Positive Imbalance Energy.

(b) Negative Imbalance Energy (Under Deliveries). In the event that Delivered Energy for any CAISO settlement interval is less than Scheduled Energy for such CAISO settlement interval, Buyer shall have no payment obligation in respect of the Negative Imbalance Energy. Seller shall make all payments to the CAISO and Seller shall be entitled to all payments or credits from the CAISO to Seller's SC in respect of the Negative Imbalance Energy required under the CAISO Tariff.]

4.4 Additional Compensation. To the extent not otherwise provided for in this Agreement, in the event that Seller is compensated by a third party for any Product produced by the Project, including, but not limited to, compensation for Resource Adequacy or Green Attributes, Seller shall remit all such compensation directly to Buyer; provided that for avoidance of doubt, nothing herein precludes Seller from retaining credits related to transmission upgrades funded by Seller.

4.5 Energy Sales Prior to Commercial Operation Date. For each month prior to the Commercial Operation Date, as compensation for the Product delivered to Buyer, (i) Buyer shall pay Seller for the Product an amount equal to the product of ***[SDG&E to insert REC value amount in $/MWh]*** times the total Bundled Green Energy delivered to Buyer in such month, and (ii) Seller shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, inter-SC trade credits, or other credits in respect of the Product Scheduled or delivered from the Project, and Seller shall be responsible for all CAISO costs (including penalties, Imbalance Energy costs, and other charges) including all CAISO charges or penalties, in each case, resulting from the Project not being available, the Seller not notifying the CAISO of outages in a timely manner, and any other failure by Seller to abide by the CAISO Tariff, including without limitation uninstructed deviation penalties. ***[When Buyer is SC for the Project, include the following:*** Each month, Buyer (as the SC for the Project) shall deliver an invoice to Seller including a statement of all such CAISO revenues and charges within thirty (30) days after the CAISO final settlement data is available to Buyer for such deliveries.]

ARTICLE 5: EVENTS OF DEFAULT; FORCE MAJEURE

5.1 Events of Default. An "Event of Default" shall mean,

(a) with respect to a Party that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within five (5) Business Days after Notice thereof;

(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, and such default is not remedied within thirty (30) days after Notice thereof;

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent

constituting a separate Event of Default, and except for such Party's obligations to Schedule, deliver, or receive the Product, the exclusive remedy for which is provided in Section 3.1(h)) and such failure is not remedied within thirty (30) days after Notice thereof;

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 13.2; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement Energy that was not generated by the Project ***[If the Project is located outside of the CAISO:*** other than Imbalance Energy from the Transmission Provider];

(ii) the failure by Seller to achieve the Commercial Operation Date no later than the Guaranteed Commercial Operation Date;

(iii) ***[For Baseload, Peaking, Dispatchable Product:*** the Contract Capacity at the Commercial Operation Date or at any other time pursuant to a Capacity Test is less than [_____] MW and such default is not remedied within thirty (30) days after Notice thereof;] ***[NOTE: for this IRP RFO, there will be an NQC minimum of 70% bid NQC, which must be maintained on average over any consecutive 12-month period.]***

(iv) ***[For Baseload, Peaking, As-Available Product:*** the failure by Seller to achieve the Guaranteed Energy Production requirement during any Performance Measurement Period as set forth in Section 3.1(e) of this Agreement] ***[For Dispatchable Product:*** the Default Availability Factor of the Project is less than [_____] percent for any rolling twelve (12) consecutive calendar month period];

(v) the failure by Seller to deliver a Remedial Action Plan that reasonably demonstrates in detail how Seller will achieve the Commercial Operation Date no later than the Guaranteed

Commercial Operation Date, if such failure is not remedied within ten (10) days after Notice;

(vi) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.3 or 8.4 of this Agreement;

(vii) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an 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:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or

(viii) 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:

(A) 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;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) 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;

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

(E) 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;

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

(G) Seller shall fail to renew or 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.

5.2 Remedies; Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("Non-Defaulting Party") shall have the right (a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("Early Termination Date") that terminates this Agreement and ends the Delivery Term effective as of the Early Termination Date, to accelerate all amounts owing between the Parties, and to collect liquidated damages calculated in accordance with Section 5.3 below ("Termination Payment"); (b) to withhold any payments due to the Defaulting Party under this Agreement; (c) to suspend performance; and (d) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement.

5.3 Termination Payment. The Termination Payment for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to the Non-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 5.1(a)(iv) [Bankruptcy], if the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Termination Payment shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages; provided, however, that any lost Capacity Attributes and Green Attributes shall be deemed direct damages covered by this Agreement. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement

transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction 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 a Terminated Transaction 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 a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

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

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 12.

5.6 Rights And Remedies Are Cumulative. Except where liquidated damages are provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 5 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

5.7 Mitigation. Any Non-Defaulting Party shall be obligated to mitigate its Costs, losses and damages resulting from any Event of Default of the other Party under this Agreement.

5.8 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 gives Notice and details of the Force Majeure to the other Party as detailed below, then, the Party impacted by Force Majeure shall be excused from the performance of its obligations to the extent impacted. Within forty-eight (48) hours of commencement of an event of Force Majeure, the non-performing Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of the commencement of an event of Force Majeure the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim. Seller shall not substitute Product from any other source for the output of the Project during an outage resulting from Force Majeure. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure. Buyer shall not be required to make any payments for any Product that Seller fails to Schedule, deliver or provide as a result of Force Majeure during the term of a Force Majeure. This Agreement may be terminated by the non-claiming Party with no further obligation to the Force-Majeure-claiming Party if a Force Majeure event prevents the performance of a material portion of the obligations of the Force-Majeure-

claiming Party hereunder and such Force Majeure event is not resolved within eight (8) months after the commencement of such Force Majeure event. In addition to the foregoing, prior to the Commercial Operation Date, this Agreement may be terminated by Buyer with no further obligation to Seller if one or more Force Majeure events prevents Seller from achieving the Commercial Operation Date by the end of the Force Majeure Extension Period; provided, however, that Buyer shall not have the right under this section to terminate this Agreement until the Guaranteed Commercial Operation Date if Seller is paying delay liquidated damages to Buyer as required under Section 3.9(c)(i) during the Project Cure Period (it being acknowledged, that Seller may elect to pay Daily Delay Damages during periods of Force Majeure up to the expiration of any remaining unclaimed portion of the Project Cure Period in lieu of claiming Force Majeure relief hereunder).

ARTICLE 6: PAYMENT

6.1 Billing and Payment. On or about the tenth (10^{th}) day of each month beginning with the second month of the first Contract Year and every month thereafter, and continuing through and including the first month following the end of the Delivery Term, Seller shall provide to Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Project for any CAISO settlement time interval during the preceding months, (b) access to any records, including invoices or settlement data from CAISO, necessary to verify the invoice; and (c) an invoice, in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with Article 4 (which may include preceding months), with all component charges and unit prices identified and all calculations used to arrive at invoiced amounts described in reasonable detail. Buyer shall pay the undisputed amount of such invoices on or before thirty (30) days after receipt of the invoice. If either the invoice date or payment date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Default Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Invoices may be sent by facsimile or e-mail.

6.2 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 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 6.2 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 any Party 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.

6.3 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, including any related damages calculated pursuant to Section 3.1(h), 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.

ARTICLE 7: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE. EXCEPT FOR A PARTY'S INDEMNITY OBLIGATION IN RESPECT OF THIRD PARTY CLAIMS OR AS OTHERWISE EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 11.2 (INDEMNITIES), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE 8: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Buyer Financial Information. If requested by Seller, Buyer shall deliver (i) within one hundred twenty (120) days following the end of each fiscal year, a copy of Buyer's annual report containing audited consolidated financial statements for such fiscal year and (ii) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Buyer's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; 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 Buyer diligently pursues the preparation, certification and delivery of the statements. Buyer shall be deemed to have satisfied such delivery requirement if the applicable report is publicly available.

8.2 Seller Financial Information. Seller shall provide the following financial information:

(a) If requested by Buyer, Seller shall deliver (i) within one hundred twenty (120) days following the end of each fiscal year, a copy of Seller's annual report containing audited consolidated financial statements for such fiscal year and (ii) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Seller's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; 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 Seller diligently pursues the preparation, certification and delivery of the statements.

(b) ***[If a Guaranty may be provided:*** If a Guaranty is provided and if requested by Buyer, Seller shall deliver (i) within one hundred twenty (120) days following the end of each fiscal year, a copy of Guarantor's annual report containing audited consolidated financial statements for such fiscal year and (ii) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Guarantor's quarterly report containing unaudited consolidated financial statements for such fiscal quarter certified by an officer of Guarantor. In all cases the statements shall be for the most recent accounting period and 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 Guarantor diligently pursues the preparation, certification and delivery of the statements. Seller shall be deemed to have satisfied such delivery requirement if the applicable report is publicly available.]

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent Seller delivers Performance Assurance hereunder, Seller hereby grants to Buyer 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, Buyer, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Buyer'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, Buyer 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 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 the 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.

8.4 Performance Assurance.

(a) ***[For Agreements with Delivery Terms greater than two years:*** CPUC Approval Security,] Development Period Security, Construction Period Security, Delivery Term Security. 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:

(i) ***[For Agreements with Delivery Terms greater than two years:*** 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 8.4(b)(i) below;]

(ii) Development Period Security in the amount of [_____] in the form of cash or a Letter of Credit [or a Guaranty] from ***[For Agreements with Delivery Terms greater than two years:*** the CPUC Approval Date] ***[For all other Agreements:*** the Execution Date of this Agreement] until the return date specified in Section 8.4(b)[(i)/(ii)] below;

(iii) 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 8.4(b)[(ii)/(iii)] below; and

(iv) 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 8.4(b)[(iii)/(iv)] below.

Except as set forth in Section 2.2 as it pertains to [***For Agreements with Delivery Terms greater than two years:*** the CPUC Approval Security and] the Development Period Security, any such Performance Assurance shall not be deemed a limitation of damages.

(b) Return of Performance Assurance.

(i) ***[For Agreements with Delivery Terms greater than two years:*** 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 2.4(b)(ii).

(ii) 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) termination of the Agreement under Section 2.4(b)(ii).

(iii) 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.

(iv) 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).

8.5 Interest on Cash. If Seller provides Performance Assurance in the form of cash, Buyer shall pay interest on such cash held as ***[For Agreements with Delivery Terms greater than two years:*** CPUC Approval Security,] Development Period Security, Construction Period Security, or Delivery Term Security, as applicable, at the Interest Rate. On or before each Interest Payment Date, Buyer shall transfer the sum of all accrued and unpaid Interest Amounts due to Seller for

such security in the form of cash by wire transfer to the bank account specified under "Wire Transfer" in the Cover Sheet.

8.6 Costs of Letter of Credit. If Seller provides Performance Assurance in the form of a Letter of Credit, in all cases, the reasonable costs and expenses of (including but not limited to the reasonable costs, expenses, and attorneys' fees, including reasonably allocated costs of in-house counsel of the Buyer) establishing, renewing, substituting, canceling, increasing and reducing the amount of (as the case may be) one or more Letters of Credit shall be borne by the Seller.

ARTICLE 9: GOVERNMENTAL CHARGES

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

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any governmental authority ("Governmental Charges") on or with respect to the Product or the transaction under this Agreement arising prior to and at the Delivery Point, including, but not limited to, ad valorem taxes and other taxes attributable to the Project, land, land rights or interests in land for the Project. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or the transaction under this Agreement from the Delivery Point. In the event Seller is required by Law or regulation 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 Law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct such amounts from payments to Seller with respect to payments under the Agreement; if Buyer elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse Buyer for such amounts upon request. 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.

ARTICLE 10: REPRESENTATIONS AND WARRANTIES; COVENANTS

10.1 General Representations and Warranties. On the Execution Date and the CP Satisfaction 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) it has all Governmental Approvals necessary for it to perform its obligations under this Agreement, except for as of the Execution Date (i) CPUC Approval in the case of Buyer, and (ii) all Governmental Approvals necessary to construct, operate and maintain the Project and related interconnection facilities in the case of Seller;

(c) the execution, delivery and performance of this Agreement is 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 applicable Law;

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

(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 becoming Bankrupt;

(f) 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 any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

(g) 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;

(h) 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; and

(i) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or the ability to make or take delivery of the Product as provided in this Agreement.

10.2 Seller Representations and Warranties.

(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.

(b) 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 CPUC Decision 08-08-028, and as may be

modified by subsequent decision of the CPUC 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.

(c) [*Include other appropriate representations, warranties, and covenants to satisfy the California RPS content category requirements.*]

10.3 Covenants.

(a) General Covenants. Each Party covenants that throughout the Delivery Term:

(i) it shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;

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

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

(iv) it shall not dispute its status as a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

(b) Seller Covenants.

(i) Seller covenants throughout the Delivery Term that it, or its permitted successors or assigns, shall maintain ownership of a fee, easement, long-term leasehold interest, or other similar asset ownership interest in the Project.

(ii) Seller covenants throughout the Delivery Term that it shall maintain market based rate authority from FERC to sell Product to Buyer under the terms of this Agreement.

(iii) If at any time during the Delivery Term, Seller's representations and warranties set forth in Section 10.2 become materially false or misleading, Seller covenants that it shall provide prompt Notice to Buyer describing such default along with a description of its efforts to cure such default.

(iv) [*Include other appropriate representations, warranties, and covenants to satisfy the California RPS content category requirements.*]

(v) [*Include other appropriate covenants regarding the use of contractors that may be diverse business enterprises.*]

ARTICLE 11: TITLE, RISK OF LOSS, INDEMNITIES

11.1 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to or at the Delivery Point.

11.2 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 under this Agreement up to and at the 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 Law, including without limitation the CAISO Tariff, (iv) any Governmental Charges for which Seller is responsible hereunder, or (v) 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 Delivery Point, (ii) the failure by Buyer to comply with applicable Law, including without limitation the CAISO Tariff, or (iii) 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.

ARTICLE 12: DISPUTE RESOLUTION

12.1 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 12. 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 12.

12.2 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.

(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

12.2(a) above, refuses or does not meet within the ten (10) Business Day period specified in Section 12.2(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.

12.3 Arbitration. Any dispute that cannot be resolved by management negotiations as set forth in Section 12.2 above shall be resolved through binding arbitration by a retired judge or justice from the [AAA][JAMS] panel conducted in San Diego, California, administered by and in accordance with [AAA's Commercial Arbitration Rules] [JAMS [Comprehensive][Streamlined] 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 [AAA's Commercial Arbitration Rules] [JAMS [Comprehensive][Streamlined] 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.

(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) 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.

(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 Section 13.1.

ARTICLE 13: MISCELLANEOUS

13.1 Confidentiality.

(a) 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 13.1(b) 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 subsection (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 13.1(a) ("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.

(b) RPS Confidentiality. Notwithstanding Section 13.1(a) of this Agreement, at any time on or after the date on which the Buyer 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, anticipated Commercial Operation Date, Contract Quantity, and Delivery Point.

(c) Publicity. Except as otherwise agreed to in this Section 13.1 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.

13.2 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 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.

13.3 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement including amounts of Delivered Energy or Scheduled Energy. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Default Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived except to the extent any misinformation was from a third party not Affiliated with any Party and such third party corrects its information after such twelve-month period. In addition, Buyer shall have the right, at its sole expense and during normal working hours, to examine the

records of Seller to the extent reasonably necessary to verify Seller's compliance with its representations and warranties set forth in Section 10.2.

13.4 Sarbanes-Oxley and SEC 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 may require access to information concerning Seller's organizational structure, including its debt/capital structure, as well as to 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 13.4(a)(iii) or any other provision of this Agreement.

(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 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.

13.5 Entire Agreement. This Agreement, together with the Cover Sheet and each and every appendix, attachment, amendment, schedule and any written supplements hereto, if any, between the Parties constitutes the entire agreement between the Parties.

13.6 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees.

13.7 Forward Contract. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code.

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

13.9 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.

13.10 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. Except to the extent provided for herein, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The headings used herein are for convenience and reference purposes only. This Agreement shall be binding on each Party's successors and permitted assigns.

13.11 Severability. If any provision in this Agreement is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement and the Parties

shall use their best efforts to modify this Agreement to give effect to the original intention of the Parties.

13.12 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.

13.13 Notices. Whenever this Agreement requires or permits delivery of a "Notice" (or requires a Party to "notify"), the Party with such right or obligation shall provide a written communication delivered personally, by a nationally recognized overnight courier, mailed by registered or certified mail (return receipt requested), or by facsimile or e-mail (if facsimile numbers or e-mail addresses are identified on the Cover Sheet or by subsequent Notice) to the receiving Party at the addresses identified on the Cover Sheet (or at such other addresses as such receiving Party shall identify by like Notice to the other Party); provided, however, that notices of Outages or other Scheduling or dispatch information or requests, shall be provided in accordance with the terms set forth in the relevant section of this Agreement. Invoices may be sent by facsimile or e-mail (if facsimile numbers or e-mail addresses are identified on the Cover Sheet or by subsequent Notice). A Notice delivered in accordance herewith shall be deemed received (i) on the date of delivery, if hand delivered, (ii) two Business Days after the date of sending, if sent by a nationally recognized overnight courier, or at such earlier time as is confirmed by the receiving Party, (iii) three Business Days after the date of mailing, if mailed by registered or certified mail, return receipt requested, or at such earlier time as is confirmed by the receiving Party, and (iv) on the Business Day on which such Notice was transmitted by facsimile transmission or e-mail (where permitted); provided, however, that a Notice delivered in accordance with this Section but received on any day other than a Business Day or after 5:00 p.m. in the place of receipt will be deemed received on the next Business Day. Each Party shall provide Notice to the other Party of the persons authorized to nominate and/or agree to a Schedule or Dispatch Order for the delivery or acceptance of the Product or make other Notices on behalf of such Party and specify the scope of their individual authority and responsibilities, and may change its designation of such persons from time to time in its sole discretion by providing Notice.

13.14 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. Pub. Util. Dist. No. 1 of Snohomish County, 128 S. Ct. 2733 (2008).

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

[_____]
a [_____]

By: _____
Name:_____
Title:_____

SAN DIEGO GAS & ELECTRIC COMPANY
a California corporation

By: _____
Name:_____
Title:_____

Exhibit A

PROJECT DESCRIPTION INCLUDING DESCRIPTION OF SITE

PROJECT DESCRIPTION

Project name _____

Project Site name: _____

Project physical address: _____

Total number of electric generating units at the Project (committed and not committed to Buyer) _____

Technology Type: _____

Substation:

The term "Site" as defined in the Agreement means the following parcel description upon which the Project is located:

Latitude and Longitude of Project:_____.

The nameplate capacity of the Project is _____.

The electric generating units utilized as generation assets as part of the Project are described below:

[INSERT MAP]

Exhibit B

MILESTONE SCHEDULE

	Date	*Project Name*
1.		Obtains control of all lands and rights-of-way comprising the Site.
2.		Files a CEC Pre-Certification and Verification application.
3.		Receives a completed [Phase I Interconnection Study Report] [interconnection feasibility study] and CAISO Deliverability Assessment Study Report. [***Omit if addressed by a Condition Precedent***]
4.		Receives a completed [Phase II Interconnection Study Report] [interconnection system impact study] and CAISO Deliverability Assessment Study report [***Omit if addressed by a Condition Precedent***]
5.		Files CEQA/NEPA application with appropriate agency(ies).
6.		Executes interconnection agreement and/or transmission agreement and receives FERC approval.
7.		Receives CEQA/NEPA approval/permit
8.		Executes an Engineering, Procurement and Construction ("EPC") contract.
9.		Delivers full NTP under EPC contract and begins construction of the Project.
10.		***[For Projects located in the CAISO:*** Executes Meter Service Agreement and Participating Generator Agreement. ***[For Projects located outside of the CAISO:*** Executes or causes to be executed all Pseudo Tie Agreements.***]***
11.		Delivers Energy to the Transmission Provider to which the Project is physically interconnected.
12.		Receives all Governmental Approvals necessary to achieve COD.
13.		Receives CEC Certification and Verification.

Exhibit C

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 Power Purchase Agreement between Beneficiary and Applicant dated _____ or under any transaction contemplated thereby (whether by failure to perform or pay any obligation thereunder or by occurrence of a "default", "event of default" or similar term as defined in such agreement, any other agreement between Beneficiary and Applicant, or otherwise). The amount due to Beneficiary is U.S. $_____."

or

2- Statement signed by a person purported to be an authorized representative of Beneficiary stating that: "[name of Applicant] ("Applicant") has forfeited all or part of its ***[For Agreements with Delivery Terms greater than two years:*** CPUC Approval Security or] Development Period Security as set forth and defined in the Power Purchase Agreement between Beneficiary and Applicant dated _____. The amount due to Beneficiary, whether or not a default has occurred, is U.S. $_____."

or

3- Statement signed by a person purported to be an authorized representative of Beneficiary stating that: "as of the close of business on [insert date, which is less than 60 days prior to the expiration date of the Letter of Credit] you have provided written

notice to us indicating your election not to permit extension of this Letter of Credit beyond its current expiry date. The amount due to Beneficiary, whether or not a default has occurred, is U.S. $_____."

Special Conditions:

- All costs and banking charges pertaining to this Letter of Credit are for the account of Applicant.

- Partial and multiple drawings are permitted.

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

This Letter of Credit expires on _____ at our counters.

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

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

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

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

govern. Matters not covered by the UCP shall be governed and construed in accordance with the laws of the State of California.

[Name of Bank]

_____
Authorized Signature(s)

Exhibit D

FORM OF GUARANTY

GUARANTY

In consideration of San Diego Gas & Electric Company ("Company") entering into a power purchase agreement with [NAME OF COUNTERPARTY] (hereinafter referred to as "Applicant"), [NAME OF GUARANTOR], a [TYPE OF LEGAL ENTITY i.e. California corporation], (hereinafter referred to as "Guarantor") agrees with Company as follows:

1. The term "Obligations" shall mean all obligations, liabilities and indebtedness of any kind whatsoever arising in connection with _____ or arising in connection with or under any security agreement or other agreement between the Company and Applicant. The amount of Obligations existing from time to time shall be calculated after giving effect to all contractual netting arrangements between Applicant and the Company.

2. Guarantor unconditionally and irrevocably guarantees to Company the full, prompt and faithful payment and performance when due of each and all of the Obligations.

3. This is a continuing guaranty relating to the Obligations. Guarantor acknowledges that there is a continuing consideration to Guarantor for this Guaranty and therefore Guarantor waives and relinquishes the right to revoke or terminate this Guaranty as provided in California Civil Code Section 2815.

4. Any of the Obligations may be amended, modified, waived, or increased (whether or not beyond any dollar limitation hereunder), further agreements may be entered into between Company and Applicant, Company may provide additional goods or services or credit to Applicant or increase or decrease the dollar value of such goods, services or credit, and further obligations (including, without limitation, the provision or pledging of security to Company for any obligation), indebtedness and liabilities may be entered into or incurred from time to time by Applicant and without further authorization from or notice to Guarantor and no such action shall terminate, release, impair, reduce, discharge, diminish or in any way affect any of the obligations of Guarantor hereunder or any security furnished by Guarantor or give Guarantor any recourse or defense against Company. Company need not inquire into the power of Applicant or the authority of its officers, directors, partners or agents acting or purporting to act in its behalf.

5. With respect to all Obligations, this is a guaranty of payment and performance and not of collection, and Guarantor waives and agrees not to assert or take advantage of:

(a) any right to require Company to proceed against Applicant or any other person or to resort to, proceed against or exhaust any security held by it at any time or to pursue any other remedy in its power before proceeding against any Guarantor;

(b) demand, presentment, protest and notice of any kind including, without limiting the generality of the foregoing, notice of nonperformance, protest, dishonor and acceptance of this Guaranty, notice under Section 9611 of the California Commercial Code, and

notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of Applicant, Company, a guarantor under this or any other instrument, or creditor of Applicant or any other person whomsoever, in connection with any of the Obligations or any collateral for any of the Obligations or in connection with any of the Obligations; and

(c) any suretyship defenses and suretyship rights of every nature otherwise available under California law and the laws of any other state or jurisdiction, including, without limitation, all defenses and rights arising under Sections 2787 through 2855 of the California Civil Code (the "Suretyship Provisions") and any successor provisions to those Sections. Without limiting the generality of the foregoing, Guarantor acknowledges his, her or its understanding that the Suretyship Provisions provide various partial or complete defenses to the recovery by Company from Guarantor and/or grant Guarantor rights the enforcement of which could reduce or eliminate entirely Guarantor's liability hereunder to Company. Among the defenses and rights contained in the Suretyship Provisions are the following: (1) Section 2809 of the Civil Code, which provides, in part, that the obligation of a surety must not be either larger in amount or in other respects more burdensome than that of the principal; (2) Section 2810 of the Civil Code, which provides, in part, that a surety is not liable if for any reason other than the mere personal disability of the principal there is no liability upon the part of the principal at the time of execution of the contract, or the liability of the principal thereafter ceases; (3) Section 2819 of the Civil Code, which provides, in part, that a surety is exonerated if the creditor alters the original obligation of the principal without the consent of the surety; (4) Section 2845 of the Civil Code, which provides, in part, that a surety is exonerated to the extent that the creditor fails to proceed against the principal, or to pursue any other remedy in the creditor's power which the surety cannot pursue and which would lighten the surety's burden; (5) Section 2846 of the Civil Code, which provides that a surety may compel his principal to perform the obligation when due; (6) Section 2847 of the Civil Code, which provides, in part, that if a surety satisfies the principal obligation, or any part thereof, the principal is obligated to reimburse the surety for the amounts paid by the surety; (7) Section 2848 of the Civil Code, which provides, in part, that a surety, upon satisfaction of the obligation of the principal is entitled to enforce remedies which the creditor then has against the principal; (8) Section 2849 of the Civil Code, which provides, in part, that a surety is entitled to the benefit of security held by the creditor for the performance of the principal obligation held by the creditor; (9) Section 2850 of the Civil Code, which provides, in part, that whenever the property of a surety is hypothecated with property of the principal, the surety is entitled to have the property of the principal first applied to the discharge of the obligation; and (10) Section 2822 of the Civil Code, which provides, in part, for a right to have the principal designate the portion of any obligation to be satisfied by the surety in the event that the principal provides partial satisfaction of such obligation.

6. All existing and future indebtedness of Applicant to Guarantor ("Intercompany Obligations") is subordinated to all Obligations hereby guaranteed. All of Guarantor's right, title and interest in and to the Intercompany Obligations and rights to receive any payments of the Intercompany Obligations are hereby granted and assigned to Company as continuing security for the Obligations hereby guaranteed, and, in the event of any default in the payment of any of the Obligations when due and until the Obligations guaranteed hereby have been paid in full (a) at the Company's request, Applicant shall forthwith pay to the Company all or any part of such Intercompany Obligations and any capital which Guarantor is entitled to withdraw until all of the

Obligations guaranteed hereby have been paid in full, and (b) Guarantor shall pay to Company immediately any payments of such Intercompany Obligations received by Guarantor.

7. Guarantor agrees to pay all attorneys' fees (including without limitation, reasonably allocated fees of in-house counsel) and all other costs and expenses which may be incurred by Company in the enforcement of this Guaranty against Guarantor.

8. This Guaranty is not assignable by Guarantor without Company's consent. This Guaranty shall inure to the benefit of Company and its successors and assigns, including the assignees of any Obligations, and bind the heirs, executors, administrators, successors and permitted (if any) assigns of Guarantor. This Guaranty is assignable by Company with respect to all or any portion of the Obligations, and when so assigned Guarantor shall be liable to the assignees under this Guaranty without in any manner affecting the liability of Guarantor hereunder with respect to any Obligations retained by Company.

9. This Guaranty shall be governed by and construed in accordance with the laws of the State of California, without reference to its choice of law provisions. Guarantor hereby irrevocably and unconditionally agrees that any legal action or proceeding against Guarantor or any of Guarantor's property with respect to this Guaranty may 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, as Company may elect, and by executing and delivering this Guaranty Guarantor hereby submits to and accepts with regard to any such action or proceeding for himself, herself or itself and in respect of his, her or its property, generally, irrevocably and unconditionally, the jurisdiction of the above mentioned courts. Guarantor hereby irrevocably appoints the Secretary of State of the State of California as his, her or its agent for service of process in any suit or proceeding if the Guarantor is located outside the State of California at the time of service or cannot reasonably be located by Company. The foregoing, however, shall not limit the right of Company as it may elect to bring any legal action or proceeding or to obtain execution of judgment in any other appropriate jurisdiction including but not limited to any other jurisdiction in which Guarantor or his, her or its property is located.

10. Except as provided in any other written agreement now or at any time hereafter in force between Company and Guarantor, this Guaranty shall constitute the entire agreement of Guarantor with Company with respect to the subject matter hereof and no representation, understanding, promise or condition concerning the subject matter hereof shall be binding upon Company unless expressed herein.

11. All notices, demands, requests and other communications required or permitted hereunder shall be in writing and shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, or by reliable overnight courier to the address of the Company set forth below (or to such new address as Company may designate hereafter in a notice to Guarantor) in the case of a communication to the Company and to the address appearing next to Guarantor's signature on this Guaranty (or to such new address as Guarantor may designate hereafter in a notice to Company) in the case of a communication to Guarantor. Any notice served personally shall be deemed delivered upon receipt, and any notice served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on

the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier.

San Diego Gas & Electric Company
555 W. Fifth Street
Attn: Major Markets 18A3, Credit Manager
Los Angeles, CA 90013
Fax No.: (213) 244-8316

12. Until all of the Obligations guaranteed hereby have been satisfied in full, Guarantor shall have no right of subrogation or reimbursement from the Applicant which Guarantor may have as a result of any payment by Guarantor under this Guaranty, and waives any right to enforce any remedy which Company now has or may hereafter have against the Applicant as a result of such payment by Guarantor under this Guaranty and waives any right under section 2849 of the California Civil Code and any other benefit of or right to participate in any security now or hereafter held by Company.

13. All amounts payable by Guarantor hereunder shall be paid without set-off or counterclaim and without any deduction or withholding whatsoever unless and to the extent that Guarantor shall be prohibited by law from doing so, in which case Guarantor shall pay to Company such additional amount as shall be necessary to ensure that Company receives the full amount it would have received if no such deduction or withholding had been made.

14. If any portion of this Guaranty is held to be unenforceable by a court of competent jurisdiction, the remainder of this Guaranty shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned Guarantor has executed this Guaranty on [MONTH AND DAY], [YEAR].

GUARANTOR:
[NAME OF GUARANTOR]

_____
Signature

_____
Title

_____
Printed Name of Person Signing for
Guarantor

_____
Guarantor's Address

_____
City, State, Zip

_____
Guarantor's Phone No.

Exhibit E

COMMERCIAL OPERATION CERTIFICATE

The undersigned, _____ ("EPC Contractor"), _____ ("Renewable Generation Equipment Supplier"), _____ ("Licensed Professional Engineer") and [_____] ("Owner") make the following certifications to San Diego Gas & Electric Company ("SDG&E"), dated as of _____. All capitalized terms not otherwise defined herein shall have the meaning given to them in the Power Purchase Agreement dated _____ between Owner and SDG&E (the "Agreement").

Renewable Generation Equipment Supplier hereby certifies that:

1. The [_____] comprising the Project have been erected and installed at the project site and have been commissioned as required under the Supply and Installation Agreement ("[_____] Supply Agreement") dated as of _____, by and between Renewable Generation Equipment Supplier and Owner and each such [_____] has passed the performance testing required to be performed pursuant to the [_____] Supply Agreement.

2. The Warranty Period under the Warranty Agreement ("Warranty Agreement") dated as of _____, by and between Renewable Generation Equipment Supplier and Owner has commenced.

EPC Contractor hereby certifies that:

All requirements necessary to achieve [Commercial Operation/Substantial Completion] as set forth in the agreement between the EPC Contractor and Owner dated _____ ("EPC Contract") have been completed and the Project has successfully passed all performance tests at a level that demonstrates satisfaction of at least the [minimum performance guarantees].

Owner hereby certifies that:

1. Except for punch list items that would not materially affect the performance, reliability or safe operation of the Project, the Project has been completed in accordance with all applicable specifications and is ready for continuous commercial operation in compliance with all applicable laws and governmental approvals. The Project has successfully passed all performance tests at a level that demonstrates satisfaction of at least the [insert minimum performance guarantees], and complete test reports have been submitted to Buyer.

2. The Operation and Maintenance Agreement (O&M Agreement), by and between Owner and _____ dated as of _____ has commenced.

3. Owner has a valid leasehold or real property interest in the Project Site for a term of at least [___] years from the Commercial Operation date.

4. The interconnection facilities have been completed in accordance with applicable specifications, tariffs, laws and governmental approvals to enable power generated by the Project to be received at the Delivery Point.

5. Owner has obtained all governmental approvals necessary for the continuous commercial operation of the Project and the Project is in compliance with all such governmental approvals and all other applicable laws.

6. The Contract Capacity of the Project is [___] MWac and [___] MWdc at [_____] conditions.

Licensed Professional Engineer certifies that:

1. We have read the Agreement, the [_____] Supply Contract, and the EPC Contract and we understand the requirements for Commercial Operation under the Agreement, the specifications and performance testing requirements under the [_____] Supply Contract, and the requirements for [Commercial Operation/Substantial Completion] under the EPC Contract.

2. We have reviewed the material and data made available to us by the Owner, the Renewable Generation Equipment Supplier, and the EPC Contractor for the Project.

3. To the extent practical, we have reviewed the engineering, procurement, construction and performance testing for the Project and in the course of this review we have not discovered any material errors or omissions in the work performed to date.

4. We have reviewed the certificates of Owner, Renewable Generation Equipment Supplier, and EPC Contractor above, and find the representations provided to be correct in all material respects.

5. We have reviewed all Governmental Approvals and permits identified by the Owner as being required for the construction and operation of the Project and are of the opinion that the Project as completed is in compliance in all material respects with the environmental and technical requirements contained therein.

6. Based on our review of the aforementioned information and of information provided to us by others which we have not independently verified, we are of the opinion that, as of, Commercial Operation has occurred as defined in the Agreement.

Executed this ___ day of ___, 200_

RENEWABLE GENERATION EQUIPMENT SUPPLIER
[*Name of Renewable Generation Equipment Supplier*]
a _____ corporation

By:_____
Name:
Title:

EPC CONTRACTOR
[*Name of EPC Contractor*]
a _____ corporation

By:_____
Name:
Title:

OWNER
[*Name of Owner*]
a _____ limited liability company

By:_____
Name:
Title:

LICENSED PROFESSIONAL ENGINEER:
[*Name of* Licensed Professional Engineer]
a _____

By:_____
Name:
Title:

ACCEPTED BY SAN DIEGO GAS & ELECTRIC COMPANY

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

Exhibit F

FORM OF QUARTERLY PROGRESS REPORT

Quarterly Progress Report
of
[_____]

("Seller")

provided to
San Diego Gas & Electric Company

[Date]

Table of Contents

[Insert Table of Contents]

1.0 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 Power Purchase Agreement by and between _____ ("Seller") and San Diego Gas & Electric Company dated _____ __, ____ (the "Agreement").

Seller shall review the status of each significant element of the Project schedule and Seller shall identify such matters referenced in clauses (i)-(v) below as known to Seller and which in Seller's reasonable judgment are expected to adversely affect the Project or the Project 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 Governmental Approval, or compliance therewith, with respect to which there is an actual or threatened dispute over the interpretation of a law or regulation, actual or threatened opposition to the granting of a necessary Governmental Approval, any organized public opposition, any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, or in each case which could reasonably be expected to materially threaten or prevent financing of the Project, attaining any Condition or Milestone, or obtaining any contemplated agreements with other parties which are necessary for attaining any Condition or Milestone or which otherwise reasonably could be expected to materially threaten Seller's ability to attain any Condition or Milestone;

(ii) Any development or event in the financial markets or the independent power industry, any change in taxation or accounting standards or practices or in Seller's business or prospects which reasonably could be expected to materially threaten financing of the Project, attainment of any Condition or Milestone or materially threaten any contemplated agreements with other parties which are necessary for attaining any Condition or Milestone or could otherwise reasonably be expected to materially threaten Seller's ability to attain any Condition or Milestone;

(iii) 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 attain any Condition or Milestone;

(iv) Any material change in the Seller's schedule for initiating or completing any material aspect of Project;

(v) The status of any matter or issue identified as outstanding in any prior Quarterly 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 Quarter Quarterly Progress Report to [_____], together with all attachments and exhibits, with [3] copies of the Report delivered to [_____] and [_____].

2.0 Executive Summary.

2.1 Major activities to be performed for each aspect of the Project during the current calendar quarter.

Please provide a brief summary of the Major[2] activities to be performed for each of the following aspects of the Project during the current calendar quarter:

2.1.1 Design

2.1.2 Engineering

2.1.3 Major Equipment procurement

2.1.4 Construction

2.1.5 Milestone report

2.1.6 Permitting (See Section 3.0)

2.2 Major activities scheduled to be performed in the previous calendar quarter but not completed as scheduled.

Please provide a brief summary of the Major activities which were scheduled to be performed in the previous calendar quarter and their status, including those activities that were not completed as scheduled:

2.2.1 Design

2.2.2 Engineering

2.2.3 Major Equipment procurement

2.2.4 Construction

2.2.5 Milestone report

2.2.6 Permitting

[2] 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 Facility 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.

3.0 Permitting.

The following describes each of the major Governmental Approvals required for the construction of the Project and the status of each:

3.1 State and/or federal Governmental Approvals.

Please describe each of the Major state and/or federal Governmental Approval (including the Permit to Construct issued by the San Diego County Air Pollution Control District) to be obtained by Seller (or EPC Contractor) and the status of each.

DESCRIPTION	STATUS

3.2 Local and/or county Governmental Approvals.

Please describe each of the Major local and/or county Governmental Approvals to be obtained by Seller and the status of each.

DESCRIPTION	STATUS

3.3 Permitting activities which occurred during the previous calendar quarter.

Please list all permitting activities which occurred during the previous calendar quarter.

3.4 Permitting activities occurring during the current calendar quarter.

Please list all permitting activities which are expected to occur during the current calendar quarter.

3.5 Permitting Notices received from EPC Contractor.

Please attach to this Quarterly Progress Report copies of any notices related to permitting activities received from EPC Contractor during the previous calendar quarter.

4.0 Design Activities.

4.1 Table of design schedule to be followed by Seller and its subcontractors.

The following table lists the design schedule to be followed by Seller and its subcontractors.

ACTIVITY	CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

4.2 Design activities to be performed during the current calendar quarter.

Please explain in detail the design activities which are expected to be performed during the current calendar quarter.

4.3 Table of design activities completed during the previous calendar quarter.

Please explain in detail the design activities which were completed during the previous calendar quarter.

5.0 Engineering Activities.

5.1 Table of engineering schedule to be followed by Seller and its subcontractors.

The following table lists the engineering schedule to be followed by Seller and its subcontractors:

ACTIVITY	CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

5.2 Engineering activities to be performed during the current calendar quarter.

Please explain in detail the engineering activities which are expected to be performed during the current calendar quarter.

5.3 Engineering activities completed during the previous calendar month.

Please explain in detail the engineering activities which were completed during the previous calendar quarter.

5.4 Three-month look-ahead engineering schedule.

Please provide a three-month look ahead engineering schedule.

6.0 Major Equipment Procurement.

6.1 Table of major equipment to be procured by Seller and its subcontractors.

The following table lists major equipment to be procured by Seller and its subcontractors:

EQUIPMENT DESCRIPTION	MANUFACTURER	MODEL	CONTRACTED DELIVERY DATE	ACTUAL DELIVERY DATE	PROJECTED INSTALLATION DATE	ACTUAL INSTALLATION DATE

6.2 Major Equipment procurement activities to be performed during the current calendar quarter.

Please explain in detail the major equipment procurement activities which are expected to be performed during the current calendar quarter.

6.3 Major Equipment procurement activities completed during the previous calendar quarter.

Please explain in detail the major equipment procurement activities which were completed during the previous calendar quarter.

7.0 Construction Activities.

7.1 Table of construction activities to be performed by Seller and its subcontractors.

The following tables lists construction activities to be performed by Seller and its subcontractors:

ACTIVITY	CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE
Civil Progress			
Structural Progress			
[Steam] Generator Progress			
Piping Progress			
IC and Electrical Progress			
Subcontractor Progress			

7.2 Construction activities to be performed during the current calendar quarter.

Please explain in detail the construction activities which are expected to be performed during the current calendar quarter.

7.3 Construction activities completed during the previous calendar quarter.

Please explain in detail the construction activities which are expected to be performed during the previous calendar quarter.

7.4 EPC Contractor Monthly Progress Report.

Please attach a copy of the Monthly Progress Reports received during the previous calendar quarter from the EPC Contractor pursuant to the EPC Contract, certified by the EPC Contractor as being true and correct as of the date issued.

7.5 Three-month look-ahead construction schedule.

Please provide a three-month look ahead construction schedule.

8.0 Milestones.

8.1 Milestone schedule.

Please state the status and progress of each Milestone and identify any completed Milestone(s) for the previous calendar quarter.

8.2 Remedial Action Plan (applicable if Seller fails to achieve Milestone by the Milestone Date).

Please explain in detail each of the following aspects of Seller's remedial action plan:

8.2.1 Missed Milestone

8.2.2 Plans to achieve missed Milestone

8.2.3 Plans to achieve subsequent Milestone

8.2.4 Delays in engineering schedule

Please explain in detail any delays beyond the scheduled Milestone Dates stated in Section 5.1, any impact from the delays on the engineering schedule, and Seller's plans to remedy such impact.

8.2.5 Delays in Major Equipment procurement

Please explain in detail any delays beyond the contracted delivery date and/or the projected installation date stated in Section 6.1, any impact from the delays on Major Equipment procurement schedule, and Seller's plans to remedy such impact.

8.2.6 Delays in construction schedule

Please explain in detail any delays beyond the scheduled completion dates stated in Section 7.1, any impact from the delays on the construction schedule, and Seller's plans to remedy such impact.

9.0 Safety and Health Reports

9.1 Please list all accidents from the previous calendar quarter:

9.2 Any work stoppage from the previous calendar quarter:

9.3 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 Seller's Quarterly 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:_____

RPS Project Development Status Report

Project Name
Date

Date of Latest Construction Progress Report from Counterparty:	
Project Owner/Counterparty:	
Technology:	
Capacity (MW):	Annual Energy (GWh/year):
On-Line Date:	Term/Duration (years):
Construction Start Date:	Point of Delivery:
Location:	

Status At-A-Glance

The below to be filled in w/ either: Completed, Acceptable, Unknown, or Concern. See Section B for a description of milestones. When the answer is "Concern" the milestone should be flagged with a notation number where additional detail is provided in Section A.

Milestones	Status	Initial Completion Date	Projected Completion Date
Fuel/Resource Supply:			
Financing:			
Corporate Financing			
Project Financing			
Site Control (100%):			
Permitting:			
Engineering:			
Major Equipment Procurement:			
Construction:			
Startup Testing and Commissioning:			
Transmission:			

Transmission - Detail (see Section C)
Dependent Transmission Upgrade(s):
Scheduled Completion:
Point of Interconnection:
Early Interconnection:
Gen-Tie Length:
Gen-Tie Voltage:
ISO Queue Position:
Feasibility Study (FS):
System Impact Study (SIS):
Facilities Study (FAS):
Remedial Action Plan:
Additional Comments:
Date of Preparation:

Exhibit G

OUTAGE NOTIFICATION FORM

OUTAGE NOTIFICATION FORM

This form may be used to comply with CAISO's outage notification requirements for both planned and forced outages. Report outages as soon as possible by submitting form via email to TSched@SempraUtilities.com or via fax at (858) 650-6191.

Request Type:

New Scheduled Maintenance Outage

Previous Notification (if applicable)

Date Sent: mm/dd/yyyy
Time Sent: hh:mm

Generator Name:
Location Code:
Address:

Contact Name:
Phone Number:
Email:

Alternate Name:
Alternate Number:
Email:

(For times, use 24hr format)

Today's Date: mm/dd/yyyy
Current Time: hh:mm

Outage Start Date: mm/dd/yyyy
Outage Start Time: hh:mm

Outage End Date: mm/dd/yyyy
Outage End Time: hh:mm

Outage Duration:
MW Available During Outage:
MW Unavailable During Outage:
RMR Unit? Yes/No

System (Select One)

- (●) Boiler — Codes 0010-1999
- ( ) Generator — Codes 4500-4899
- ( ) Regulatory, Safety, Environmental — Codes 9504-9720
- ( ) Balance of Plant — Codes 3110-3999
- ( ) Pollution Control Equipment — Codes 8000-8835
- ( ) Others — Codes 9900-9999
- ( ) Steam Turbine — Codes 4000-4499
- ( ) External — Codes 9000-9040

Cause Code Ranges / Affected Component

(Select One)

Cause Code / Component Problem

(Select One)

Comments

Exhibit H

PROJECT OPERATING RESTRICTIONS

Operational characteristics of the Project must be equal to or greater than the resource flexibility reflected in the resource Master File, as such term is defined in the CAISO Tariff. Buyer may request that CAISO modify the Master File for the Project to reflect the findings of a CAISO audit of the Project and to ensure that the information provided by Seller is true and accurate. Seller agrees to coordinate with Buyer and any third party Scheduling Coordinator to ensure all information provided to the CAISO regarding the operational and technical constraints in the Master File for the Project are accurate and are actually based on physical characteristics of the resource. The Parties agree to make reasonable modifications to this Exhibit H to modify existing operating restrictions or add additional operating restrictions that may be necessary to address changes in the CAISO Tariff or applicable Law applicable to the Products provided from this Project.

- Nameplate capacity of the Project: ____MW
- Minimum operating capacity: ____MW
- Advance notification required for a Dispatch Notice: ____
- Ramp Rate: ____MW/minute

[Form of PPA for As-Available, Baseload, Peaking or Dispatchable Product]

[Standard contract terms and conditions that "may not be modified" per CPUC D.04-06-014 and subsequent decisions are shown in red shaded text and standard contract terms and conditions that may be modified per CPUC D.04-06-014 and subsequent decisions are shown in green shaded text.]

POWER PURCHASE AGREEMENT

Between

SAN DIEGO GAS & ELECTRIC COMPANY
(as "Buyer")

and

_____
(as "Seller")

POWER PURCHASE AGREEMENT

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COVER SHEET

This Power Purchase Agreement is made as of the following date: [_____]. This Power Purchase Agreement and all exhibits, schedules, appendices, and any written supplements hereto, any designated collateral, credit support or margin agreement or similar arrangement between the Parties as well as all written and signed amendments and modifications thereto shall be a part of, and shall be referred to as, the "Agreement." The Parties to this Agreement (hereinafter individually a "Party" and collectively the "Parties") are the following:

Name:_____("Seller")

All Notices:
Street: _____
City: _____ Zip:_____
Attn: Contract Administration
Phone: _____
Facsimile: _____
Duns: _____
Federal Tax ID Number: _____

Invoices:
_____
_____
_____
Attn: _____
Phone: _____
Facsimile: _____

Scheduling:
_____
_____
_____
Attn: _____
Phone: _____
Facsimile: _____

Payments:
_____
_____
_____
Attn: _____
Phone: _____
Facsimile: _____

Wire Transfer:
BNK: _____
ABA: _____
ACCT: _____
Confirmation: _____
FAX: _____

Credit and Collections:
_____
_____
_____
Attn: _____

Name: San Diego Gas & Electric Company ("Buyer")

All Notices:
Street: 8315 Century Park Court
City: San Diego, CA Zip: 92123
Attn: Electric & Fuel Procurement - Contract Administration
Phone: (858) 636-5536
Facsimile: (858) 650-6190
Duns: 006911457
Federal Tax ID Number: 95-1184800

Invoices:
San Diego Gas & Electric Company
8315 Century Park Ct.
San Diego, California 92123-1593
Attn: Electric & Fuel Procurement – Invoicing and Reporting
Phone: (858) 650-6187
Facsimile: (858) 650-6190

Scheduling:
San Diego Gas & Electric Company
8315 Century Park Ct.
San Diego, California 92123-1593
Attn: Transaction Scheduling Manager
Phone: (858) 650-6160
Facsimile: (858) 650-6191

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
Confirmation: SDG&E, Major Markets
FAX:(213) 244-8316

Credit and Collections:
San Diego Gas & Electric Company, Major Markets
555 W. Fifth Street, ML 18A3
Los Angeles, CA 90013-1011

Phone: _____
Facsimile: _____

With additional Notices of an Event of Default or Potential Event of Default to:

_____
_____
_____
Attn: _____
Phone: _____
Facsimile: _____

Attn.: Major Markets, Credit and Collections Manager
Fax No.: (213) 244-8316
Phone: (213) 244-4343

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

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

1.1 General. The following terms shall have the following meaning for purposes of this Agreement.

"[AAA][JAMS]" means [the American Arbitration Association] [JAMS, Inc.].

"Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

"Agreement" has the meaning set forth in the preamble to the Cover Sheet.

"Arbitration" has the meaning set forth in Section 12.3.

[For As-Available Product only: "As-Available" means a Product for which, subject to the terms of this Agreement, Seller is excused from selling and delivering the Product to Buyer, and Seller shall not be liable to Buyer for any damages determined pursuant to Section 3.1(h) of the Agreement, in the event that Seller fails to deliver the Product to Buyer for any of the following reasons:

(a) if the Project is unavailable as a result of a Forced Outage and such Forced Outage is not the result of Seller's negligence or willful misconduct;

(b) Force Majeure;

(c) by the Buyer's failure to perform;

(d) by a Planned Outage of the Project;

(e) a reduction in output as ordered under Dispatch Down Periods; or

(f) [the unavailability of landfill gas which was not anticipated as of the Execution Date, which is not within the reasonable control of, or the result of negligence of, Seller or the party supplying such landfill gas to the Project, and which by the exercise of reasonable due diligence, Seller is unable to overcome or avoid or causes to be avoided.] OR [insufficient wind power for the Project to generate energy as determined by the best wind speed and direction standards utilized by other wind producers or purchasers in the vicinity of the Project or if wind speeds exceed the Project's technical specifications.] OR [the unavailability of water or the unavailability of sufficient pressure required for operation of the hydroelectric turbine-generator as reasonably determined by Seller within its operating procedures, neither of which was anticipated as of the

Execution Date, which is not within the reasonable control of, or the result of negligence of, Seller or the party supplying such water to the Project, and which by the exercise of due diligence, such Seller or the party supplying the water is unable to overcome or avoid or causes to be avoided.] OR [insufficient solar power for the Project to generate energy as determined by the best solar standards utilized by other solar producers or purchasers in the vicinity of the Project.]

[For Dispatchable Product only: "Availability Adjustment Factor" has the meaning set forth in Section 4.1(b)***.]***

"Availability Incentive Payments" shall mean Availability Incentive Payments as defined in FERC filing ER09-1064 or such other similar term as modified and approved by FERC thereafter to be incorporated in the CAISO Tariff or otherwise applicable to CAISO.

[For Dispatchable Product only: "Availability Notice" has the meaning set forth in Section 3.3([f/g]).]

"Availability Standards" shall mean Availability Standards as defined in FERC filing ER09-1064 or such other similar term as modified and approved by FERC thereafter to be incorporated in the CAISO Tariff or otherwise applicable to CAISO.

"Bankrupt" means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of sixty (60) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) 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 (f) is generally unable to pay its debts as they fall due.

[For Baseload Product only: "Baseload" means a Unit Firm Product for which the delivery levels are uniform twenty-four (24) hours per day, seven (7) days per week.]

"Bundled Green Energy" means Energy, Green Attributes, and any other Product, the quantity of which is measured based on the amount of Delivered Energy, in each case, that are produced by or associated with the Project. The quantity of Bundled Green Energy shall be equal to the lesser of the quantity of (i) ***[When Seller is SC for the Project or when Buyer is SC but Project is not in the VER Forecasting Program:*** Contract Energy**]** ***[When SDG&E is SC for the Project and Project is in the VER Forecasting Program:*** Delivered Energy**]** (ii) Green Attributes that are delivered to Buyer, and (iii) any other Product that is delivered to Buyer, the quantity of which is measured based on the amount of Delivered Energy. For example, if the quantity of Renewable Energy Credits that are delivered to Buyer is less than the quantity of the ***[When Seller is SC for the Project or when Buyer is SC but Project is not in the VER Forecasting Program:*** Contract Energy**]** ***[When SDG&E is SC for the Project and Project is in the VER Forecasting Program:*** Delivered Energy**]**, then the quantity of Bundled Green Energy shall be equal to the quantity of Renewable Energy Credits that are delivered to Buyer.

"Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday and shall be between the hours of 8:00 a.m. and 5:00 p.m. local time for the relevant Party's principal place of business where the relevant Party, in each instance unless otherwise specified, shall be the Party 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 on the Cover Sheet.

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

[When SDG&E is the SC for the Project: "CAISO Charges Invoice" has the meaning set forth in Section 3.3([a/b])(iv).***]***

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

"CAISO Tariff" means the CAISO Operating Agreement and Tariff, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

"California Renewables Portfolio Standard" means the Renewables Portfolio Standard of California under California Senate Bills 1078 and 107, as codified in California Public Utilities Code Sections 387, 390.1, and Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1, as such provisions are amended or supplemented from time to time.

"Capacity Attributes" means any current or future defined characteristic, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific as to the location or any other attribute of the Project intended to value any aspect of the capacity of the Project to produce Energy or ancillary services, including but not limited to any accounting construct so that the Contract Capacity of the Project may be counted toward a Resource Adequacy obligation or similar measure in respect to the capacity of the Project to generate Energy by the CPUC, the CAISO, the FERC, or any other entity vested with the authority under federal or state Law, to require Buyer to procure, or to procure at Buyer's expense, Resource Adequacy or other similar products.

[For Dispatchable Product only: "Capacity Price" has the meaning set forth in Section 4.1(a).]

[For Baseload, Peaking, or Dispatchable Product only: "Capacity Test" shall be the complete capacity testing procedure for the Project that is reasonably acceptable to Buyer that Seller shall develop no later than thirty (30) days prior to the initial capacity testing of the Project prior to the Commercial Operation Date. The capacity testing procedure shall describe in detail the testing standard(s) to be used for the technology of the Project, the conditions under which testing shall take place, the average summer ambient conditions to which the results will be corrected, and the testing procedures. The same capacity testing procedure shall be applied to all subsequent Capacity Tests.]

"CEC" means the California Energy Commission or its successor agency.

"CEC Certification and Verification" means that the CEC has certified (or, with respect to periods before the Project has been constructed, that the CEC has pre-certified) that the Project is an ERR for purposes of the California Renewables Portfolio Standard and that all Energy produced by the Project qualifies as generation from an ERR for purposes of the Agreement.

"Claims" has the meaning set forth in Section 11.2(a).

"Commercial Operation" means that (a) the Project is operating and able to produce and deliver the Product to Buyer pursuant to the terms of this Agreement; (b) Seller shall have satisfied the requirements set forth in the Commercial Operation Certificate in the form attached as Exhibit E; (c) Seller shall have delivered a true, correct, and complete Commercial Operation Certificate from Seller, the Renewable Generation Equipment Supplier, the EPC Contractor, and a Licensed Professional Engineer; (d) Seller shall have delivered to Buyer the Delivery Term Security required under Article 8; (e) Seller has received all local, state and federal Governmental Approvals and other approvals as may be required by Law for the construction, operation and maintenance of the Project, including approvals, if any, required under the California Environmental Quality Act for the Project and related interconnection facilities; ***[For Baseload, Peaking, Dispatchable Product only:*** and (f) Seller shall have successfully completed the initial Capacity Test and delivered to Buyer a true, correct, and complete report documenting the results of Seller's initial Capacity Test as required under Section 3.1(f)].

"Commercial Operation Date" means the date on which Seller achieves Commercial Operation for the Project.

"Conditions Precedent" has the meaning set forth in Section 2.3.

"Construction Period Security" shall mean the Performance Assurance that Seller is required to maintain during the period and as otherwise specified in Section 8.4(a)[(ii)/(iii)] to secure performance of its obligations hereunder.

"Contract Capacity" has the meaning set forth in Section 3.1(f).

[When Seller is SC for the Project or when Buyer is SC but Project is not in the VER Forecasting Program: "Contract Energy" means the lower of Delivered Energy or Scheduled Energy for any given period in each case net of all Electrical Losses.**]**

"Contract Quantity" has the meaning set forth in Section 3.1(e).

"Contract Year" means a period of twelve (12) consecutive months (except in the case of the first Contract Year which may be longer) with the first Contract Year commencing on the Commercial Operation Date and each subsequent Contract Year commencing on the anniversary of the first day of the month following the Commercial Operation Date.

"Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into

new arrangements which replace a Terminated Transaction; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with such Terminated Transaction.

"Cover Sheet" means the document that precedes Article 1: General Definitions to this Agreement.

"CP Satisfaction Date" shall mean the date on which all of the Conditions Precedent have been satisfied (or waived in writing by the Party described in Section 2.4).

"CPUC" or "Commission or successor entity" means the California Public Utilities Commission, or successor entity.

"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 Buyer's requested relief contained in the approval filing and 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. ***[For Agreements for the purchase and sale of TRECS only, use STC REC-3 instead of the foregoing]***

[For Agreements with Delivery Terms greater than two years: "CPUC Approval Date" shall mean the date on which the Conditions Precedent set forth in Section 2.3(a) have been satisfied (or waived in writing by the beneficiary Party described in Section 2.4).]

[For Agreements with Delivery Terms greater than two years: "CPUC Approval Security" shall mean the Performance Assurance that Seller is required to maintain during the period and as otherwise specified in Section 8.4(a)(i) to secure performance of its obligations hereunder.]

"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) by S&P or Moody's.

"Daily Delay Damages" means an amount equal to (a) the Construction Period Security amount required hereunder, divided by (b) the number of days in the Project Cure Period.

"Day-Ahead Forecast" has the meaning set forth in Section 3.3([d/e]).

[*For As-Available and Baseload Products only:* "Deemed Bundled Green Energy" means the amount of Bundled Green Energy that Seller could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of Economic Dispatch Down. The quantity of Deemed Bundled Green Energy shall be equal to **[*For As-Available Products:*** (a) the Deemed Delivery Forecast of Energy corresponding to the applicable Economic Dispatch Down periods, whether or not Seller is participating in the VER Forecasting Program during such events, less the amount of Energy scheduled under Economic Dispatch Down as specified in the Dispatch Notice during such periods, and less any amount of Energy that was not delivered associated with any concurrent Planned Outage, Forced Outage, Force Majeure, System Dispatch Down, and/or CAISO fault but only to the extent the Deemed Delivery Forecast does not already reflect the foregoing *provided that*, if the applicable amount calculated pursuant to this clause (a) is negative, the Deemed Bundled Green Energy shall be zero (0), or (b) if there is no such Deemed Delivery Forecast available during the applicable Economic Dispatch Down periods or if the Bundled Green Energy amount has historically not been determined based on clause (i) of the definition of Bundled Green Energy, the amount of Bundled Green Energy that Seller could reasonably have delivered to Buyer but was prevented from delivering to Buyer as a result of Economic Dispatch Down as determined by Buyer in a commercially reasonable manner, which amount shall not include any amount of Energy that was not delivered associated with any concurrent Planned Outage, Forced Outage, Force Majeure, System Dispatch Down, and/or CAISO fault.] **[*For Baseload Products:*** the amount of Bundled Green Energy that Seller could reasonably have delivered to Buyer but was prevented from delivering to Buyer during the applicable Economic Dispatch Down periods, as determined by Buyer in a commercially reasonable manner, which amount shall not include any amount of Energy that was not delivered associated with any concurrent Planned Outage, Forced Outage, Force Majeure, System Dispatch Down, and/or CAISO fault.]]

[For As-Available only: "Deemed Delivery Forecast" means the forecast of the Energy to be produced by the Project prepared by the CAISO or its agent in accordance with the VER Forecasting Program and communicated to the Scheduling Coordinator, which forecast is the last such forecast prepared by the CAISO that does not reflect curtailed production as a result of Economic Dispatch Down periods. As of the Execution Date, such Deemed Delivery Forecast is the CAISO forecast generated through its Resource Specific VER Forecast Usage Report].

[Dispatchable Product only: "Default Availability Factor" means, for any period, the amount determined according to the following formula:

Default Availability Factor = (PH - (EDH - EEDH)) / PH

Where:

PH is the number of period hours;

EDH is the number of equivalent derate hours calculated as the sum, for each derate, of the product of the number of hours of full or partial derate hours times the size of the reduction from the initial Contract Capacity (as of the Commercial Operation Date) divided by the initial Contract Capacity. For the purposes of this calculation, a derate includes all

outages for any reason, including without limitation, Forced Outages, Force Majeure events, Dispatch Down Periods, Planned Outages, Buyer's failure to perform, and other times when any portion of the Contract Capacity is not available and when the Delivered Energy of the Project is less than the amount of Energy dispatched by Buyer; and

EEDH is the number of equivalent excused derate hours solely due to either Force Majeure events, Dispatch Down Periods or Buyer's failure to perform (and for no other reason), calculated as the sum, for each excused derate, of the product of the number of hours of full or partial derate hours times the size of the reduction from the initial Contract Capacity, divided by the initial Contract Capacity.]

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

"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.

"Delivered Energy" means all Energy produced from the Project and delivered to Buyer at the Delivery Point as measured in MWh at the CAISO revenue meter of the Project based on a power factor of precisely one (1) and net of all Electrical Losses.

"Delivery Point" means the point at which Buyer receives Seller's Product, as set forth in Section 3.1(d).

"Delivery Term" has the meaning set forth in Section 3.1(c).

"Delivery Term Security" shall mean the Performance Assurance that Seller is required to maintain during the period and as otherwise specified in Section 8.4(a)[(iii)/(iv)] to secure performance of its obligations hereunder.

"Development Period Security" shall mean the Performance Assurance that Seller is required to maintain during the period and as otherwise specified in Section 8.4(a)[(i)/(ii)] to secure performance of its obligations hereunder.

"Disclosing Party" has the meaning set forth in Section 13.1(a).

"Disclosure Order" has the meaning set forth in Section 13.1(a).

"Dispatch Down Period" means the period of curtailment of delivery of Product from the Project resulting from System Dispatch Down ***[For all Products other than Dispatchable Product:*** or Economic Dispatch Down***]***.

"Dispatch Notice" means the operating instruction, and any subsequent updates given either by Buyer to Seller or by the CAISO to Seller, directing Seller to operate the Project at a specified megawatt output for the period of time set forth in such order.

[For Dispatchable Product only: "Dispatchable" means a Unit Firm Product for which Seller makes available capacity for Buyer to Schedule and dispatch up or down at Buyer's option in accordance with Section 3.3([g/h]).]

"Distribution Upgrades" has the meaning set forth in the CAISO Tariff.

"DUNS" means the Data Universal Numbering System, which is a unique nine character identification number provided by Dun and Bradstreet.

[For Projects located outside of the CAISO: "Dynamic Scheduling Agreement" means the agreement between the CAISO and Buyer or Seller, as Scheduling Coordinator (as applicable), with respect to the duties and responsibilities of the Scheduling Coordinator with respect to facilities located outside the CAISO balancing area and whose product is dynamically transferred via a pseudo-tie to the CAISO, in form and substance reasonably acceptable to the parties thereto.***]***

"Early Termination Date" has the meaning set forth in Section 5.2.

[For all Products other than Dispatchable Product: "Economic Dispatch Down" means curtailment of delivery of Product from the Project that is the result of economic curtailment where Buyer (as the Scheduling Coordinator) or a third party Scheduling Coordinator (in accordance with Buyer's directions) either submits a self-schedule with a binding Product quantity or an economic bid in the applicable CAISO market or fails to submit any such schedule or bid, in either case, that when implemented by the CAISO results in an otherwise available Product quantity not being scheduled or awarded in such CAISO market and such curtailment is not concurrently the result of a Planned Outage, Forced Outage, Force Majeure, System Dispatch Down, and/or CAISO fault.

"Electrical Losses" means all electrical losses associated with the transmission of Product to the Delivery Point, including if applicable, but not limited to, any transmission or transformation losses between the CAISO revenue meter and the Delivery Point.

"Electrical Interconnection Upgrades" means the facilities to which Seller shall be able to interconnect and deliver Energy from the Project to and at the Delivery Point and Buyer shall be able to transmit Energy from the Delivery Point and the facilities that protect the Participating Transmission Owner's, Transmission Provider's, distribution operator's, ***[For Projects located outside of the CAISO:*** Native Balancing Authority's,***]*** or other affected system owner's, as applicable, electric system (or other systems to which such electric systems are connected, including the CAISO Grid) and the Participating Transmission Owner's, Transmission Provider's, distribution operator's, ***[For Projects located outside of the CAISO:*** Native Balancing Authority's,***]*** or other affected system owner's, as applicable, customers from faults occurring at the Project, including, but not limited to, all network, distribution, connection, transformation, switching, metering, communications, control, and safety equipment, as such equipment may be required pursuant to Good Industry Practices or in accordance with the Participating Transmission Owner's, Transmission Provider's, distribution operator's, ***[For Projects located outside of the CAISO:*** Native Balancing Authority's,***]*** or other affected system owner's, as applicable, facility connection requirements. Such Electrical Interconnection Upgrades include all Network Upgrades, Distribution Upgrades, Interconnection Facilities, and other network upgrades, distribution upgrades, or interconnection facilities ***[For Projects located outside of the CAISO:***

Native Balancing Authority's, or***]*** on any other affected system owner's electrical system that are determined to be necessary by the CAISO, Participating Transmission Owner, ***[For Projects located outside of the CAISO:*** Native Balancing Authority's, or***]*** other affected system owner, as applicable, to physically and electrically interconnect the Project to ***[For Projects located outside of the CAISO:*** Native Balancing Authority's system and***]*** the Participating Transmission Owner's electric system so as to allow Seller to deliver Energy from the Project to the Delivery Point and Buyer to be able to transmit Energy from the Delivery Point.

"Eligible Renewable Energy Resource" or "ERR" has the meaning set forth in California Public Utilities Code Section 399.11, *et seq*., as amended or supplemented from time to time.

"Energy" means electric energy measured in MWh and net of Station Service (unless otherwise specified).

"Energy Price" has the meaning set forth in Section 4.[1/2](a).

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

"EPC Contractor" means an engineering, procurement, and construction contractor, selected by Seller, with substantial experience in the engineering, procurement, and construction of power plants of the same type of facility as Seller's.

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

[For Dispatchable Product only: "Equivalent Availability Factor" or "EAF" has the meaning set forth in Section 4.1(b).]

"Event of Default" has the meaning set forth in Section 5.1.

"Execution Date" means the date hereof as set forth in the preamble of the Cover Sheet.

"Executive(s)" has the meaning set forth in Section 12.2(a).

"FERC" means the Federal Energy Regulatory Commission or any successor government agency.

"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)(vii) 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) a lack of wind, sun or other fuel source of an inherently intermittent nature;

(v) 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;

(vi) Seller's failure to obtain financing or other 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;

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

(viii) any equipment failure except if such equipment failure is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) though (a)(iii) above.

"Force Majeure Extension Period" has the meaning set forth in Section 3.9(c)(ii).

"Forced Outage" means any unplanned reduction or suspension of production of Product from the Project or unavailability of the Project in whole or in part that is not a Planned Outage or a willful withholding of Product when the Project is otherwise capable of delivering Product under Good Industry Practices.

"GAAP" has the meaning set forth in Section 13.4.

"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 for the remaining Delivery Term, determined in a commercially reasonable manner, subject to Section 5.2 hereof. Factors used in determining economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties, 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 market referent prices for renewable power set by the CPUC, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining term of this Agreement and include the value, if any, of Capacity Attributes, and Green Attributes.

"Good Industry Practice" means those practices, methods and acts that would be implemented and followed by prudent operators of electric transmission facilities (with respect to Buyer) or prudent operators of electric generation facilities similar to the Project (with respect to Seller) in the Western United States during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety, and shall include, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with manufacturers' warranties, restrictions in this Agreement, and the requirements of Governmental Authorities, WECC standards, the CAISO ***[For Projects located outside of the CAISO:*** Native Balancing Authority,***]*** and applicable Law. Good Industry Practice is not intended to be the optimum practice, method or act to the exclusion of all others, but rather is intended to be any of the practices, methods and/or actions generally accepted in the region.

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

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

"Governmental Charges" has the meaning set forth in Section 9.2.

"Green Attributes" means, subject to the limitations in the final sentence of this definition, 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: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) 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] and (3) 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. If the Project is a biomass 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 and for all electric generation using biomethane as fuel, Seller shall transfer to Buyer sufficient Green Attributes of biomethane production and capture to ensure that there are zero net emissions associated with the production of electricity from the Project using the biomethane.

"Guaranteed Commercial Operation Date" or "GCOD" means [*insert date*], as may be extended pursuant to Section 3.9(c)(ii).

"Guaranteed Energy Production" has the meaning set forth in Section 3.1(e).

"Guarantor" means, with respect to Seller, any person that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably

[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.

acceptable to Buyer, (c) has a Credit Rating of [____] or better from S&P or a Credit Rating of [____] or better from Moody's, (d) has a tangible net worth of at least [_____], (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of Buyer substantially in the form attached hereto as Exhibit D. ***[SDG&E will consider accepting a Guaranty based on the Project, the amount of Performance Assurance, and the identity of the Seller and Guarantor]***

"Guaranty" means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached hereto as Exhibit D. ***[SDG&E will consider accepting a Guaranty based on the Project, the amount of Performance Assurance, and the identity of the Seller and Guarantor]***

"Imbalance Energy" means the amount of Energy, in any given settlement period, by which the amount of Delivered Energy deviates from the amount of Scheduled Energy.

"Initial Negotiation End Date" has the meaning set forth in Section 12.2(a).

[For Projects located outside of the CAISO: "Interconnected Balancing Authority Agreement" means an agreement between the Native Balancing Authority and the CAISO to govern operation of their interconnected electric systems, including the dynamic transfer of Project output via a pseudo-tie from the Native Balancing Authority and the CAISO, in form and substance reasonably acceptable to the parties thereto.***]***

"Interconnection Facilities" has the meaning set forth in the CAISO Tariff.

"Interest Amount" means, with respect to an Interest Period, the amount of interest derived from the product of (a) the sum of (i) the principal amount of Performance Assurance in the form of cash held by Buyer during that Interest Period, and (ii) the sum of all accrued and unpaid Interest Amounts accumulated prior to such Interest Period; multiplied by (b) the Interest Rate in effect on the first day of the Interest Period; multiplied by (c) the number of days in that Interest Period; divided by (d) 360.

"Interest Payment Date" means the date on which cash held as Performance Assurance is returned pursuant to the terms of this Agreement.

"Interest Period" means the monthly period beginning on the first day of each month and ending on the last day of each month or the shorter period during which Performance Assurance in the form of cash is held by Buyer.

"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 rate 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.

"[Large/Small] Generator Interconnection Agreement" has the meaning set forth in the CAISO Tariff.

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

"Letter(s) of Credit" means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least [A-] with an outlook designation of "stable" from S&P or [A3] with an outlook designation of "stable" from Moody's, in substantially the form as contained in Exhibit C to this Agreement.

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

"Locational Marginal Price" has the meaning set forth in the CAISO Tariff.

"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 a Terminated Transaction for the remaining term of this Agreement, determined in a commercially reasonable manner. Factors used in determining the loss of economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties 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, market referent prices for renewable power set by the CPUC, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g. NYMEX), all of which should be calculated for the remaining term of this Agreement and include the value, if any, of Capacity Attributes, and Green Attributes.

"Manager" has the meaning set forth in Section 12.2(a).

"Milestones" has the meaning set forth in Section 3.9(b)(i).

[For Dispatchable Product only: "Monthly Capacity Payment" has the meaning set forth in Section 4.1(b).]

"Monthly Energy Payment" has the meaning set forth in Section 4.[1/2]([b/c]).

[For Dispatchable Product only: "Monthly Shaping Factor" has the meaning set forth in Section 4.1(b).]

"Moody's" means Moody's Investor Services, Inc., or its successor.

"MWh" means megawatt-hour.

[For Projects located outside of the CAISO: "Native Balancing Authority" means the balancing authority for the balancing authority area where the Project is physically interconnected to the electric system. As of the Execution Date, the Native Balancing Authority is [***insert name***].***]***

[For Projects located outside of the CAISO: "NBA Generator Agreement" means the agreement between the Native Balancing Authority and Seller with respect to Seller's obligations to the Native Balancing Authority in connection with the Native Balancing Authority's duties and obligations under the Interconnected Balancing Authority Agreement, in form and substance reasonably acceptable to the parties thereto.***]***

"Negative Imbalance Energy" has the meaning set forth in Section 4.[2/3].

"NERC" means the North American Electric Reliability Corporation or a successor organization that is responsible for establishing reliability criteria and protocols.

"NERC Holiday" means any of the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Three of these days, Memorial Day, Labor Day, and Thanksgiving Day, occur on the same day each year. Memorial Day is the last Monday in May; Labor Day is the first Monday in September; and Thanksgiving Day is the fourth (4^{th}) Thursday in November. New Year's Day, Independence Day, and Christmas Day occur on the same date each year, but in the event any of these holidays occur on a Sunday, the "NERC Holiday" is celebrated on the Monday immediately following that Sunday; and if any of these holidays occur on a Saturday, the "NERC Holiday" remains on that Saturday.

"Network Upgrades" has the meaning set forth in the CAISO Tariff.

"Non-Availability Charges" shall mean Non-Availability Charges as defined in FERC filing ER09-1064 or such other similar term as modified and approved by FERC thereafter to be incorporated in the CAISO Tariff or otherwise applicable to CAISO.

"Non-Defaulting Party" has the meaning set forth in Section 5.2.

"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).

"Notice to Proceed" or "NTP" means the notice provided by Seller to the EPC Contractor following execution of the EPC Contract between Seller and such EPC Contractor and satisfaction of all conditions precedent to performance of such contract, by which Seller authorizes such EPC Contractor to commence and complete full performance of the work under the EPC Contract without any delay or waiting periods.

"Outage Notification Form" means the completed document from Seller notifying Buyer of an outage of the Project substantially in the form attached hereto as Exhibit G. Buyer reserves the right to reasonably revise or change the form upon Notice to Seller.

[For intermittent As-Available Product: "Participating Intermittent Resource" shall have the meaning set forth in the CAISO Tariff.]

"Participating Transmission Owner" or "Participating TO" means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities that are interconnected to the Delivery Point and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid. As of the Execution Date, the Participating Transmission Owner is ***[San Diego Gas & Electric Company].***

"Party" or "Parties" means the Buyer or Seller individually, or to both collectively.

[For Peaking Product only: "Peaking" means a Unit-Firm Product for which Energy must be delivered during hours ending 1200-1900 (11:00 am to 7:00 pm) on Monday-Friday, excluding NERC Holidays, for the months July through October and during hours ending 1400-2100 (1:00 pm to 9:00 pm) on Monday-Friday, excluding NERC Holidays, for the months November and December.] ***[Note: Buyer will consider other firm products such as 6x16:*** "6x16 Block" means a Unit-Firm Product for which Energy must be delivered during hours ending 0700-2200 (6:00 am to 10:00 pm) on Monday-Saturday throughout the Delivery Term.]

"Performance Assurance" means collateral provided by Seller to Buyer to secure Seller's obligations hereunder and includes ***[For Agreements with Delivery Terms greater than two years:*** CPUC Approval Security,] Development Period Security, Construction Period Security, and Delivery Term Security.

[For As-Available, Baseload, Peaking Product: "Performance Measurement Period" has the meaning set forth in Section 3.1(e).]

"Planned Outage" means any planned reduction or suspension of the electrical output from the Project or unavailability of the Project in whole or in part as a result of the inspection, maintenance, or repair of equipment that is scheduled in accordance with Section 3.7(a).

"PNode" has the meaning set forth in the CAISO Tariff.

"Positive Imbalance Energy" has the meaning set forth in Section 4.[2/3].

"Product" has the meaning set forth in Section 3.1(a).

[For Projects receiving PTCs: "Production Tax Credit" or "PTC" means the tax credit for electricity produced from certain renewable generation resources described in Section 45 of the Internal Revenue Code of 1986, as it may be amended from time to time.***]***

"Project" means all of the *[insert technology]* electric generating units, the Site at which the generating facility is located, the utility interconnection facilities up to the point of change in

ownership to the applicable utility's facilities, and the other assets, tangible and intangible, that compose the generation facility as more particularly described on Exhibit A.

"Project Cure Period" has the meaning set forth in Section 3.9(c)(i).

"Qualified Assignee" has the meaning set forth in Section 13.2.

"Quarterly Progress Report" means the report similar in form and content attached hereto as Exhibit F, as may be modified from time to time to meet applicable CPUC requirements.

[For Projects located outside of the CAISO: "Pseudo Participating Generator Agreement" means an agreement between CAISO and Seller that is the equivalent of a Participating Generator Agreement (as defined in the CAISO Tariff) for generators interconnected to a Native Balancing Authority other than CAISO and whose output is dynamically transferred via a pseudo-tie to the CAISO, in form and substance reasonably acceptable to the parties thereto.***]***

[For Projects located outside of the CAISO: "Pseudo Tie Agreements" means the Interconnected Balancing Authority Agreement, the Dynamic Scheduling Agreement, the Pseudo Participating Generator Agreement, and the NBA Generator Agreement, or equivalent agreements that may be adopted by the CAISO or included in the CAISO Tariff, which are intended to permit and facilitate the dynamic transfer of the output of the Project via a pseudo-tie from its Native Balancing Authority to the CAISO.***]***

"Recording" has the meaning set forth in Section 13.6.

"Reductions" has the meaning set forth in Section 3.2(c).

"Referral Date" has the meaning set forth in Section 12.2(a).

"Remedial Action Plan" has the meaning provided in Section 3.9(b)(ii).

"Renewable Energy Credit" has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision 08-08-028, as each may be amended from time to time or as further defined or supplemented by Law.

"Renewable Generation Equipment Supplier" means the supplier of the [electric generating [wind] [gas] [steam] turbine(s)] [solar electric generating equipment] for the Project, selected by Seller.

"Replacement Price" means the price (in dollars per megawatt hour) at which Buyer, acting in a commercially reasonable manner, purchases for delivery at the Delivery Point (or any other reasonably equivalent delivery point for Buyer) a replacement for any Product (including its associated Green Attributes) that was not Scheduled and delivered by Seller, plus (a) costs (calculated in dollars per megawatt hour) reasonably incurred by Buyer in purchasing such replacement Product and (b) additional transmission charges (calculated in dollars per megawatt hour), if any, reasonably incurred by Buyer for such replacement Product, or absent a purchase, the market price at the Delivery Point (or any other reasonably equivalent delivery point for Buyer) for such replacement Product for the hours impacted by such failure to Schedule or deliver such

Product as determined by Buyer in a commercially reasonable manner. The Replacement Price also shall include all CAISO ***[For Projects located outside of the CAISO:*** , Native Balancing Authority,***]*** and other charges and penalties calculated in dollars per megawatt hour with respect to the deviation from the Scheduled supply resulting from Seller's failure to Schedule or deliver; provided, however, in no event shall such price include any ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller's liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party. If for any reason a Replacement Price is unavailable when Seller fails to deliver or Schedule Product, then the Replacement Price for the hours when a Replacement Price is unavailable shall be the last available Replacement Price together with any charges and penalties allocated to Buyer during such time.

"Resource Adequacy" means the procurement obligation of load serving entities, including Buyer, as such obligations are described in 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, 12-06-025, 13-06-024, and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time in the CPUC Resource Adequacy Rulemakings (R.) 04-04-003 and (R.) 05-12-013 or by any successor proceeding, and all other Resource Adequacy obligations established by any other entity, including the CAISO.

"Sales Price" means the price (in dollars per megawatt hour) at which Seller, acting in a commercially reasonable manner, resells any Product not Scheduled and received by Buyer, deducting from such proceeds any (a) costs (calculated in dollars per megawatt hour) reasonably incurred by Seller in reselling such Product including all costs charged by CAISO ***[For Projects located outside of the CAISO:*** and the Native Balancing Authority,***]*** to Schedule and deliver the Product into the CAISO System ***[For Projects located outside of the CAISO:*** or the Native Balancing Authority's system***],*** and (b) additional transmission charges (calculated in dollars per megawatt hour), if any, reasonably incurred by Seller in Scheduling and delivering such Product to the third party purchasers, or absent a sale despite commercially reasonable efforts to resell the Product, zero. The Sales Price shall also be reduced by all CAISO and other costs, charges and penalties with respect to the deviation from the Scheduled supply, in each case, resulting from Buyer's failure to take Product and calculated in dollars per megawatt hour; provided, however, in no event shall such price include any ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer's liability. The Sales Price may be less than zero.

"S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

"Schedule" means the actions of Seller, Buyer and/or their designated representatives, or Scheduling Coordinators, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other and the CAISO the quantity and type of Product to be delivered on any given day or days at a specified Delivery Point.

"Scheduling Coordinator" or "SC" means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff, for the purposes of undertaking the functions specified in "Responsibilities of a Scheduling Coordinator," of the CAISO Tariff, as amended from time-to-time.

"Scheduled Energy" means the Energy that clears under the applicable CAISO market based on the final Schedule developed in accordance with this Agreement, the operating procedures developed by the Parties pursuant to Section 3.10, and the applicable CAISO Tariff, protocols and Scheduling practices.

"SEC" means the U.S. Securities and Exchange Commission.

"Seller" shall have the meaning set forth on the Cover Sheet.

"Settlement Amount" means, with respect to the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such Party incurs as a result of the liquidation of a Terminated Transaction pursuant to Sections 5.2 and 5.3.

"Site" shall mean the location of the Project as described in Exhibit A.

"Station Service" means the electric energy produced by the Project that is used within the Project to power the lights, motors, control systems and other auxiliary electrical loads that are necessary for operation of the Project.

"System Dispatch Down" means curtailment of delivery of Product from the Project resulting from (a) curtailment ordered by the CAISO (whether directly or through the Scheduling Coordinator or the Participating Transmission Owner), for any reason, including, but not limited to, an Exceptional Dispatch (as defined in the CAISO Tariff), any system emergency as defined in the CAISO Tariff ("System Emergency"), any warning of an anticipated System Emergency, or any warning of an imminent condition or situation which could jeopardize the CAISO's or Participating Transmission Owner's electric system integrity or the integrity of other systems to which the CAISO or Participating Transmission Owner is connected, any warning, forecast, or anticipated overgeneration conditions, including a request from CAISO to manage over-generation conditions; (b) curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner's electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected; (c) curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) as a result of scheduled or unscheduled maintenance or construction on the Participating Transmission Owner's transmission facilities or distribution operator's facilities (if interconnected to distribution or sub-transmission system) that prevents the delivery or receipt of Delivered Energy to or at the Delivery Point, (d) curtailment in accordance with Seller's obligations under its interconnection agreement with the Participating Transmission Owner or distribution operator, ***[If the Project is located***

outside of the CAISO: or Native Balancing Authority; or (e) curtailment ordered by the Transmission Provider provided, that Seller has contracted for firm transmission with such Transmission Provider for the Product to be delivered to the Delivery Point and such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff***]***; ***[For Dispatchable Product only:*** or ([e/f]) curtailment ordered by Buyer pursuant to a Dispatch Notice.***]*** ***[For all Products other than Dispatchable:*** provided, however, that System Dispatch Down shall not include Economic Dispatch Down].

"Terminated Transaction" means the termination of this Agreement in accordance with Section 5.2 of this Agreement.

"Termination Payment" has the meaning set forth in Section 5.2.

"Transmission Provider" means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point.

[For Baseload, Peaking, or Dispatchable Product only: "Unit Firm" means, with respect to a Product, that the Product is intended to be supplied from the Project, and subject to the terms of this Agreement, Seller is excused from selling and delivering the Product to Buyer, and Seller shall not be liable to Buyer for any damages determined pursuant to Section 3.1(h) of the Agreement, in the event that Seller fails to deliver the Product to Buyer for any of the following reason:

(a) if the Project is unavailable as a result of a Forced Outage and such Forced Outage is not the result of Seller's negligence or willful misconduct;

(b) Force Majeure;

(c) by the Buyer's failure to perform;

(d) by a Planned Outage of the Project; or

(e) a reduction in output as ordered under Dispatch Down Periods.

The following products shall be considered "Unit Firm" products: Peaking, Baseload, and Dispatchable.]

[For an intermittent As-Available Product only: "VER Forecasting Program" means the rules, protocols, procedures and standards for Participating Intermittent Resources under the CAISO's Eligible Intermittent Resource Protocol, as may be amended from time to time, as set forth in the CAISO Tariff.]

"WECC" means the Western Electricity Coordinating Council or successor agency.

"WREGIS" means the Western Renewable Energy Generating Information System or any successor renewable energy tracking program.

1.2 Interpretation. The following rules of interpretation shall apply:

(a) 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.

(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.

(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 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.

(h) All references to dollars are to U.S. dollars.

ARTICLE 2: EFFECTIVENESS OF AGREEMENT; CONDITIONS PRECEDENT

2.1 Effectiveness of Agreement Prior to CP Satisfaction Date. Commencing on the Execution 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 Article 2, including, as it relates to Article 2, the rights and obligations under Articles 1, 5, 7, 8, 9, 10, 11, 12, and 13.

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

(a) 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 [___], (ii) diligently pursue development of the Project in accordance with Section 3.9, (iii) comply with Section 3.9(b) in achieving the applicable Milestones that have due dates occurring prior to the CP Satisfaction Date, reporting completion of such Milestones, and delivering Remedial Action Plans in respect of missed Milestones as more fully described therein, (iv) deliver the Quarterly Progress Report in accordance with Section 3.9(a), and (v) otherwise comply with its obligations, covenants, representations, and warranties under Articles 7-13. ***[For Agreements with Delivery Terms greater than two years:*** Upon an Event of Default of Seller prior to the CPUC Approval Date, Buyer may terminate this Agreement in which case Seller shall owe Buyer liquidated damages in the amount of the CPUC Approval Security.] Upon an Event of Default of Seller ***[For Agreements with Delivery Terms greater than two years:*** on or after the CPUC Approval Date but] prior to the CP Satisfaction Date, Buyer may terminate this Agreement in which case Seller shall owe Buyer liquidated damages in the amount of the Development Period 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.

(b) 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 Sections 2.3(a), and (ii) otherwise comply with its obligations, covenants, representations, and warranties under Articles 7-13. ***[For Agreements with Delivery Terms greater than two years:*** Upon an Event of Default of Buyer prior to the CPUC Approval Date, Seller may terminate this Agreement in which case Buyer shall owe Seller liquidated damages in the amount of the CPUC Approval Security.] Upon an Event of Default of Buyer ***[For Agreements with Delivery Terms greater than two years:*** on or after the CPUC Approval Date but] prior to the CP Satisfaction Date, Seller may terminate this Agreement in which case Buyer shall owe Seller liquidated damages in the amount of the Development Period Security. Each Party agrees and acknowledges that (a) the actual damages that Seller would incur due to an Event of Default of Buyer 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 Buyer prior to the CP Satisfaction Date.

2.3 Conditions Precedent. Subject to Section 2.1, the effectiveness of the remainder of this Agreement is conditioned upon the satisfaction (or waiver by the Party described in Section 2.4) 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:

(a) CPUC Approval. 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) Electrical Interconnection. No later than [_____], Seller shall have entered into a [Large/Small/Rule 21/Native Balancing Authority] Generator Interconnection Agreement ***[For Projects located outside of the CAISO:*** along with any supplemental arrangements with the CAISO as an affected system owner***]*** providing for the construction of the Electrical Interconnection Upgrades necessary to maintain the "[Full Capacity] [Energy Only] Deliverability Status" (as defined in the CAISO Tariff) of the Project and setting forth:

(i) 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 [Large/Small/Rule 21/Native Balancing Authority] Generator Interconnection Agreement for the Project ***[For Projects located outside of the CAISO:*** and its supplemental arrangements with the CAISO as an affected system owner],

(ii) a 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 as provided thereunder not exceeding $[_____], and [***Note: Seller may propose additional provisions whereby Seller can satisfy this Condition Precedent by buying down the Network***

Upgrade costs that exceed the foregoing cost cap in a manner that is mutually acceptable to the Parties.]

(iii) a nonrefundable cost that Seller would be obligated to pay thereunder not exceeding $[_____] (or such greater amount as Seller may approve, in its sole discretion).

(c) ***[Others, Major Governmental Approvals, Financing, etc.]***

2.4 Failure to Meet All Conditions Precedent.

(a) Beneficiary Party.

(i) Both of the Parties are the beneficiaries of the Conditions Precedent set forth in Sections 2.3(a), 2.3(b)(i)-(ii) ***[Others]***, and in order for a waiver of non-satisfaction of such Conditions Precedent to be effective, both of the Parties must waive (in their sole discretion) non-satisfaction by the deadline date therefor.

(ii) Buyer shall be the sole beneficiary of the Conditions Precedent set forth in Sections ***[List]***, and in order for a waiver of non-satisfaction of such Conditions Precedent to be effective, Buyer alone must waive (in its sole discretion) non-satisfaction by the deadline date therefor.

(iii) Seller shall be the sole beneficiary of the Conditions Precedent set forth in Sections 2.3(b)(iii) ***[Others]***, and in order for a waiver of non-satisfaction of such Conditions Precedent to be effective, Seller alone must waive (in its sole discretion) non-satisfaction by the deadline date therefor.

(b) Termination. If any of the Conditions Precedent is not satisfied or waived in writing by the beneficiary Parties thereto on or before the date that is fifteen (15) days after the applicable deadline date therefor, then this Agreement shall automatically terminate with no further obligation to either Party (other than as set forth in Sections 2.4(b)(i)-(ii) below and any other payment obligations which are accrued and payable at the time of termination).

(i) Upon a termination of this Agreement for any reason under Section 2.4 other than as described in Section 2.4(b)(ii) below, Seller shall forfeit to Buyer an amount equal to the Performance Assurance then required to be delivered to Buyer hereunder. Buyer may retain such Performance Assurance to pay such amount.

(ii) Upon a termination of this Agreement under this Section 2.4 as a result of the failure of the Conditions Precedent set forth in Sections 2.3(a) to be satisfied (or waived by both Parties) or as a result of

the failure of the Conditions Precedent set forth in Sections 2.3(b)(i)-(ii) to be satisfied or waived by Buyer, Buyer shall return to Seller the Performance Assurances then held by Buyer.

2.5 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 Term 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 Term, the Settlement Amount, indemnification payments or other damages (whether directly or indirectly such as through set-off or netting) and (ii) the undrawn portion of the ***[For Agreements with Delivery Terms greater than two years:*** CPUC Approval Security,] Development Period Security, Construction Period Security, or Delivery Term Security, as applicable, is released and/or returned as applicable (if any is due). All indemnity rights shall survive the termination or expiration of this Agreement for the longer of twelve (12) months or the expiration of the statute of limitations period of the claim underlying the indemnity obligation.

ARTICLE 3: OBLIGATIONS AND DELIVERIES

3.1 Transaction.

(a) Product. The "Product" to be delivered and sold by Seller and received and purchased by Buyer under this Agreement is ***[Seller to select:*** As-Available, Baseload, Peaking, or Dispatchable***]*** Energy, Capacity Attributes, Green Attributes, and other ancillary products, services or attributes similar to the foregoing which are or can be produced by or associated with the Project (net of Station Service) in accordance with the terms hereof.

(b) Transaction. Unless specifically excused by the terms of this Agreement during the Delivery Term, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Product at the Delivery Point, and Buyer shall pay Seller for the Product in accordance with the terms hereof. In no event shall Seller have the right to procure any element of the Product from sources other than the Project for sale or delivery to Buyer under this Agreement ***[If the Project is located outside of the CAISO:*** except with respect to Imbalance Energy from the Transmission Provider***]***.

(c) Delivery Term. The Parties agree that the period of Product delivery is [_____] Contract Years. As used herein, "Delivery Term" shall mean the period of Contract Years specified above beginning on the Commercial Operation Date and continuing until the end of the last Contract Year unless terminated earlier as provided by the terms of this Agreement.

(d) Delivery Point. The Delivery Point shall be [the point of interconnection of the Project to the CAISO Grid] ***[For Projects located outside of the CAISO, insert:*** "The Delivery Point shall be the point on the CAISO Grid where the Native Balancing Authority's grid is interconnected to the CAISO Grid at the ***[identify the local CAISO substation to which the Project has firm transmission rights]*** Substation (and, for payment purposes, the corresponding PNode for the Project, or if none exists, the PNode corresponding to the point on the CAISO Grid where the Native Balancing Authority's grid is interconnected to the CAISO Grid at the Delivery Point)."***]*** The Delivery Point shall be [the point of interconnection of the Project to the CAISO Grid] ***[Seller may specify another delivery point; for a Project located outside the CAISO Grid, the Delivery Point should be a CAISO Scheduling Point as defined by the CAISO]*** and for financial settlement purposes under the applicable CAISO market, the PNode corresponding to such point.

(e) ***[For Baseload, Peaking, As-Available Product:*** Contract Quantity and Guaranteed Energy Production. The quantity of Bundled Green Energy that Seller expects to be able to deliver to Buyer during each Contract Year is **[_____]** MWh ("Contract Quantity"). Throughout the Delivery Term, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production (as defined below) in any [twelve (12)] [twenty-four (24)] consecutive calendar month period during the Delivery Term ("Performance Measurement Period"). "Guaranteed Energy Production" means an amount of Bundled Green Energy, as measured in MWh, equal to [two times] [_____]% of the Contract Quantity. Notwithstanding the excuses to performance set forth in the definition of the Product type (as such Product type is specified in Section 3.1(a)), Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Force Majeure events, Buyer's failure to perform, or Dispatch Down Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer an amount of Bundled Green Energy that it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure events, Buyer's failure to perform, or Dispatch Down Periods.] ***[For Dispatchable Product:*** Contact Quantity. The quantity of Bundled Green Energy that Seller expects to be able to deliver to Buyer during each Contract Year is **[_____]** MWh ("Contract Quantity").]

(f) Contract Capacity. The "Contract Capacity" is the full generation capacity of the Project net of all Station Service which shall be ***[For As-Available Product:*** no less than [____] MW and no greater than [____] MW] ***[For Baseload, Peaking, or Dispatchable Product only:*** an amount determined periodically pursuant to a Capacity Test as set forth below]. Throughout the Delivery Term, Seller shall sell and Schedule

all Product associated with the Contract Capacity of the Project solely to Buyer, except in the case of an Event of Default of Buyer ***[If the Project is located outside of the CAISO:*** or the sale of Imbalance Energy to the Transmission Provider]. ***[For Dispatchable Product:*** Throughout the Delivery Term, Seller shall make the Contract Capacity available solely to Buyer at all times, except in the case of an Event of Default of Buyer ***[If the Project is located outside of the CAISO:*** or the sale of Imbalance Energy to the Transmission Provider].]

(i) ***[For Baseload, Peaking, Dispatchable Product:*** Initial Capacity Testing. Upon no less than fourteen (14) days prior Notice to Buyer, Seller shall schedule and complete a Capacity Test prior to the Commercial Operation Date for the Project. Such initial Capacity Test shall establish the Contract Capacity for the Project for the first Contract Year.]

(ii) ***[For Baseload, Peaking, Dispatchable Product:*** Annual Capacity Testing. Thereafter, at least once per Contract Year within the first quarter of each Contract Year, upon no less than 14 days prior Notice to Buyer, Seller shall schedule and complete a Capacity Test. In addition, Buyer shall have the right to require a retest of the Capacity Test at any time upon five (5) days prior written Notice to Seller if Buyer reasonably believes that the actual Contract Capacity has varied materially from the results of the most recent tests. Seller shall have the right to run a retest of the Capacity Test at any time upon two (2) days prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Good Industry Practices).]

(iii) ***[For Baseload, Peaking, Dispatchable Product:*** Witness at Capacity Tests. Buyer shall have the right to send one or more representative(s) to witness all Capacity Tests.]

(iv) ***[For Baseload, Peaking, Dispatchable Product:*** Capacity Test Reporting. No later than fourteen (14) days following any Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include meter readings and plant log sheets verifying the operating conditions and output of the Project. The Contract Capacity determined pursuant to a Capacity Test shall become the new Contract Capacity at the beginning of the day following the completion of the test for all purposes under this Agreement.]

(v) ***[For Baseload, Peaking, Dispatchable Product:*** Capacity Test Costs and Payments. Buyer shall pay the [Monthly Energy Payment] in respect of the Product produced during the initial Capacity Test prior to the Commercial Operation Date and each

annually scheduled Capacity Test thereafter. In addition, Buyer shall pay the [Monthly Energy Payment] in respect of the Product produced during any other Buyer requested test unless the results of such test demonstrate that the actual Contract Capacity has varied by more than two percent (2%) from the results of the most recent tests, in which case Buyer shall pay the lesser of the [Monthly Energy Payment] in respect of the Product produced during such test and the applicable CAISO real-time hourly average energy price. In addition, Buyer shall pay the lesser of the [Monthly Energy Payment] in respect of the Product produced during any Seller requested test and the applicable CAISO real-time hourly average energy price]. Buyer is responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing Capacity Testing. All other costs of any Capacity Tests shall be borne by Seller.]

(g) Project. All Product provided by Seller pursuant to this Agreement shall be supplied from the Project only ***[If the Project is located outside of the CAISO:*** except with respect to Imbalance Energy from the Transmission Provider**]**. Other than maintenance in accordance with Good Industry Practices, Seller shall not make any alteration or modification to the Project which results in a change to the Contract Capacity of the Project or any other material changes to the Project without Buyer's prior written consent. The Project is further described in Exhibit A.

(h) Performance Excuses.

(i) Seller Excuses. The performance of Seller to Schedule, deliver, and sell the Product shall be excused only for the reasons set forth in the definition of ***[Seller to select:*** "As-Available" or "Unit Firm"***]***. If Seller fails to Schedule, deliver, or sell all or part of the Product, and such failure is not excused as described above, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred an amount for such Product deficiency equal to the positive difference, if any, obtained by subtracting (A) the product of the Energy Price

(ii) Buyer Excuses. The performance of Buyer to Schedule, receive, and pay for the Product shall be excused only (A) during periods of Force Majeure, (B) by Seller's failure to perform or (C) during Dispatch Down Periods ***[For all Products other than Dispatchable Product:*** (except that Buyer shall not be excused from paying for the Product as required under Section 3.4 during periods of Economic Dispatch Down)***]***. If Buyer fails to Schedule, receive, or purchase all or part of the Product and such failure is not excused as described above, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which

the failure occurred an amount for such Product deficiency equal to the positive difference, if any, obtained by subtracting (Y) the product of the Sales Price times the Product deficiency from (Z) the product of the Energy Price times the Product deficiency. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

(i) 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. For all electric generation using biomethane as fuel, neither Buyer nor Seller may make a marketing, regulatory, or retail claim that asserts that a procurement contract to which that entity was a party resulted, or will result, in greenhouse gas reductions related to the destruction of methane if the capture and destruction is required by Law. If the capture and destruction of the biomethane is not required by Law, neither Buyer nor Seller may make a marketing, regulatory, or retail claim that asserts that a procurement contract to which that entity was a party resulted, or will result, in greenhouse gas reductions related to the destruction of methane, unless the environmental attributes associated with the capture and destruction of the biomethane pursuant to that contract are transferred to Buyer and retired on behalf of the retail customers consuming the electricity associated with the use of that biomethane, or unless Seller's procurement contract with the source of biomethane prohibits the source of biomethane from separately marketing the environmental attributes associated with the capture and destruction of the biomethane sold pursuant to that contract, and such attributes have been retired.

(j) Resource Adequacy. During the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Project's Contract Capacity, including Capacity Attributes, from the Project for Buyer to use in meeting its Resource Adequacy or successor program requirements, as the CPUC, CAISO or other regional entity may prescribe. Seller understands that the CPUC is currently in the process of developing requirements for Resource Adequacy and these requirements and the implementation thereof have not been finalized. Seller agrees that it shall take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to enable Buyer to use all of the Contract Capacity, including Capacity Attributes, to be committed by Seller to Buyer pursuant to this Agreement for the Resource Adequacy requirements of Buyer, including

for necessary deliverability Network Upgrades. Seller agrees that the Project is subject to the terms of the Availability Standards. ***[For Projects located outside of the CAISO, insert:*** Seller acknowledges that in order for the Project, as a generator that is dynamically transferred via a pseudo-tie to the CAISO, to qualify its Capacity Attributes as Resource Adequacy capacity, Seller will need, among other things, to maintain firm transmission service to the Delivery Point or equivalent arrangements, to maintain as effective the Pseudo-Tie Agreements, to establish a "Qualifying Capacity" (or its equivalent) periodically with the CPUC, to establish a "Net Qualifying Capacity" (or its equivalent) periodically with the CAISO, and to submit through Seller's Scheduling Coordinator a Resource Adequacy supply plan periodically to the CAISO. Seller acknowledges that (i) Buyer may allocate its share of import capability on the CAISO Grid to any CAISO import scheduling point on the CAISO Grid as it deems appropriate in its sole discretion, and (ii) Buyer may allocate its share, if any, of import capability at the CAISO import scheduling point corresponding to the Delivery Point to any resource at such CAISO import scheduling point as it deems appropriate in its sole discretion, even if, in either case, Buyer's allocation of such import capability, if any, to the CAISO import scheduling point corresponding to the Delivery Point or to the Project may not be sufficient for the Capacity Attributes from the Project to be accepted and approved by the CPUC and the CAISO as qualifying for the determination of, and as satisfying Buyer's requirement for demonstrating its procurement of, Resource Adequacy capacity. If there are determined to be deliverability Network Upgrade costs on the CAISO Grid as an affected system of the Native Balancing Authority as a result of this Project, Buyer can request that Seller elect to fund or elect not to fund all deliverability Network Upgrades. If Seller elects to fund any such deliverability Network Upgrades after Buyer's request that Seller not fund such deliverability Network Upgrades, Buyer shall have the right to declare a termination, and Seller shall owe Buyer a Termination Payment. If Buyer requests that Seller fund certain deliverability Network Upgrades, but Seller does not fund such deliverability Network Upgrades, Buyer shall have the right to declare a termination, and Seller shall owe Buyer a Termination Payment. If the Seller is required to provide Resource Adequacy hereunder, Seller agrees that the Project is subject to the terms of the Availability Standards.***]***

(k) WREGIS. Prior to the initial delivery of Energy to Buyer, Seller shall register the Project in WREGIS, execute a CAISO Qualified Reporting Entity Service Agreement to allow CAISO, on the Seller's behalf, to upload generation information directly into WREGIS, and take all other actions necessary to ensure that the Green Attributes produced from the Project in an amount equal to the amount of Delivered Energy are issued and tracked for purposes of satisfying the requirements of the California Renewable Portfolio Standard and transferred to Buyer, including

payment of all fees required to register the facility in WREGIS, issue WREGIS certificates, and transfer such certificates to Buyer. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under the Agreement.

(l) Prevailing Wage. To the extent applicable, Seller shall comply with the prevailing wage requirements of California Public Utilities Code Section 399.13, subdivision (h).

3.2 Transmission.

(a) Seller's Transmission Service Obligations. During the Delivery Term, Seller shall arrange and be responsible for transmission service for delivery of the Product to and at the Delivery Point and bear all risks and costs associated with such transmission service, including, but not limited to, all Transmission Provider costs and charges, electric transmission losses, and any transmission outages or curtailment, except as provided otherwise in this Agreement in respect of Dispatch Down Periods. ***[For Projects located outside of CAISO:*** Seller shall obtain and maintain during the Delivery Term firm transmission service to deliver the Product from the Site to the Delivery Point from all intermediary Transmission Providers between the Site and the Delivery Point. At Buyer's request, Seller shall provide to Buyer a copy of all firm transmission service agreements and any amendments thereto.***]*** Seller shall fulfill all contractual, metering and applicable interconnection requirements, including those set forth in ***[For Projects located outside of CAISO:*** the Native Balancing Authority's applicable tariffs,***]*** Participating Transmission Owner's applicable tariffs, the CAISO Tariff and implementing CAISO standards and requirements, including, but not limited to, executing applicable interconnection agreements, Participating Generator Agreement and Meter Service Agreement ***[For Projects located outside of CAISO:*** (or equivalent arrangements (such as a Pseudo-Participating Generator Agreement) for projects located outside the CAISO whose output is dynamically transferred via a pseudo-tie to the CAISO)***]*** so as to be able to deliver Energy to the CAISO Grid. ***[For Project located within the CAISO:*** Seller shall arrange for any interconnection agreement with the CAISO (or the Participating Transmission Owner, for distribution level interconnections).***]*** ***[For Projects located outside of CAISO:*** Seller shall arrange for and maintain, or cause to be maintained, during the Delivery Term appropriate interconnection agreements with the Native Balancing Authority and appropriate Pseudo Tie Agreements among the parties thereto that permit and facilitate the dynamic transfer of the output of the Project via a pseudo-tie from the Native Balancing Authority to the CAISO.] Any and such interconnection agreement is separate and not a part of this Agreement.

(b) Buyer's Transmission Service Obligations. During the Delivery Term, Buyer shall arrange and be responsible for transmission service for delivery of the Product from the Delivery Point and bear all risks and costs associated with such transmission service, including, but not limited to, all Transmission Provider costs and charges, electric transmission losses, and any transmission outages or curtailment, except as provided otherwise in this Agreement in respect of Dispatch Down Periods.

(c) Congestion Charges. Seller shall be responsible for all costs of congestion for transmission of the Product up to and at the Delivery Point. Buyer shall be responsible for all costs of congestion for transmission of the Product from the Delivery Point. To the extent that Seller is reimbursed for or receives any refunds, credits, or benefits from the CAISO for congestion charges or losses in respect of transmission of the Product from the Delivery Point, whether due to differences between the locational marginal pricing at the Delivery Point and Buyer's load aggregation point or any other point downstream of the Delivery Point, congestion revenue rights associated with any transmission path downstream of the Delivery Point, or any other hedging instruments associated with the transmission of the Product from the Delivery Point (collectively, any such refunds, credits or benefits are referred to as "Reductions"), then, at Buyer's option, either (i) Seller shall transfer any such Reductions and their related rights to Buyer; or (ii) Buyer shall reduce payments due to Seller under this Agreement in amounts equal to the Reductions and Seller shall retain the Reductions.

3.3 Scheduling.

(a) ***[For As-Available intermittent Product only:*** VER Forecasting Program Requirements. Seller shall cause the Project to become a Participating Intermittent Resource including executing all necessary documents to become a Participating Intermittent Resource. Seller shall be responsible for all CAISO forecasting fees and related charges associated with the Project becoming a Participating Intermittent Resource and participating in the VER Forecasting Program. Seller and Buyer shall comply with the VER Forecasting Program, and all additional protocols issued by the CAISO relating to Participating Intermittent Resources, including the VER Forecasting Program, for the Delivery Term. Seller shall provide Buyer with a copy of the notice from the CAISO certifying the Project as a Participating Intermittent Resource prior to the Commercial Operation Date. In the event that the VER Forecasting Program or the CAISO Tariff and/or any protocols relating thereto are changed, amended, modified replaced or terminated, Seller and Buyer agree to comply with such revisions and, to the extent practical, to implement such revisions in a manner that maintains the relative economic positions of the Parties as of the date of this Agreement.]

(b) Scheduling Coordinator.

[When Seller is SC for the Project, include the following two paragraphs:

(i) Seller as Scheduling Coordinator for the Project. During the Delivery Term, Seller shall be its own Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with its Transmission Provider to Schedule and deliver the Product to the Delivery Point and Buyer shall be its own Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with its Transmission Provider to Schedule and receive the Product at the Delivery Point. Throughout the Delivery Term, Buyer and Seller shall submit inter-SC trades for scheduling all Product from the Project at the Delivery Point (including Energy, Integrated Forward Market Load Uplift Obligations in respect of self-scheduled Energy, and other Product from time to time contemplated under the CAISO Tariff to be subject to inter-SC trades), based on a final Schedule developed in compliance with this Agreement. During the Delivery Term, each Party or each Party's SC shall conduct all Scheduling in accordance with the operating procedures developed by the Parties pursuant to Section 3.10 and in full compliance with the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, or real time basis, as determined by Buyer. ***[For As-Available intermittent Product only:*** Whenever the VER Forecasting Program is available, Seller shall submit Schedules and any updates to such Schedules to the CAISO based on the most current forecast of Delivered Energy consistent with the VER Forecasting Program.**]** In all cases, ***[For all Products other than Dispatchable:*** consistent with its Economic Dispatch Down curtailment rights,**]** Buyer may direct the Scheduling Coordinator to submit, and Seller shall cause the Scheduling Coordinator to submit in accordance with such Buyer's directions, a self-schedule or an economic bid in the applicable CAISO market in order to Schedule the Product with the CAISO. It is the intent of the Parties that neither Party be subject to a double payment or a double charge for Product from the Project through this Agreement and CAISO settlement process and that the more detailed Scheduling and operating procedures developed pursuant to Section 3.10 complement the CAISO settlement process to produce a final economic result between them that is consistent with the fundamental transaction of this Agreement.

(ii) CAISO Costs and Revenues. Seller shall be responsible for CAISO costs (including penalties and other charges) and shall be entitled to all CAISO revenues (including credits and other payments) as the Scheduling Coordinator for the Project, in each case, associated

with Imbalance Energy, including all CAISO charges or penalties incurred as a consequence of the Project not being available, the Seller not notifying the CAISO and Buyer of outages in a timely manner (in accordance with the CAISO Tariff and as set forth in Section 3.7), any other failure by Seller to abide by the CAISO Tariff, and any other deviations between Delivered Energy and Scheduled Energy that are attributable to Seller, the Project, or any event, circumstance, act, or incident occurring prior to or at the Delivery Point, including without limitation uninstructed deviation penalties. 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 or other CAISO charges associated with the Project not providing sufficient Resource Adequacy capacity are the responsibility of the Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, the cost of the sanctions or penalties shall be the Seller's responsibility. Buyer shall be entitled to all credits, payments, or revenues from the CAISO in respect of the Product Scheduled or delivered from the Project, including revenues associated with CAISO dispatches, inter-SC trade credits, and bid cost recovery.

[When SDG&E is SC for the Project, include the following seven paragraphs:

(iii) Buyer as Scheduling Coordinator for the Project. [During the Delivery Term] [Upon initial synchronization of the Project to the CAISO Grid], Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Project for both the delivery and the receipt of the Product at the Delivery Point. At least thirty (30) days prior to the [Commercial Operation Date of the Project] [initial synchronization of the Project to the CAISO Grid], 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 beginning of the Delivery Term] [initial synchronization of the Project to the CAISO Grid]. [During the Delivery Term] [On and after initial synchronization of the Project to the CAISO Grid], 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 (as Seller's SC) shall submit Schedules to the CAISO based on the final Schedule developed in accordance with this Agreement, the operating procedures developed by the Parties pursuant to Section 3.10, and

the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, or real time basis, as determined by Buyer. ***[For As-Available intermittent Product only:*** Buyer (as Seller's SC) shall submit Schedules and any updates to such Schedules to the CAISO based on the most current forecast of Delivered Energy consistent with the VER Forecasting Program whenever the VER Forecasting Program is available, and consistent with Buyers' best estimate based on the information reasonably available to Buyer including Buyer's forecast whenever the VER Forecasting Program is not available.] In all cases, ***[For all Products other than Dispatchable:*** consistent with its Economic Dispatch Down curtailment rights,**]** Buyer (as the Scheduling Coordinator) may, or may direct the third party Scheduling Coordinator to, submit a self-schedule or an economic bid in the applicable CAISO market in order to Schedule the Product with the CAISO.

(iv) Notices. Buyer (as Seller's SC) shall provide Seller with access to a web based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Project's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. In accordance with Section 3.7 and this Section 3.2, Seller will cooperate with Buyer to provide such notices and updates. If the web based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, or facsimile transmission to the personnel designated to receive such information.

(v) CAISO Costs and Revenues. Except as otherwise set forth below, ***[For all Products other than Dispatchable Product:*** in Section 3.4(c)(ii),***]*** and elsewhere in this Agreement, Buyer (as Seller's SC) shall be responsible for CAISO costs (including penalties, ***[For As-Available Product VER Forecasting Program Participants only:*** Negative Imbalance Energy costs or revenues,] and other charges) and shall be entitled to all CAISO revenues (including credits, ***[For As-Available Product VER Forecasting Program Participants only:*** Positive Imbalance Energy revenues or costs,] and other payments) as the Scheduling Coordinator for the Project, including revenues associated with CAISO dispatches, bid cost recovery, inter-SC trade credits, or other credits in respect of the Product Scheduled or delivered from the Project. ***[For As-Available Product VER Forecasting Program Participants only:*** Seller shall be responsible for all CAISO charges or penalties net of credits and payments (including without limitation all Imbalance Energy costs), in each case, resulting from the Seller not notifying the

CAISO and Buyer (as Seller's SC) of outages or other unavailability of Project capacity in a timely manner (in accordance with the CAISO Tariff and as set forth in Section 3.7) or any other failure by Seller to abide by the CAISO Tariff.***]*** ***[For all Products other than As-Available Product VER Forecasting Program Participants:*** Seller shall be responsible for all CAISO charges or penalties net of credits and payments, in each case, resulting from the Project not being available, the Seller not notifying the CAISO and Buyer (as Seller's SC) of outages in a timely manner (in accordance with the CAISO Tariff and as set forth in Section 3.7), any other failure by Seller to abide by the CAISO Tariff, and deviations between Delivered Energy and Scheduled Energy that are attributable to Seller, the Project, or any event, circumstance, act, or incident occurring prior to or at the Delivery Point, including without limitation uninstructed deviation penalties.**]** 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 or other CAISO charges associated with the Project not providing sufficient Resource Adequacy capacity are the responsibility of the Seller and for Seller's account. In addition, if during the Delivery Term, 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.

(vi) CAISO Settlements. Buyer (as Seller's SC) shall be responsible for all settlement functions with the CAISO related to the Project. Buyer shall render a separate invoice to Seller for any CAISO charges or penalties ("CAISO Charges Invoice") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after 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 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.

(vii) Dispute Costs. Buyer (as Seller's SC) may be required to dispute CAISO settlements in respect of the Project. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees, including reasonably allocated costs of in-house counsel of the Buyer) associated with its involvement with such CAISO disputes. In no event shall Buyer (or its third party designee, as Scheduling Coordinator) be liable to Seller for the actions, inactions, errors, or omissions of the CAISO or its agents in the performance of their scheduling functions and/or market operations.

(viii) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, 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 such expiration date.

(ix) Master File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master File and Resource Data Template (or successor data systems) for this Project consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.**]**

(c) Annual Delivery Schedules. No later than forty-five (45) days before (A) the first day of the first Contract Year of the Delivery Term and (B) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month's average-day expected Delivered Energy, by hour, for the following calendar year.

(d) Monthly Delivery Schedules. Ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide a non-binding forecast of each day's average expected Delivered Energy, by hour, for the following month ("Monthly Delivery Forecast").

(e) Daily Delivery Schedules. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall ***[When Seller is SC for the Project:*** cause its Scheduling Coordinator to**]** provide Buyer with a ***[For As-Available intermittent Product only:*** non-binding forecast of the Project's available capacity (or if the VER Forecasting Program is not available for any reason, the expected Delivered Energy)] ***[For all Products other than As-Available intermittent:*** binding forecast of the expected Delivered Energy] for each hour of the immediately succeeding day ("Day-Ahead Forecast") ***[For all Products other than As-Available intermittent: [When Seller is SC for the Project:*** concurrent with delivery to the CAISO**]** ***[When SDGE***

is SC for the Project: and Buyer shall submit a Schedule to the CAISO consistent with such Day-Ahead Forecast**]**, it being understood that, ***[For all Products other than Dispatchable:*** consistent with its Economic Dispatch Down curtailment rights,**]** Buyer (as the Scheduling Coordinator) may, or may direct the third party Scheduling Coordinator to, submit a self-schedule or an economic bid in the applicable CAISO market in order to Schedule the Product with the CAISO]. A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include Schedules for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of ***[For As-Available intermittent Product only:*** the Project's available capacity (or if the VER Forecasting Program is not available for any reason, the expected Delivered Energy)] ***[For all Products other than As-Available intermittent:*** the expected Delivered Energy]. Seller may not change such Schedule past the deadlines provided in this section except in the event of a Forced Outage or Schedule change imposed by Buyer or the CAISO, in which case Seller shall promptly provide Buyer with a copy of any and all updates to such Schedule indicating changes from the then-current Schedule. These notices and changes to the Schedules shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein, then for such unscheduled delivery period only Buyer shall rely on the delivery Schedule provided in the Monthly Delivery Forecast or Buyer's best estimate based on information reasonably available to Buyer and Seller shall be liable for Scheduling and delivery based on such Monthly Delivery Forecast or Buyer's best estimate.

(f) Real Time Delivery Schedules. Notwithstanding anything to the contrary herein, in the event Seller makes a change to its Schedule on the actual date of delivery for any reason including Forced Outages (other than a scheduling change imposed by Buyer or CAISO) which results in a change to its deliveries (whether in part or in whole), Seller shall notify Buyer immediately by calling Buyer's on-duty Scheduling Coordinator. Seller shall notify Buyer and the CAISO of Forced Outages in accordance with Section 3.7. Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Project during or after the end of the outage.

(g) ***[For Dispatchable Product Only:*** Availability Notices. During the Delivery Term, 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 capacity that the Project is expected to have available 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 developed by the Parties under Section 3.10 by (in order of preference) electronic mail, facsimile transmission or, telephonically to Buyer personnel designated to receive such communications.]

(h) ***[For Dispatchable Product Only:*** Dispatch Notices. Buyer or the CAISO will have the right to dispatch the Project, seven days per week and 24 hours per day (including holidays), by providing Dispatch Notices and updated Dispatch Notices to Seller electronically, subject to the requirements and limitations set forth in this Agreement, including the system requirements under Section 3.4(b) and the Project operating restrictions set forth in Exhibit H. Each Dispatch Notice will be effective unless and until Buyer modifies such Dispatch Notice by providing Seller with an updated Dispatch Notice. 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 the timelines as specified in the CAISO Tariff.]

3.4 Dispatch Notices.

(a) General. Seller shall reduce delivery amounts as directed by the CAISO, the Participating Transmission Owner, Buyer, or a Transmission Provider during any Dispatch Down Period.

(b) System Requirements. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary (i) for Seller to respond and follow instructions, including an electronic signal conveying real time instructions, to operate the Project as directed by the Buyer and/or the CAISO, including to implement a System Dispatch Down or an Economic Dispatch Down in accordance with the then-current methodology used to transmit such instructions as it may change from time to time, and (ii) for Buyer and/or the CAISO to control the quantity of Product generated by the Project in order to implement a System Dispatch Down or an Economic Dispatch Down, in each case, in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. As of the Execution Date, the systems required to comply with clause (i) include at a minimum the CAISO's Automatic Dispatch System (as described in the CAISO website) and the systems required to comply with clause (ii) include at a minimum the CAISO'S Application Programming Interfaces (as described in the CAISO website). If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take all commercially reasonable steps necessary to become compliant as soon as possible. Seller shall be liable

pursuant to Section ***[For all Products other than Dispatchable Product:*** 3.4(c)(ii)***] [For Dispatchable Product:*** 3.3(b)[(ii)/(iii)]***]*** for failure to comply with an order directing a Dispatch Down Period, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, an order directing a Dispatch Down Period via such systems and facilities shall have the same force and effect on Seller as any other form of communication. If an electronic submittal is not possible, Buyer and/or the CAISO may provide 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 and Seller shall maintain communications systems necessary to permit such transmittal of Dispatch Notices. The Parties shall describe with more specificity the Economic Dispatch Down process (including the automated communication process for Dispatch Notices) in the operating procedures developed by the Parties pursuant to Section 3.10.

(c) ***[For all Products other than Dispatchable Product:*** Economic Dispatch Down. Each of Buyer and the CAISO has the right to order Seller to curtail deliveries of Energy from the Project to the Delivery Point for Economic Dispatch Down purposes, seven days per week and 24 hours per day (including holidays), by providing Dispatch Notices and updated Dispatch Notices to Seller electronically via the communications systems described in Section 3.4(b), subject to the requirements and limitations set forth in this Agreement, including the Project operating restrictions set forth in Exhibit H. Each Dispatch Notice will be effective unless and until Buyer (or the CAISO) modifies such Dispatch Notice by providing Seller with an updated Dispatch Notice. 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 the timelines as specified in the CAISO Tariff. Seller agrees to adjust the Project's Delivered Energy as set forth in a Dispatch Notice that meets the requirements of Economic Dispatch Down.]

(i) [Buyer Payments. Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which any such Economic Dispatch Down occurred an amount equal to the positive difference, if any, of (Y) the product of the Energy Price, times, minus (Z) the product of the positive value of the Sales Price, if received, times the amount of Deemed Bundled Green Energy resulting from such Economic Dispatch Down.

(ii) [Failure to Comply. If Seller fails to comply with a Dispatch Notice that is in compliance with this Agreement, then, for the deviation between the Delivered Energy and the amount set forth in the Dispatch Notice, Seller shall pay Buyer an amount equal to the sum

of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for any Delivered Energy in excess of the amount set forth in the Dispatch Notice (for example, the Energy Price adjusted by TOD Factors), and (B) is all Imbalance Energy costs or charges (excluding any revenues or credits), and (C) is any penalties or other charges resulting from Seller's failure to comply with the Dispatch Notice.]

3.5 Standards of Care.

(a) General Operation. Seller shall comply with all applicable requirements of Law, the CAISO, NERC and WECC relating to the Project (including those related to safety, construction, ownership and/or operation of the Project).

(b) CAISO and WECC Standards. Each Party shall perform all generation, scheduling and transmission services in compliance with all applicable (i) operating policies, criteria, rules, guidelines, tariffs and protocols of the CAISO, (ii) WECC scheduling practices and (iii) Good Industry Practices.

(c) Reliability Standard. Seller agrees to abide by all (i) NERC, WECC and CAISO reliability requirements, including all such reliability requirements for generator owners and generator operators, and, if applicable, CPUC General Order No.167, "Enforcement of Maintenance and Operation Standards for Electrical Generating Facilities," and (ii) all applicable requirements regarding interconnection of the Project, including the requirements of the interconnected Transmission Provider.

3.6 Metering.

(a) CAISO Revenue Meter. All output from the Project per the terms of this Agreement must be delivered through a single CAISO revenue meter and that meter must be dedicated exclusively to the Project described herein. All Product purchased under this Agreement must be measured by the Project's CAISO revenue meter to be eligible for payment under this Agreement. Seller shall bear all costs relating to all metering equipment reasonably necessary to accommodate the Project. In addition, Seller hereby agrees to provide all meter data to Buyer in a form acceptable to Buyer, and consents to Buyer obtaining from the CAISO the CAISO meter data applicable to the Project and all inspection, testing and calibration data and reports. Seller shall grant Buyer the right to retrieve the meter reads from the CAISO meter reporting website and/or directly from the CAISO meter(s) at the Project site. If the CAISO makes any adjustment to any CAISO meter data for a given time period, Seller agrees that it shall submit revised monthly invoices, pursuant to Section 6.2, covering the entire applicable time period in order to conform fully

such adjustments to the meter data. Seller shall submit any such revised invoice no later than thirty (30) days from the date on which the CAISO provides to Seller such binding adjustment to the meter data.

(i) 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 Good Industry Practice and the CAISO 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.

(ii) 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 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 was determined pursuant to a test required by Buyer, Seller shall bear the expense of any such test.

(iii) Delivered 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 is increased or decreased, the revised Delivered Energy 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, they shall be recalculated using the revised amount of Delivered Energy. 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 6.2.

(b) Real Time Telemetry. Seller shall install, activate and maintain metering, communication and telemetry equipment for the Project in a centralized system to which Buyer shall have real time access. Seller shall link its system to Buyer via an approved Buyer communication network, utilizing existing industry standard network protocol, as

reasonably approved by Buyer. Seller shall correct any problems with such equipment as soon as practicable.

(c) ***[The following section is for As-Available Intermittent Products only]*** Meteorological Station. Seller, at its own expense, shall install and maintain such stand-alone meteorological stations at the Project as may be required under the VER Forecasting Program and the CAISO Tariff to monitor and report weather data to both the CAISO and Buyer's weather station data collection system. Each station shall be equipped with instruments and equipment that meet the specifications of the VER Forecasting Program and shall measure, collect, record, format, and communicate the data required under the VER Forecasting Program. Seller shall submit to Buyer for review and approval, which shall not be unreasonably withheld, its technical specifications for the meteorological station along with a site plan showing the location of the station within the Project. Seller shall correct any problems with such equipment as soon as practicable.

3.7 Outage Notification.

(a) Planned Outages. Seller shall schedule Planned Outages for the Project in accordance with Good Industry Practices and with the prior written consent of Buyer, which consent may not be unreasonably withheld or conditioned. The Parties acknowledge that in all circumstances, Good Industry Practices shall dictate when Planned Outages should occur. Seller shall notify Buyer of its proposed Planned Outage schedule for the Project for the following calendar year by submitting a written Planned Outage schedule no later than October 1st of each year during the Delivery Term. The Planned Outage schedule is subject to Buyer's approval, which approval may not be unreasonably withheld or conditioned. Buyer shall promptly respond with its approval or with reasonable modifications to the Planned Outage schedule and Seller shall use its best efforts in accordance with Good Industry Practices to accommodate Buyer's requested modifications. Notwithstanding the submission of the Planned Outage schedule described above, Seller shall also submit a completed Outage Notification Form to Buyer no later than fourteen (14) days prior to each Planned Outage and all appropriate outage information or requests to the CAISO in accordance with the CAISO Tariff. Seller shall contact Buyer with any requested changes to the Planned Outage schedule if Seller believes the Project must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Good Industry Practices. Seller shall not change its Planned Outage schedule without Buyer's approval, not to be unreasonably withheld or conditioned. Seller shall use its best efforts in accordance with Good Industry Practices not to schedule Planned Outages during the months of July, August, September and October. At Buyer's request, Seller shall use commercially

reasonable efforts to reschedule Planned Outage so that it may deliver Product during CAISO declared or threatened emergency periods. Seller shall not substitute Energy from any other source for the output of the Project during a Planned Outage.

(b) Forced Outages. Within ***[When Seller is the SC for the Project:*** Within two hours of any Forced Outage,**]** ***[When SDG&E is the SC for the Project:*** Within one-half of the notification time prescribed under the CAISO Tariff for Forced Outages,**]** Seller shall submit a completed Outage Notification Form to the Buyer in accordance with the instructions shown on the form and shall submit outage information to the CAISO in accordance with the CAISO Tariff ***[When SDG&E is the SC for the Project:*** and Section 3.3(b)(ii) above**]**. Seller shall not substitute Energy from any other source for the output of the Project during a Forced Outage.

(c) Coordination with CAISO. Seller shall be responsible ***[When SDG&E is SC for the Project:*** in accordance with Section 3.3(b)(ii)**]** for all outage coordination communications with the CAISO. Buyer shall cooperate with Seller in arranging and coordinating all Project outages with the CAISO.

3.8 Operations Logs and Access Rights.

(a) Operations Logs. Seller shall maintain a complete and accurate log of all material operations and maintenance information on a daily basis. Such log shall include, but not be limited to, information on power production, fuel consumption, efficiency, availability, maintenance performed, outages, results of inspections, manufacturer recommended services, replacements, electrical characteristics of the generators, control settings or adjustments of equipment and protective devices. Seller shall maintain this information for at least two (2) years and shall provide this information electronically to Buyer within one day of Buyer's request.

(b) Access Rights. Buyer, its authorized agents, employees and inspectors shall have the right of ingress to and egress from the Project during normal business hours upon reasonable advance Notice and for any purposes reasonably connected with this Agreement.

3.9 New Generation Facility.

(a) Project Development. Seller, at no cost to Buyer, shall:

(i) Design and construct the Project.

(ii) Perform all studies, pay all fees, obtain all necessary approvals and execute all necessary agreements with the CAISO and the

Participating Transmission Owner for the Electrical Interconnection Upgrades to Schedule and deliver the Product from the Project [***For Projects Providing Resource Adequacy:*** under "Full Capacity Deliverability Status" (as defined in the CAISO Tariff)]. Following satisfaction or waiver of the Conditions Precedent set forth in Section 2.3(b), Seller shall not request from the CAISO or the Participating Transmission Owner any changes to its plan of interconnection that are inconsistent with the plan of interconnection that was evaluated in connection with the satisfaction or waiver of the Conditions Precedent in Section 2.3(b) without Buyer's prior written consent.

(iii) Acquire all Governmental Approvals and other approvals necessary for the construction, operation, and maintenance of the Project.

(iv) Complete all environmental impact studies necessary for the construction, operation, and maintenance of the Project, including all environmental analysis required under the California Environmental Quality Act for the Project and related interconnection facilities.

(v) At Buyer's request, provide to Buyer Seller's electrical specifications and design drawings pertaining to the Project.

(vi) Within fifteen (15) days after the close of each calendar quarter following the Execution Date until the Commercial Operation Date, provide to Buyer a Quarterly Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The Quarterly Progress Report shall identify the Milestones and indicate whether Seller has met or is on target to meet such Milestones.

(vii) Provide access to Buyer, its authorized agents, employees and inspectors for purpose of inspecting the Project's construction site or on-site Seller data and information pertaining to the Project during normal business hours upon reasonable advance Notice.

(viii) At Buyer's request, provide information to Buyer relating to Seller's or Seller's contractor's use, during Project construction, of "Women-Owned Businesses" or "Minority-Owned Businesses" or "Disabled Veteran Business Enterprises" as defined in CPUC General Order 156, and the number of new employees hired by Seller or Seller's contractors and the number of women, minority, and disabled veterans trained or hired by Seller or Seller's contractor's as contemplated under Cal. Public Utilities Code

§910(a)(8), as each such group of entities and individuals may be amended from time to time or further defined, supplemented, or superseded by applicable Law or replaced with similar designations or certifications. [*Include other covenants related to "women-owned business" or "minority-owned business" as may be applicable to the Seller's RFO bid.*]

(b) Construction Milestones.

(i) The Parties agree time is of the essence in regards to this Agreement. As such, the Parties also agree certain milestones for the construction of the Project as set forth in the Milestone schedule attached hereto as Exhibit B ("Milestones") must be achieved in a timely fashion or Buyer will suffer damages.

(ii) Within seven (7) days after completion of each Milestone, Seller shall provide Buyer with Notice along with accompanying documentation (including reasonably redacted copies of applicable agreements, Governmental Approvals, and certificates) to reasonably demonstrate the achievement of such Milestone. If Seller misses the deadline date for three (3) or more Milestones or misses the deadline date for any one Milestone by more than ninety (90) days, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan ("Remedial Action Plan") that describes in detail a reasonable course of action and plan (including accelerating the work, for example, by using additional shifts, overtime, additional crews or resequencing of the work, as applicable) to achieve the missed Milestones and all subsequent Milestones no later than the Guaranteed Commercial Operation Date (as it may be extended under Section 3.9(c)(i)-(ii)); provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to meet any subsequent Milestones and the Guaranteed Commercial Operation Date.

(c) Daily Delay Damages.

(i) COD. Seller shall cause the Project to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date; provided, however, that the Commercial Operation Date shall not occur more than one hundred eighty (180) days prior to the Guaranteed Commercial Operation Date***. [NOTE to bidders: To be changed to 30 days for 2021 online date bids.]*** Seller may elect to extend the Guaranteed Commercial Operation Date for no more than a total of [_____] days (the "Project Cure Period") by providing Buyer with Notice of its election to extend the Guaranteed Commercial Operation Date by no later than 5:00

p.m. on the Business Day prior to the Guaranteed Commercial Operation Date along with Seller's estimate of the duration of the extension and its payment of Daily Delay Damages for each day or portion of a day that the Guaranteed Commercial Operation Date is extended. Seller may further extend the Guaranteed Commercial Operation Date beyond the already extended Guaranteed Commercial Operation Date subject to the same terms applicable to the original extension; provided, however, that the total of all extensions under this clause (i) shall not exceed the Project Cure Period. The Daily Delay Damages payments are in addition to, and not a part of, the Construction Period Security. Seller will be entitled to a refund (without interest) of any estimated Daily Delay Damages payments paid by Seller that exceed the amount required to cover the number of days or partial days by which the Commercial Operation Date occurred after the original Guaranteed Commercial Operation Date (where the original Guaranteed Commercial Operation Date excludes any extensions under this Section 3.9(c)(i) but includes any extensions under Section 3.9(c)(ii)). In addition, Seller shall submit a Remedial Action Plan within ten (10) days after each extension of the Guaranteed Commercial Operation Date if the Project has not then achieved the Commercial Operation Date. Each Party agrees and acknowledges that (a) the actual damages that Buyer would incur due to a delay in achieving the Commercial Operation Date on or before the original Guaranteed Commercial Operation Date (where the original Guaranteed Commercial Operation Date excludes any extensions under this Section 3.9(c)(i) but includes any extensions under Section 3.9(c)(ii)) 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 Commercial Operation Date for the length of the extensions paid for in advance by Seller up to the Project Cure Period 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 Commercial Operation Date altogether.

(ii) Extensions. The Guaranteed Commercial Operation Date and the deadline dates for Milestone numbers [_____] as set forth in Exhibit B shall be extended on a day for day basis for up to ninety (90) ***[NOTE: to be changed to 30 days for 2021 online bids.]*** calendar days in the aggregate ("Force Majeure Extension Period") without imposition of any Daily Delay Damages to the extent Seller is actually and demonstrably delayed in its critical path to achieving the Commercial Operation Date by the Guaranteed Commercial Operation Date as a result of Force Majeure; provided, however,

any such delay in excess of this period shall be subject to Daily Delay Damages pursuant to Section 3.9(c)(i).

3.10 Operating Procedures. No later than forty-five (45) days before the Commercial Operation Date, and from time to time as reasonably determined necessary by the Parties, the Parties shall meet to address how each Party will perform its respective obligations under this Agreement, including, but not limited to: (1) the method of day-to-day communications; (2) key personnel lists for each Party; (3) procedures for Forced Outage and Planned Outage reporting; (4) procedures for delivery forecasting; (5) procedures for record keeping; (6) Scheduling procedures; and (7) invoicing and payment procedures; provided, that the failure to agree on these operating procedures will not relieve the Parties of their respective obligations under this Agreement, and any failure to agree shall be resolved in accordance with the dispute resolution procedures in Article 12.

ARTICLE 4: COMPENSATION; MONTHLY PAYMENTS

4.1 ***[For Dispatchable Product Only:*** Capacity Payment.

(a) Capacity Price.

Contract Year	Capacity Price ($/KW)
1	

(b) Monthly Capacity Payment. For each month, Buyer shall pay Seller for the Product the amount calculated as follows ("Monthly Capacity Payment"):

MCP = CC x CP x SF x AAF

Where:

MCP is the Monthly Capacity Payment expressed in Dollars for such month of the Delivery Term.

CC is the Contract Capacity, expressed in kW, rounded to the nearest 100 kW.

CP is the Capacity Price expressed in Dollars per kW-year, for the applicable month.

SF is the Monthly Shaping Factor for the applicable month, 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

AAF is the Availability Adjustment Factor for each month, expressed as a three-place decimal and determined as follows:

(a) If the Equivalent Availability Factor ("EAF") for the month is less than or equal to 0.980, then the AAF equals EAF / 0.98.

(b) If the EAF for the month is greater than 0.980 but less than 0.990, then the AAF equals 1.0.

(c) If the EAF for the month is greater than or equal to 0.990, then the AAF equals EAF / 0.99.

EAF is the Equivalent Availability Factor for each month determined as follows:

EAF = (PH - (EDH - EEDH)) / PH

Where:

PH is the number of period hours;

EDH is the number of equivalent derate hours calculated as the sum, for each derate, of the product of the number of hours of full or partial derate hours times the size of the reduction from the Contract Capacity divided by the Contract Capacity for the month. For the purposes of this calculation, a derate includes all outages for any reason, including without limitation, Forced Outages, Force

Majeure events, Dispatch Down Periods, Planned Outages, Buyer's failure to perform, and other times when any portion of the Contract Capacity is not available and when the Delivered Energy of the Project is less than the amount of Energy dispatched by Buyer; and

EEDH is the number of equivalent excused derate hours solely due to either Dispatch Down Periods or Buyer's failure to perform (and for no other reason), calculated as the sum, for each excused derate, of the product of the number of hours of full or partial derate hours times the size of the reduction from the Contract Capacity, divided by the Contract Capacity for the month.

4.2 Energy Payment. ***[NOTE: for this IRP RFO, contract price shall be adjusted based on NQC provided. Formula for such adjustments will be provided based on bid.]***

(a) Energy Price. The price for the Bundled Green Energy that is delivered to Buyer in each Contract Year shall be as follows ("Energy Price"):

Contract Year	Energy Price ($/MWh)

provided, however, that:

(i) if Seller delivers Bundled Green Energy in the aggregate for any CAISO settlement interval (not to exceed one hour) in excess of the product of the Contract Capacity times the length of such settlement interval, expressed in hours, then the Energy Price for such excess Bundled Green Energy in such settlement interval shall be reduced to zero dollars ($0), and if the real time Locational Marginal Price for the Delivery Point during such settlement interval is less than zero dollars ($0), Seller shall pay to Buyer an amount equal to the absolute value of such negative Locational Marginal Price times such excess Bundled Green Energy;

(ii) if Seller delivers Bundled Green Energy in the aggregate for any Contract Year during the Delivery Term in excess of one hundred fifteen percent (110%) of the annual Contract Quantity, then the Energy Price for such excess Bundled Green Energy for the remainder of that Contract Year shall be reduced to zero dollars ($0), and for each CAISO settlement interval during that time in which the real time Locational Marginal Price is less than zero dollars ($0), Seller shall pay to Buyer an amount equal to the absolute value of such negative Locational Marginal Price times

the Bundled Green Energy delivered during such settlement interval;

(b) Monthly Energy Payment. For each month, Buyer shall pay Seller for the Product an amount equal to the sum for each hour in the month of the product of the Energy Price times the Bundled Green Energy in each hour ("Monthly Energy Payment").

Monthly Energy Payment = ∑ Energy Price x Bundled Green Energy

For any period where the quantity of Bundled Green Energy is less than the quantity of Delivered Energy and the quantity of Bundled Green Energy cannot practicably be determined for each settlement interval during such period (for example, where WREGIS does not specify in which settlement periods Renewable Energy Credits were delivered or not delivered), then the quantity of Bundled Green Energy for any settlement interval during the entire period shall be equal to the product of the quantity of Delivered Energy for a settlement interval multiplied by the quotient of the aggregate quantity of Green Attributes that are delivered to Buyer during such entire period divided by the aggregate quantity of Delivered Energy that is delivered to Buyer during such entire period.

4.3 Imbalance Energy. Seller shall use commercially reasonable efforts to deliver Energy in accordance with the Scheduled Energy. Buyer and Seller recognize that from time to time the amount of Delivered Energy will deviate from the amount of Scheduled Energy. When Delivered Energy minus Scheduled Energy is a positive amount, it shall be considered "Positive Imbalance Energy;" when Delivered Energy minus Scheduled Energy is a negative amount, the absolute (i.e., positive) value of that amount shall be considered the "Negative Imbalance Energy." ***[When Seller is SC for the Project or when Buyer is SC but Project is not in the VER Forecasting Program:*** Seller shall be responsible for settlement of Imbalance Energy with the CAISO and all fees, liabilities, assessments, or similar charges assessed by the CAISO in connection with Imbalance Energy.] Buyer and Seller shall cooperate to minimize charges and imbalances associated with Imbalance Energy to the extent possible. Seller shall promptly notify Buyer as soon as possible of any material imbalance that is occurring or has occurred. ***[When SDG&E is SC for the Project and Project is in the VER Forecasting Program:*** Buyer shall receive all Green Attributes for the Positive Imbalance Energy in all settlement intervals.**]**

[When Seller is SC for the Project or when Buyer is SC but Project is not in the VER Forecasting Program, include the following two paragraphs:

(a) Positive Imbalance Energy (Over Deliveries). In the event that Delivered Energy for any CAISO settlement interval is equal to or greater than Scheduled Energy for such CAISO settlement interval, Buyer shall have no payment obligation in respect of the Positive Imbalance Energy. Buyer shall receive all Green Attributes for the Positive Imbalance Energy in such CAISO settlement interval regardless as to whether it was sold into the CAISO. Seller shall be entitled to all payments or credits from the CAISO to Seller's SC and Seller shall make all payments to the CAISO in respect of the Positive Imbalance Energy.

(b) Negative Imbalance Energy (Under Deliveries). In the event that Delivered Energy for any CAISO settlement interval is less than Scheduled Energy for such CAISO settlement interval, Buyer shall have no payment obligation in respect of the Negative Imbalance Energy. Seller shall make all payments to the CAISO and Seller shall be entitled to all payments or credits from the CAISO to Seller's SC in respect of the Negative Imbalance Energy required under the CAISO Tariff.]

4.4 Additional Compensation. To the extent not otherwise provided for in this Agreement, in the event that Seller is compensated by a third party for any Product produced by the Project, including, but not limited to, compensation for Resource Adequacy or Green Attributes, Seller shall remit all such compensation directly to Buyer; provided that for avoidance of doubt, nothing herein precludes Seller from retaining credits related to transmission upgrades funded by Seller.

4.5 Energy Sales Prior to Commercial Operation Date. For each month prior to the Commercial Operation Date, as compensation for the Product delivered to Buyer, (i) Buyer shall pay Seller for the Product an amount equal to the product of ***[SDG&E to insert REC value amount in $/MWh]*** times the total Bundled Green Energy delivered to Buyer in such month, and (ii) Seller shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, inter-SC trade credits, or other credits in respect of the Product Scheduled or delivered from the Project, and Seller shall be responsible for all CAISO costs (including penalties, Imbalance Energy costs, and other charges) including all CAISO charges or penalties, in each case, resulting from the Project not being available, the Seller not notifying the CAISO of outages in a timely manner, and any other failure by Seller to abide by the CAISO Tariff, including without limitation uninstructed deviation penalties. ***[When Buyer is SC for the Project, include the following:*** Each month, Buyer (as the SC for the Project) shall deliver an invoice to Seller including a statement of all such CAISO revenues and charges within thirty (30) days after the CAISO final settlement data is available to Buyer for such deliveries.]

ARTICLE 5: EVENTS OF DEFAULT; FORCE MAJEURE

5.1 Events of Default. An "Event of Default" shall mean,

(a) with respect to a Party that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within five (5) Business Days after Notice thereof;

(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, and such default is not remedied within thirty (30) days after Notice thereof;

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent

constituting a separate Event of Default, and except for such Party's obligations to Schedule, deliver, or receive the Product, the exclusive remedy for which is provided in Section 3.1(h)) and such failure is not remedied within thirty (30) days after Notice thereof;

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 13.2; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement Energy that was not generated by the Project ***[If the Project is located outside of the CAISO:*** other than Imbalance Energy from the Transmission Provider];

(ii) the failure by Seller to achieve the Commercial Operation Date no later than the Guaranteed Commercial Operation Date;

(iii) ***[For Baseload, Peaking, Dispatchable Product:*** the Contract Capacity at the Commercial Operation Date or at any other time pursuant to a Capacity Test is less than [_____] MW and such default is not remedied within thirty (30) days after Notice thereof;] ***[NOTE: for this IRP RFO, there will be an NQC minimum of 70% bid NQC, which must be maintained on average over any consecutive 12-month period.]***

(iv) ***[For Baseload, Peaking, As-Available Product:*** the failure by Seller to achieve the Guaranteed Energy Production requirement during any Performance Measurement Period as set forth in Section 3.1(e) of this Agreement] ***[For Dispatchable Product:*** the Default Availability Factor of the Project is less than [_____] percent for any rolling twelve (12) consecutive calendar month period];

(v) the failure by Seller to deliver a Remedial Action Plan that reasonably demonstrates in detail how Seller will achieve the Commercial Operation Date no later than the Guaranteed

Commercial Operation Date, if such failure is not remedied within ten (10) days after Notice;

(vi) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.3 or 8.4 of this Agreement;

(vii) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an 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:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or

(viii) 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:

(A) 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;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) 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;

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

(E) 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;

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

(G) Seller shall fail to renew or 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.

5.2 Remedies; Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("Non-Defaulting Party") shall have the right (a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("Early Termination Date") that terminates this Agreement and ends the Delivery Term effective as of the Early Termination Date, to accelerate all amounts owing between the Parties, and to collect liquidated damages calculated in accordance with Section 5.3 below ("Termination Payment"); (b) to withhold any payments due to the Defaulting Party under this Agreement; (c) to suspend performance; and (d) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement.

5.3 Termination Payment. The Termination Payment for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to the Non-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 5.1(a)(iv) [Bankruptcy], if the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Termination Payment shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages; provided, however, that any lost Capacity Attributes and Green Attributes shall be deemed direct damages covered by this Agreement. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement

transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction 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 a Terminated Transaction 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 a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

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

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 12.

5.6 Rights And Remedies Are Cumulative. Except where liquidated damages are provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 5 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

5.7 Mitigation. Any Non-Defaulting Party shall be obligated to mitigate its Costs, losses and damages resulting from any Event of Default of the other Party under this Agreement.

5.8 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 gives Notice and details of the Force Majeure to the other Party as detailed below, then, the Party impacted by Force Majeure shall be excused from the performance of its obligations to the extent impacted. Within forty-eight (48) hours of commencement of an event of Force Majeure, the non-performing Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of the commencement of an event of Force Majeure the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim. Seller shall not substitute Product from any other source for the output of the Project during an outage resulting from Force Majeure. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure. Buyer shall not be required to make any payments for any Product that Seller fails to Schedule, deliver or provide as a result of Force Majeure during the term of a Force Majeure. This Agreement may be terminated by the non-claiming Party with no further obligation to the Force-Majeure-claiming Party if a Force Majeure event prevents the performance of a material portion of the obligations of the Force-Majeure-

claiming Party hereunder and such Force Majeure event is not resolved within eight (8) months after the commencement of such Force Majeure event. In addition to the foregoing, prior to the Commercial Operation Date, this Agreement may be terminated by Buyer with no further obligation to Seller if one or more Force Majeure events prevents Seller from achieving the Commercial Operation Date by the end of the Force Majeure Extension Period; provided, however, that Buyer shall not have the right under this section to terminate this Agreement until the Guaranteed Commercial Operation Date if Seller is paying delay liquidated damages to Buyer as required under Section 3.9(c)(i) during the Project Cure Period (it being acknowledged, that Seller may elect to pay Daily Delay Damages during periods of Force Majeure up to the expiration of any remaining unclaimed portion of the Project Cure Period in lieu of claiming Force Majeure relief hereunder).

ARTICLE 6: PAYMENT

6.1 Billing and Payment. On or about the tenth (10^{th}) day of each month beginning with the second month of the first Contract Year and every month thereafter, and continuing through and including the first month following the end of the Delivery Term, Seller shall provide to Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Project for any CAISO settlement time interval during the preceding months, (b) access to any records, including invoices or settlement data from CAISO, necessary to verify the invoice; and (c) an invoice, in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with Article 4 (which may include preceding months), with all component charges and unit prices identified and all calculations used to arrive at invoiced amounts described in reasonable detail. Buyer shall pay the undisputed amount of such invoices on or before thirty (30) days after receipt of the invoice. If either the invoice date or payment date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Default Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Invoices may be sent by facsimile or e-mail.

6.2 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 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 6.2 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 any Party 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.

6.3 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, including any related damages calculated pursuant to Section 3.1(h), 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.

ARTICLE 7: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE. EXCEPT FOR A PARTY'S INDEMNITY OBLIGATION IN RESPECT OF THIRD PARTY CLAIMS OR AS OTHERWISE EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 11.2 (INDEMNITIES), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE 8: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Buyer Financial Information. If requested by Seller, Buyer shall deliver (i) within one hundred twenty (120) days following the end of each fiscal year, a copy of Buyer's annual report containing audited consolidated financial statements for such fiscal year and (ii) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Buyer's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; 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 Buyer diligently pursues the preparation, certification and delivery of the statements. Buyer shall be deemed to have satisfied such delivery requirement if the applicable report is publicly available.

8.2 Seller Financial Information. Seller shall provide the following financial information:

(a) If requested by Buyer, Seller shall deliver (i) within one hundred twenty (120) days following the end of each fiscal year, a copy of Seller's annual report containing audited consolidated financial statements for such fiscal year and (ii) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Seller's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; 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 Seller diligently pursues the preparation, certification and delivery of the statements.

(b) ***[If a Guaranty may be provided:*** If a Guaranty is provided and if requested by Buyer, Seller shall deliver (i) within one hundred twenty (120) days following the end of each fiscal year, a copy of Guarantor's annual report containing audited consolidated financial statements for such fiscal year and (ii) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Guarantor's quarterly report containing unaudited consolidated financial statements for such fiscal quarter certified by an officer of Guarantor. In all cases the statements shall be for the most recent accounting period and 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 Guarantor diligently pursues the preparation, certification and delivery of the statements. Seller shall be deemed to have satisfied such delivery requirement if the applicable report is publicly available.]

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent Seller delivers Performance Assurance hereunder, Seller hereby grants to Buyer 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, Buyer, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Buyer'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, Buyer 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 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 the 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.

8.4 Performance Assurance.

(a) ***[For Agreements with Delivery Terms greater than two years:*** CPUC Approval Security,] Development Period Security, Construction Period Security, Delivery Term Security. 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:

(i) ***[For Agreements with Delivery Terms greater than two years:*** 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 8.4(b)(i) below;]

(ii) Development Period Security in the amount of [_____] in the form of cash or a Letter of Credit [or a Guaranty] from ***[For Agreements with Delivery Terms greater than two years:*** the CPUC Approval Date] ***[For all other Agreements:*** the Execution Date of this Agreement] until the return date specified in Section 8.4(b)[(i)/(ii)] below;

(iii) 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 8.4(b)[(ii)/(iii)] below; and

(iv) 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 8.4(b)[(iii)/(iv)] below.

Except as set forth in Section 2.2 as it pertains to [***For Agreements with Delivery Terms greater than two years:*** the CPUC Approval Security and] the Development Period Security, any such Performance Assurance shall not be deemed a limitation of damages.

(b) Return of Performance Assurance.

(i) ***[For Agreements with Delivery Terms greater than two years:*** 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 2.4(b)(ii).

(ii) 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) termination of the Agreement under Section 2.4(b)(ii).

(iii) 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.

(iv) 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).

8.5 Interest on Cash. If Seller provides Performance Assurance in the form of cash, Buyer shall pay interest on such cash held as ***[For Agreements with Delivery Terms greater than two years:*** CPUC Approval Security,] Development Period Security, Construction Period Security, or Delivery Term Security, as applicable, at the Interest Rate. On or before each Interest Payment Date, Buyer shall transfer the sum of all accrued and unpaid Interest Amounts due to Seller for

such security in the form of cash by wire transfer to the bank account specified under "Wire Transfer" in the Cover Sheet.

8.6 Costs of Letter of Credit. If Seller provides Performance Assurance in the form of a Letter of Credit, in all cases, the reasonable costs and expenses of (including but not limited to the reasonable costs, expenses, and attorneys' fees, including reasonably allocated costs of in-house counsel of the Buyer) establishing, renewing, substituting, canceling, increasing and reducing the amount of (as the case may be) one or more Letters of Credit shall be borne by the Seller.

ARTICLE 9: GOVERNMENTAL CHARGES

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

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any governmental authority ("Governmental Charges") on or with respect to the Product or the transaction under this Agreement arising prior to and at the Delivery Point, including, but not limited to, ad valorem taxes and other taxes attributable to the Project, land, land rights or interests in land for the Project. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or the transaction under this Agreement from the Delivery Point. In the event Seller is required by Law or regulation 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 Law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct such amounts from payments to Seller with respect to payments under the Agreement; if Buyer elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse Buyer for such amounts upon request. 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.

ARTICLE 10: REPRESENTATIONS AND WARRANTIES; COVENANTS

10.1 General Representations and Warranties. On the Execution Date and the CP Satisfaction 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) it has all Governmental Approvals necessary for it to perform its obligations under this Agreement, except for as of the Execution Date (i) CPUC Approval in the case of Buyer, and (ii) all Governmental Approvals necessary to construct, operate and maintain the Project and related interconnection facilities in the case of Seller;

(c) the execution, delivery and performance of this Agreement is 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 applicable Law;

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

(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 becoming Bankrupt;

(f) 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 any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

(g) 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;

(h) 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; and

(i) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or the ability to make or take delivery of the Product as provided in this Agreement.

10.2 Seller Representations and Warranties.

(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.

(b) 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 CPUC Decision 08-08-028, and as may be

modified by subsequent decision of the CPUC 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.

(c) [*Include other appropriate representations, warranties, and covenants to satisfy the California RPS content category requirements.*]

10.3 Covenants.

(a) General Covenants. Each Party covenants that throughout the Delivery Term:

(i) it shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;

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

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

(iv) it shall not dispute its status as a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

(b) Seller Covenants.

(i) Seller covenants throughout the Delivery Term that it, or its permitted successors or assigns, shall maintain ownership of a fee, easement, long-term leasehold interest, or other similar asset ownership interest in the Project.

(ii) Seller covenants throughout the Delivery Term that it shall maintain market based rate authority from FERC to sell Product to Buyer under the terms of this Agreement.

(iii) If at any time during the Delivery Term, Seller's representations and warranties set forth in Section 10.2 become materially false or misleading, Seller covenants that it shall provide prompt Notice to Buyer describing such default along with a description of its efforts to cure such default.

(iv) [*Include other appropriate representations, warranties, and covenants to satisfy the California RPS content category requirements.*]

(v) [*Include other appropriate covenants regarding the use of contractors that may be diverse business enterprises.*]

ARTICLE 11: TITLE, RISK OF LOSS, INDEMNITIES

11.1 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to or at the Delivery Point.

11.2 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 under this Agreement up to and at the 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 Law, including without limitation the CAISO Tariff, (iv) any Governmental Charges for which Seller is responsible hereunder, or (v) 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 Delivery Point, (ii) the failure by Buyer to comply with applicable Law, including without limitation the CAISO Tariff, or (iii) 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.

ARTICLE 12: DISPUTE RESOLUTION

12.1 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 12. 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 12.

12.2 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.

(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

12.2(a) above, refuses or does not meet within the ten (10) Business Day period specified in Section 12.2(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.

12.3 Arbitration. Any dispute that cannot be resolved by management negotiations as set forth in Section 12.2 above shall be resolved through binding arbitration by a retired judge or justice from the [AAA][JAMS] panel conducted in San Diego, California, administered by and in accordance with [AAA's Commercial Arbitration Rules] [JAMS [Comprehensive][Streamlined] 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 [AAA's Commercial Arbitration Rules] [JAMS [Comprehensive][Streamlined] 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.

(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) 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.

(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 Section 13.1.

ARTICLE 13: MISCELLANEOUS

13.1 Confidentiality.

(a) 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 13.1(b) 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 subsection (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 13.1(a) ("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.

(b) RPS Confidentiality. Notwithstanding Section 13.1(a) of this Agreement, at any time on or after the date on which the Buyer 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, anticipated Commercial Operation Date, Contract Quantity, and Delivery Point.

(c) Publicity. Except as otherwise agreed to in this Section 13.1 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.

13.2 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 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.

13.3 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement including amounts of Delivered Energy or Scheduled Energy. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Default Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived except to the extent any misinformation was from a third party not Affiliated with any Party and such third party corrects its information after such twelve-month period. In addition, Buyer shall have the right, at its sole expense and during normal working hours, to examine the

records of Seller to the extent reasonably necessary to verify Seller's compliance with its representations and warranties set forth in Section 10.2.

13.4 Sarbanes-Oxley and SEC 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 may require access to information concerning Seller's organizational structure, including its debt/capital structure, as well as to 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 13.4(a)(iii) or any other provision of this Agreement.

(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 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.

13.5 Entire Agreement. This Agreement, together with the Cover Sheet and each and every appendix, attachment, amendment, schedule and any written supplements hereto, if any, between the Parties constitutes the entire agreement between the Parties.

13.6 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees.

13.7 Forward Contract. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code.

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

13.9 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.

13.10 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. Except to the extent provided for herein, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The headings used herein are for convenience and reference purposes only. This Agreement shall be binding on each Party's successors and permitted assigns.

13.11 Severability. If any provision in this Agreement is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement and the Parties

shall use their best efforts to modify this Agreement to give effect to the original intention of the Parties.

13.12 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.

13.13 Notices. Whenever this Agreement requires or permits delivery of a "Notice" (or requires a Party to "notify"), the Party with such right or obligation shall provide a written communication delivered personally, by a nationally recognized overnight courier, mailed by registered or certified mail (return receipt requested), or by facsimile or e-mail (if facsimile numbers or e-mail addresses are identified on the Cover Sheet or by subsequent Notice) to the receiving Party at the addresses identified on the Cover Sheet (or at such other addresses as such receiving Party shall identify by like Notice to the other Party); provided, however, that notices of Outages or other Scheduling or dispatch information or requests, shall be provided in accordance with the terms set forth in the relevant section of this Agreement. Invoices may be sent by facsimile or e-mail (if facsimile numbers or e-mail addresses are identified on the Cover Sheet or by subsequent Notice). A Notice delivered in accordance herewith shall be deemed received (i) on the date of delivery, if hand delivered, (ii) two Business Days after the date of sending, if sent by a nationally recognized overnight courier, or at such earlier time as is confirmed by the receiving Party, (iii) three Business Days after the date of mailing, if mailed by registered or certified mail, return receipt requested, or at such earlier time as is confirmed by the receiving Party, and (iv) on the Business Day on which such Notice was transmitted by facsimile transmission or e-mail (where permitted); provided, however, that a Notice delivered in accordance with this Section but received on any day other than a Business Day or after 5:00 p.m. in the place of receipt will be deemed received on the next Business Day. Each Party shall provide Notice to the other Party of the persons authorized to nominate and/or agree to a Schedule or Dispatch Order for the delivery or acceptance of the Product or make other Notices on behalf of such Party and specify the scope of their individual authority and responsibilities, and may change its designation of such persons from time to time in its sole discretion by providing Notice.

13.14 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. Pub. Util. Dist. No. 1 of Snohomish County, 128 S. Ct. 2733 (2008).

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

[_____]
a [_____]

By: _____
Name:_____
Title:_____

SAN DIEGO GAS & ELECTRIC COMPANY
a California corporation

By: _____
Name:_____
Title:_____

Exhibit A

PROJECT DESCRIPTION INCLUDING DESCRIPTION OF SITE

PROJECT DESCRIPTION

Project name _____

Project Site name: _____

Project physical address: _____

Total number of electric generating units at the Project (committed and not committed to Buyer) _____

Technology Type: _____

Substation:

The term "Site" as defined in the Agreement means the following parcel description upon which the Project is located:

Latitude and Longitude of Project:_____.

The nameplate capacity of the Project is _____.

The electric generating units utilized as generation assets as part of the Project are described below:

[INSERT MAP]

Exhibit B

MILESTONE SCHEDULE

	Date	*Project Name*
1.		Obtains control of all lands and rights-of-way comprising the Site.
2.		Files a CEC Pre-Certification and Verification application.
3.		Receives a completed [Phase I Interconnection Study Report] [interconnection feasibility study] and CAISO Deliverability Assessment Study Report. [***Omit if addressed by a Condition Precedent***]
4.		Receives a completed [Phase II Interconnection Study Report] [interconnection system impact study] and CAISO Deliverability Assessment Study report [***Omit if addressed by a Condition Precedent***]
5.		Files CEQA/NEPA application with appropriate agency(ies).
6.		Executes interconnection agreement and/or transmission agreement and receives FERC approval.
7.		Receives CEQA/NEPA approval/permit
8.		Executes an Engineering, Procurement and Construction ("EPC") contract.
9.		Delivers full NTP under EPC contract and begins construction of the Project.
10.		***[For Projects located in the CAISO:*** Executes Meter Service Agreement and Participating Generator Agreement. ***[For Projects located outside of the CAISO:*** Executes or causes to be executed all Pseudo Tie Agreements.***]***
11.		Delivers Energy to the Transmission Provider to which the Project is physically interconnected.
12.		Receives all Governmental Approvals necessary to achieve COD.
13.		Receives CEC Certification and Verification.

Exhibit C

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 Power Purchase Agreement between Beneficiary and Applicant dated _____ or under any transaction contemplated thereby (whether by failure to perform or pay any obligation thereunder or by occurrence of a "default", "event of default" or similar term as defined in such agreement, any other agreement between Beneficiary and Applicant, or otherwise). The amount due to Beneficiary is U.S. $_____."

or

2- Statement signed by a person purported to be an authorized representative of Beneficiary stating that: "[name of Applicant] ("Applicant") has forfeited all or part of its ***[For Agreements with Delivery Terms greater than two years:*** CPUC Approval Security or] Development Period Security as set forth and defined in the Power Purchase Agreement between Beneficiary and Applicant dated _____. The amount due to Beneficiary, whether or not a default has occurred, is U.S. $_____."

or

3- Statement signed by a person purported to be an authorized representative of Beneficiary stating that: "as of the close of business on [insert date, which is less than 60 days prior to the expiration date of the Letter of Credit] you have provided written

notice to us indicating your election not to permit extension of this Letter of Credit beyond its current expiry date. The amount due to Beneficiary, whether or not a default has occurred, is U.S. $_____."

Special Conditions:

- All costs and banking charges pertaining to this Letter of Credit are for the account of Applicant.

- Partial and multiple drawings are permitted.

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

This Letter of Credit expires on _____ at our counters.

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

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

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

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

govern. Matters not covered by the UCP shall be governed and construed in accordance with the laws of the State of California.

[Name of Bank]

_____
Authorized Signature(s)

Exhibit D

FORM OF GUARANTY

GUARANTY

In consideration of San Diego Gas & Electric Company ("Company") entering into a power purchase agreement with [NAME OF COUNTERPARTY] (hereinafter referred to as "Applicant"), [NAME OF GUARANTOR], a [TYPE OF LEGAL ENTITY i.e. California corporation], (hereinafter referred to as "Guarantor") agrees with Company as follows:

1. The term "Obligations" shall mean all obligations, liabilities and indebtedness of any kind whatsoever arising in connection with _____ or arising in connection with or under any security agreement or other agreement between the Company and Applicant. The amount of Obligations existing from time to time shall be calculated after giving effect to all contractual netting arrangements between Applicant and the Company.

2. Guarantor unconditionally and irrevocably guarantees to Company the full, prompt and faithful payment and performance when due of each and all of the Obligations.

3. This is a continuing guaranty relating to the Obligations. Guarantor acknowledges that there is a continuing consideration to Guarantor for this Guaranty and therefore Guarantor waives and relinquishes the right to revoke or terminate this Guaranty as provided in California Civil Code Section 2815.

4. Any of the Obligations may be amended, modified, waived, or increased (whether or not beyond any dollar limitation hereunder), further agreements may be entered into between Company and Applicant, Company may provide additional goods or services or credit to Applicant or increase or decrease the dollar value of such goods, services or credit, and further obligations (including, without limitation, the provision or pledging of security to Company for any obligation), indebtedness and liabilities may be entered into or incurred from time to time by Applicant and without further authorization from or notice to Guarantor and no such action shall terminate, release, impair, reduce, discharge, diminish or in any way affect any of the obligations of Guarantor hereunder or any security furnished by Guarantor or give Guarantor any recourse or defense against Company. Company need not inquire into the power of Applicant or the authority of its officers, directors, partners or agents acting or purporting to act in its behalf.

5. With respect to all Obligations, this is a guaranty of payment and performance and not of collection, and Guarantor waives and agrees not to assert or take advantage of:

(a) any right to require Company to proceed against Applicant or any other person or to resort to, proceed against or exhaust any security held by it at any time or to pursue any other remedy in its power before proceeding against any Guarantor;

(b) demand, presentment, protest and notice of any kind including, without limiting the generality of the foregoing, notice of nonperformance, protest, dishonor and acceptance of this Guaranty, notice under Section 9611 of the California Commercial Code, and

notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of Applicant, Company, a guarantor under this or any other instrument, or creditor of Applicant or any other person whomsoever, in connection with any of the Obligations or any collateral for any of the Obligations or in connection with any of the Obligations; and

(c) any suretyship defenses and suretyship rights of every nature otherwise available under California law and the laws of any other state or jurisdiction, including, without limitation, all defenses and rights arising under Sections 2787 through 2855 of the California Civil Code (the "Suretyship Provisions") and any successor provisions to those Sections. Without limiting the generality of the foregoing, Guarantor acknowledges his, her or its understanding that the Suretyship Provisions provide various partial or complete defenses to the recovery by Company from Guarantor and/or grant Guarantor rights the enforcement of which could reduce or eliminate entirely Guarantor's liability hereunder to Company. Among the defenses and rights contained in the Suretyship Provisions are the following: (1) Section 2809 of the Civil Code, which provides, in part, that the obligation of a surety must not be either larger in amount or in other respects more burdensome than that of the principal; (2) Section 2810 of the Civil Code, which provides, in part, that a surety is not liable if for any reason other than the mere personal disability of the principal there is no liability upon the part of the principal at the time of execution of the contract, or the liability of the principal thereafter ceases; (3) Section 2819 of the Civil Code, which provides, in part, that a surety is exonerated if the creditor alters the original obligation of the principal without the consent of the surety; (4) Section 2845 of the Civil Code, which provides, in part, that a surety is exonerated to the extent that the creditor fails to proceed against the principal, or to pursue any other remedy in the creditor's power which the surety cannot pursue and which would lighten the surety's burden; (5) Section 2846 of the Civil Code, which provides that a surety may compel his principal to perform the obligation when due; (6) Section 2847 of the Civil Code, which provides, in part, that if a surety satisfies the principal obligation, or any part thereof, the principal is obligated to reimburse the surety for the amounts paid by the surety; (7) Section 2848 of the Civil Code, which provides, in part, that a surety, upon satisfaction of the obligation of the principal is entitled to enforce remedies which the creditor then has against the principal; (8) Section 2849 of the Civil Code, which provides, in part, that a surety is entitled to the benefit of security held by the creditor for the performance of the principal obligation held by the creditor; (9) Section 2850 of the Civil Code, which provides, in part, that whenever the property of a surety is hypothecated with property of the principal, the surety is entitled to have the property of the principal first applied to the discharge of the obligation; and (10) Section 2822 of the Civil Code, which provides, in part, for a right to have the principal designate the portion of any obligation to be satisfied by the surety in the event that the principal provides partial satisfaction of such obligation.

6. All existing and future indebtedness of Applicant to Guarantor ("Intercompany Obligations") is subordinated to all Obligations hereby guaranteed. All of Guarantor's right, title and interest in and to the Intercompany Obligations and rights to receive any payments of the Intercompany Obligations are hereby granted and assigned to Company as continuing security for the Obligations hereby guaranteed, and, in the event of any default in the payment of any of the Obligations when due and until the Obligations guaranteed hereby have been paid in full (a) at the Company's request, Applicant shall forthwith pay to the Company all or any part of such Intercompany Obligations and any capital which Guarantor is entitled to withdraw until all of the

Obligations guaranteed hereby have been paid in full, and (b) Guarantor shall pay to Company immediately any payments of such Intercompany Obligations received by Guarantor.

7. Guarantor agrees to pay all attorneys' fees (including without limitation, reasonably allocated fees of in-house counsel) and all other costs and expenses which may be incurred by Company in the enforcement of this Guaranty against Guarantor.

8. This Guaranty is not assignable by Guarantor without Company's consent. This Guaranty shall inure to the benefit of Company and its successors and assigns, including the assignees of any Obligations, and bind the heirs, executors, administrators, successors and permitted (if any) assigns of Guarantor. This Guaranty is assignable by Company with respect to all or any portion of the Obligations, and when so assigned Guarantor shall be liable to the assignees under this Guaranty without in any manner affecting the liability of Guarantor hereunder with respect to any Obligations retained by Company.

9. This Guaranty shall be governed by and construed in accordance with the laws of the State of California, without reference to its choice of law provisions. Guarantor hereby irrevocably and unconditionally agrees that any legal action or proceeding against Guarantor or any of Guarantor's property with respect to this Guaranty may 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, as Company may elect, and by executing and delivering this Guaranty Guarantor hereby submits to and accepts with regard to any such action or proceeding for himself, herself or itself and in respect of his, her or its property, generally, irrevocably and unconditionally, the jurisdiction of the above mentioned courts. Guarantor hereby irrevocably appoints the Secretary of State of the State of California as his, her or its agent for service of process in any suit or proceeding if the Guarantor is located outside the State of California at the time of service or cannot reasonably be located by Company. The foregoing, however, shall not limit the right of Company as it may elect to bring any legal action or proceeding or to obtain execution of judgment in any other appropriate jurisdiction including but not limited to any other jurisdiction in which Guarantor or his, her or its property is located.

10. Except as provided in any other written agreement now or at any time hereafter in force between Company and Guarantor, this Guaranty shall constitute the entire agreement of Guarantor with Company with respect to the subject matter hereof and no representation, understanding, promise or condition concerning the subject matter hereof shall be binding upon Company unless expressed herein.

11. All notices, demands, requests and other communications required or permitted hereunder shall be in writing and shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, or by reliable overnight courier to the address of the Company set forth below (or to such new address as Company may designate hereafter in a notice to Guarantor) in the case of a communication to the Company and to the address appearing next to Guarantor's signature on this Guaranty (or to such new address as Guarantor may designate hereafter in a notice to Company) in the case of a communication to Guarantor. Any notice served personally shall be deemed delivered upon receipt, and any notice served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on

the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier.

San Diego Gas & Electric Company
555 W. Fifth Street
Attn: Major Markets 18A3, Credit Manager
Los Angeles, CA 90013
Fax No.: (213) 244-8316

12. Until all of the Obligations guaranteed hereby have been satisfied in full, Guarantor shall have no right of subrogation or reimbursement from the Applicant which Guarantor may have as a result of any payment by Guarantor under this Guaranty, and waives any right to enforce any remedy which Company now has or may hereafter have against the Applicant as a result of such payment by Guarantor under this Guaranty and waives any right under section 2849 of the California Civil Code and any other benefit of or right to participate in any security now or hereafter held by Company.

13. All amounts payable by Guarantor hereunder shall be paid without set-off or counterclaim and without any deduction or withholding whatsoever unless and to the extent that Guarantor shall be prohibited by law from doing so, in which case Guarantor shall pay to Company such additional amount as shall be necessary to ensure that Company receives the full amount it would have received if no such deduction or withholding had been made.

14. If any portion of this Guaranty is held to be unenforceable by a court of competent jurisdiction, the remainder of this Guaranty shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned Guarantor has executed this Guaranty on [MONTH AND DAY], [YEAR].

GUARANTOR:
[NAME OF GUARANTOR]

_____
Signature

_____
Title

_____
Printed Name of Person Signing for
Guarantor

_____
Guarantor's Address

_____
City, State, Zip

_____
Guarantor's Phone No.

Exhibit E

COMMERCIAL OPERATION CERTIFICATE

The undersigned, _____ ("EPC Contractor"), _____ ("Renewable Generation Equipment Supplier"), _____ ("Licensed Professional Engineer") and [_____] ("Owner") make the following certifications to San Diego Gas & Electric Company ("SDG&E"), dated as of _____. All capitalized terms not otherwise defined herein shall have the meaning given to them in the Power Purchase Agreement dated _____ between Owner and SDG&E (the "Agreement").

Renewable Generation Equipment Supplier hereby certifies that:

1. The [_____] comprising the Project have been erected and installed at the project site and have been commissioned as required under the Supply and Installation Agreement ("[_____] Supply Agreement") dated as of _____, by and between Renewable Generation Equipment Supplier and Owner and each such [_____] has passed the performance testing required to be performed pursuant to the [_____] Supply Agreement.

2. The Warranty Period under the Warranty Agreement ("Warranty Agreement") dated as of _____, by and between Renewable Generation Equipment Supplier and Owner has commenced.

EPC Contractor hereby certifies that:

All requirements necessary to achieve [Commercial Operation/Substantial Completion] as set forth in the agreement between the EPC Contractor and Owner dated _____ ("EPC Contract") have been completed and the Project has successfully passed all performance tests at a level that demonstrates satisfaction of at least the [minimum performance guarantees].

Owner hereby certifies that:

1. Except for punch list items that would not materially affect the performance, reliability or safe operation of the Project, the Project has been completed in accordance with all applicable specifications and is ready for continuous commercial operation in compliance with all applicable laws and governmental approvals. The Project has successfully passed all performance tests at a level that demonstrates satisfaction of at least the [insert minimum performance guarantees], and complete test reports have been submitted to Buyer.

2. The Operation and Maintenance Agreement (O&M Agreement), by and between Owner and _____ dated as of _____ has commenced.

3. Owner has a valid leasehold or real property interest in the Project Site for a term of at least [___] years from the Commercial Operation date.

4. The interconnection facilities have been completed in accordance with applicable specifications, tariffs, laws and governmental approvals to enable power generated by the Project to be received at the Delivery Point.

5. Owner has obtained all governmental approvals necessary for the continuous commercial operation of the Project and the Project is in compliance with all such governmental approvals and all other applicable laws.

6. The Contract Capacity of the Project is [___] MWac and [___] MWdc at [_____] conditions.

Licensed Professional Engineer certifies that:

1. We have read the Agreement, the [_____] Supply Contract, and the EPC Contract and we understand the requirements for Commercial Operation under the Agreement, the specifications and performance testing requirements under the [_____] Supply Contract, and the requirements for [Commercial Operation/Substantial Completion] under the EPC Contract.

2. We have reviewed the material and data made available to us by the Owner, the Renewable Generation Equipment Supplier, and the EPC Contractor for the Project.

3. To the extent practical, we have reviewed the engineering, procurement, construction and performance testing for the Project and in the course of this review we have not discovered any material errors or omissions in the work performed to date.

4. We have reviewed the certificates of Owner, Renewable Generation Equipment Supplier, and EPC Contractor above, and find the representations provided to be correct in all material respects.

5. We have reviewed all Governmental Approvals and permits identified by the Owner as being required for the construction and operation of the Project and are of the opinion that the Project as completed is in compliance in all material respects with the environmental and technical requirements contained therein.

6. Based on our review of the aforementioned information and of information provided to us by others which we have not independently verified, we are of the opinion that, as of, Commercial Operation has occurred as defined in the Agreement.

Executed this ___ day of ___, 200_

RENEWABLE GENERATION EQUIPMENT SUPPLIER
[*Name of Renewable Generation Equipment Supplier*]
a _____ corporation

By:_____
Name:
Title:

EPC CONTRACTOR
[*Name of EPC Contractor*]
a _____ corporation

By:_____
Name:
Title:

OWNER
[*Name of Owner*]
a _____ limited liability company

By:_____
Name:
Title:

LICENSED PROFESSIONAL ENGINEER:
[*Name of* Licensed Professional Engineer]
a _____

By:_____
Name:
Title:

ACCEPTED BY SAN DIEGO GAS & ELECTRIC COMPANY

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

Exhibit F

FORM OF QUARTERLY PROGRESS REPORT

Quarterly Progress Report
of
[_____]

("Seller")

provided to
San Diego Gas & Electric Company

[Date]

Table of Contents

[Insert Table of Contents]

1.0 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 Power Purchase Agreement by and between _____ ("Seller") and San Diego Gas & Electric Company dated _____ __, ____ (the "Agreement").

Seller shall review the status of each significant element of the Project schedule and Seller shall identify such matters referenced in clauses (i)-(v) below as known to Seller and which in Seller's reasonable judgment are expected to adversely affect the Project or the Project 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 Governmental Approval, or compliance therewith, with respect to which there is an actual or threatened dispute over the interpretation of a law or regulation, actual or threatened opposition to the granting of a necessary Governmental Approval, any organized public opposition, any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, or in each case which could reasonably be expected to materially threaten or prevent financing of the Project, attaining any Condition or Milestone, or obtaining any contemplated agreements with other parties which are necessary for attaining any Condition or Milestone or which otherwise reasonably could be expected to materially threaten Seller's ability to attain any Condition or Milestone;

(ii) Any development or event in the financial markets or the independent power industry, any change in taxation or accounting standards or practices or in Seller's business or prospects which reasonably could be expected to materially threaten financing of the Project, attainment of any Condition or Milestone or materially threaten any contemplated agreements with other parties which are necessary for attaining any Condition or Milestone or could otherwise reasonably be expected to materially threaten Seller's ability to attain any Condition or Milestone;

(iii) 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 attain any Condition or Milestone;

(iv) Any material change in the Seller's schedule for initiating or completing any material aspect of Project;

(v) The status of any matter or issue identified as outstanding in any prior Quarterly 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 Quarter Quarterly Progress Report to [_____], together with all attachments and exhibits, with [3] copies of the Report delivered to [_____] and [_____].

2.0 Executive Summary.

2.1 Major activities to be performed for each aspect of the Project during the current calendar quarter.

Please provide a brief summary of the Major[2] activities to be performed for each of the following aspects of the Project during the current calendar quarter:

2.1.1 Design

2.1.2 Engineering

2.1.3 Major Equipment procurement

2.1.4 Construction

2.1.5 Milestone report

2.1.6 Permitting (See Section 3.0)

2.2 Major activities scheduled to be performed in the previous calendar quarter but not completed as scheduled.

Please provide a brief summary of the Major activities which were scheduled to be performed in the previous calendar quarter and their status, including those activities that were not completed as scheduled:

2.2.1 Design

2.2.2 Engineering

2.2.3 Major Equipment procurement

2.2.4 Construction

2.2.5 Milestone report

2.2.6 Permitting

[2] 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 Facility 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.

3.0 Permitting.

The following describes each of the major Governmental Approvals required for the construction of the Project and the status of each:

3.1 State and/or federal Governmental Approvals.

Please describe each of the Major state and/or federal Governmental Approval (including the Permit to Construct issued by the San Diego County Air Pollution Control District) to be obtained by Seller (or EPC Contractor) and the status of each.

DESCRIPTION	STATUS

3.2 Local and/or county Governmental Approvals.

Please describe each of the Major local and/or county Governmental Approvals to be obtained by Seller and the status of each.

DESCRIPTION	STATUS

3.3 Permitting activities which occurred during the previous calendar quarter.

Please list all permitting activities which occurred during the previous calendar quarter.

3.4 Permitting activities occurring during the current calendar quarter.

Please list all permitting activities which are expected to occur during the current calendar quarter.

3.5 Permitting Notices received from EPC Contractor.

Please attach to this Quarterly Progress Report copies of any notices related to permitting activities received from EPC Contractor during the previous calendar quarter.

4.0 Design Activities.

4.1 Table of design schedule to be followed by Seller and its subcontractors.

The following table lists the design schedule to be followed by Seller and its subcontractors.

ACTIVITY	CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

4.2 Design activities to be performed during the current calendar quarter.

Please explain in detail the design activities which are expected to be performed during the current calendar quarter.

4.3 Table of design activities completed during the previous calendar quarter.

Please explain in detail the design activities which were completed during the previous calendar quarter.

5.0 Engineering Activities.

5.1 Table of engineering schedule to be followed by Seller and its subcontractors.

The following table lists the engineering schedule to be followed by Seller and its subcontractors:

ACTIVITY	CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

5.2 Engineering activities to be performed during the current calendar quarter.

Please explain in detail the engineering activities which are expected to be performed during the current calendar quarter.

5.3 Engineering activities completed during the previous calendar month.

Please explain in detail the engineering activities which were completed during the previous calendar quarter.

5.4 Three-month look-ahead engineering schedule.

Please provide a three-month look ahead engineering schedule.

6.0 Major Equipment Procurement.

6.1 Table of major equipment to be procured by Seller and its subcontractors.

The following table lists major equipment to be procured by Seller and its subcontractors:

EQUIPMENT DESCRIPTION	MANUFACTURER	MODEL	CONTRACTED DELIVERY DATE	ACTUAL DELIVERY DATE	PROJECTED INSTALLATION DATE	ACTUAL INSTALLATION DATE

6.2 Major Equipment procurement activities to be performed during the current calendar quarter.

Please explain in detail the major equipment procurement activities which are expected to be performed during the current calendar quarter.

6.3 Major Equipment procurement activities completed during the previous calendar quarter.

Please explain in detail the major equipment procurement activities which were completed during the previous calendar quarter.

7.0 Construction Activities.

7.1 Table of construction activities to be performed by Seller and its subcontractors.

The following tables lists construction activities to be performed by Seller and its subcontractors:

ACTIVITY	CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE
Civil Progress			
Structural Progress			
[Steam] Generator Progress			
Piping Progress			
IC and Electrical Progress			
Subcontractor Progress			

7.2 Construction activities to be performed during the current calendar quarter.

Please explain in detail the construction activities which are expected to be performed during the current calendar quarter.

7.3 Construction activities completed during the previous calendar quarter.

Please explain in detail the construction activities which are expected to be performed during the previous calendar quarter.

7.4 EPC Contractor Monthly Progress Report.

Please attach a copy of the Monthly Progress Reports received during the previous calendar quarter from the EPC Contractor pursuant to the EPC Contract, certified by the EPC Contractor as being true and correct as of the date issued.

7.5 Three-month look-ahead construction schedule.

Please provide a three-month look ahead construction schedule.

8.0 Milestones.

8.1 Milestone schedule.

Please state the status and progress of each Milestone and identify any completed Milestone(s) for the previous calendar quarter.

8.2 Remedial Action Plan (applicable if Seller fails to achieve Milestone by the Milestone Date).

Please explain in detail each of the following aspects of Seller's remedial action plan:

8.2.1 Missed Milestone

8.2.2 Plans to achieve missed Milestone

8.2.3 Plans to achieve subsequent Milestone

8.2.4 Delays in engineering schedule

Please explain in detail any delays beyond the scheduled Milestone Dates stated in Section 5.1, any impact from the delays on the engineering schedule, and Seller's plans to remedy such impact.

8.2.5 Delays in Major Equipment procurement

Please explain in detail any delays beyond the contracted delivery date and/or the projected installation date stated in Section 6.1, any impact from the delays on Major Equipment procurement schedule, and Seller's plans to remedy such impact.

8.2.6 Delays in construction schedule

Please explain in detail any delays beyond the scheduled completion dates stated in Section 7.1, any impact from the delays on the construction schedule, and Seller's plans to remedy such impact.

9.0 Safety and Health Reports

9.1 Please list all accidents from the previous calendar quarter:

9.2 Any work stoppage from the previous calendar quarter:

9.3 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 Seller's Quarterly 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:_____

RPS Project Development Status Report

Project Name
Date

Date of Latest Construction Progress Report from Counterparty:	
Project Owner/Counterparty:	
Technology:	
Capacity (MW):	Annual Energy (GWh/year):
On-Line Date:	Term/Duration (years):
Construction Start Date:	Point of Delivery:
Location:	

Status At-A-Glance

The below to be filled in w/ either: Completed, Acceptable, Unknown, or Concern. See Section B for a description of milestones. When the answer is "Concern" the milestone should be flagged with a notation number where additional detail is provided in Section A.

Milestones	Status	Initial Completion Date	Projected Completion Date
Fuel/Resource Supply:			
Financing:			
Corporate Financing			
Project Financing			
Site Control (100%):			
Permitting:			
Engineering:			
Major Equipment Procurement:			
Construction:			
Startup Testing and Commissioning:			
Transmission:			

Transmission - Detail (see Section C)
Dependent Transmission Upgrade(s):
Scheduled Completion:
Point of Interconnection:
Early Interconnection:
Gen-Tie Length:
Gen-Tie Voltage:
ISO Queue Position:
Feasibility Study (FS):
System Impact Study (SIS):
Facilities Study (FAS):
Remedial Action Plan:
Additional Comments:
Date of Preparation:

Exhibit G

OUTAGE NOTIFICATION FORM

OUTAGE NOTIFICATION FORM

This form may be used to comply with CAISO's outage notification requirements for both planned and forced outages. Report outages as soon as possible by submitting form via email to TSched@SempraUtilities.com or via fax at (858) 650-6191.

Request Type:

New Scheduled Maintenance Outage

Previous Notification (if applicable)

Date Sent: mm/dd/yyyy
Time Sent: hh:mm

Generator Name:
Location Code:
Address:

Contact Name:
Phone Number:
Email:

Alternate Name:
Alternate Number:
Email:

(For times, use 24hr format)

Today's Date: mm/dd/yyyy
Current Time: hh:mm

Outage Start Date: mm/dd/yyyy
Outage Start Time: hh:mm

Outage End Date: mm/dd/yyyy
Outage End Time: hh:mm

Outage Duration:
MW Available During Outage:
MW Unavailable During Outage:
RMR Unit? Yes/No

System (Select One)

- (●) Boiler — Codes 0010-1999
- ( ) Generator — Codes 4500-4899
- ( ) Regulatory, Safety, Environmental — Codes 9504-9720
- ( ) Balance of Plant — Codes 3110-3999
- ( ) Pollution Control Equipment — Codes 8000-8835
- ( ) Others — Codes 9900-9999
- ( ) Steam Turbine — Codes 4000-4499
- ( ) External — Codes 9000-9040

Cause Code Ranges / Affected Component

(Select One)

Cause Code / Component Problem

(Select One)

Comments

Exhibit H

PROJECT OPERATING RESTRICTIONS

Operational characteristics of the Project must be equal to or greater than the resource flexibility reflected in the resource Master File, as such term is defined in the CAISO Tariff. Buyer may request that CAISO modify the Master File for the Project to reflect the findings of a CAISO audit of the Project and to ensure that the information provided by Seller is true and accurate. Seller agrees to coordinate with Buyer and any third party Scheduling Coordinator to ensure all information provided to the CAISO regarding the operational and technical constraints in the Master File for the Project are accurate and are actually based on physical characteristics of the resource. The Parties agree to make reasonable modifications to this Exhibit H to modify existing operating restrictions or add additional operating restrictions that may be necessary to address changes in the CAISO Tariff or applicable Law applicable to the Products provided from this Project.

- Nameplate capacity of the Project: ____MW
- Minimum operating capacity: ____MW
- Advance notification required for a Dispatch Notice: ____
- Ramp Rate: ____MW/minute

CONFIRMATION LETTER FOR BILATERAL IMPORT CAPABILITY TRANSFER BETWEEN SAN DIEGO GAS & ELECTRIC ("PARTY A") AND SOUTHERN CALIFORNIA EDISON COMPANY ("PARTY B")

This confirmation letter ("Confirmation") confirms the Transaction between Party A ("Seller") and Party B ("Buyer"), which becomes effective on the date fully executed by both Parties (the "Confirmation Effective 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 is governed by the Master Power Purchase and Sale Agreement between the Parties, effective as of October 30, 2019, together with the Cover Sheet, the Collateral Annex and Paragraph 10 to the Collateral Annex, and any other annexes thereto (collectively, as amended, restated, supplemented, or otherwise modified from time to time, the "Master Agreement"). The Master Agreement and this Confirmation are collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings specified for such terms in the Master Agreement or the Tariff (defined below), as applicable. Section references herein are to this Confirmation unless otherwise noted.

1. Definitions

1.1 "Bilateral Import Capability Transfer" is the transfer of Remaining Import Capability from one Market Participant to another, as defined and described in the Tariff.

1.2 "Buyer" has the meaning specified in the introductory paragraph.

1.3 "CAISO" means the California Independent System Operator Corporation, or any successor entity performing substantially the same functions.

1.4 "CIRA" means the CAISO Customer Interface for Resource Adequacy.

1.5 "CIRA System Failure" means a disruption in transfer of Product caused solely by the CIRA System that is not within the control of, or the result of the negligence of, either Party and which could not have been avoided by the exercise of due diligence.

1.6 "Confirmation" has the meaning specified in the introductory paragraph.

1.7 "Confirmation Effective Date" has the meaning specified in the introductory paragraph of this Confirmation.

1.8 "Contract Month" has the meaning set forth in Section 3.3 of this Confirmation.

1.9 "Contract Price" means the price, expressed in dollars per kW-month, specified for each Contract Month as set forth in the Contract Price Table in Section 4.1.

1.10 "Contract Quantity" means, with respect to the Contract Month, the amount of Product, expressed in MW set forth in the Contract Quantity Table in Section 3.3.

1.11 "Contract Term" has the meaning set forth in Section 2.1.

1.12 "CPUC" means the California Public Utilities Commission.

1.13 "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. This definition does not include "market participant" as defined in the CAISO's Business Practice Manual for Definitions and Acronyms as published on the CAISO website.

1.14 "Master Agreement" has the meaning specified in the introductory paragraph of this Confirmation.

1.15 "One-Time Payment" has the meaning specified in Section 4.1 of this Confirmation.

1.16 "Procurement Review Group" has the meaning set forth in CPUC Decision D. 02-08-071.

1.17 "Product" has the meaning specified in Section 3.1 of this Confirmation.

1.18 "Remaining Import Capability" means the quantity in MW of Total Import Capability assigned to a Load Serving Entity up to its Load Share Quantity after the assignment of Existing Contract Import Capability and Pre-RA Import Commitment Capability.

1.19 "Scheduling Coordinator" has the meaning set forth in the Tariff.

1.20 "Seller" has the meaning specified in the introductory paragraph of this Confirmation.

1.21 "Tariff" means the Fifth Replacement FERC Electric Tariff and the associated CAISO protocol provisions, including any current CAISO-published "Operating Procedures" and "Business Practice Manuals," in each case as amended or supplemented from time to time.

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 last Contract Month or (b) the date the Parties' obligations under the Agreement have been fulfilled.

2.2 Binding Nature

This Agreement shall be effective and binding as of the Confirmation Effective Date.

3. Transaction

3.1 Product

Seller shall transfer to Buyer, in the manner set forth in Section 3.3, the Remaining Import Capability (the "Product") corresponding to the Contract Quantity, for each day in each Contract Month, and at the applicable Contract Price.

3.2 Delivery Point

Branch Group	**Bilateral Import Capability Transfer**

CAISO BG/MSL Name	PALOVRDE_ITC
CAISO BG/MSL Name	MALIN500_ISL

3.3 Delivery of Product

Seller shall transfer to Buyer, within five (5) Business Days following receipt of the One Time Payment, the Product in the amount of the Contract Quantity for the Contract Month(s) by registering the transfer with the CAISO as a Bilateral Import Capability Transfer, and completing any other action or documentation required by the CAISO to effect such transfer.

Contract Quantity: Seller shall transfer the Contract Quantity for each of the following months (each a "Contract Month"):

Contract Quantity Table

Contract Month Reference	Contract Month and Year	Contract Quantity (MW)	Delivery Point	SCID of Benefitting LSE (Buyer to fill out)
June	June 2024	51	PALOVRDE_ITC	
June	June 2024	25	MALIN500_ISL	

3.4 Buyer's Re-Sale of Product

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

4. Payment

4.1 One-Time Payment

Buyer shall make a One-Time Payment for the Product. The One-Time Payment is to be received by Seller within five (5) Business Days following the Confirmation Effective Date. The Parties understand and agree that the One-Time Payment shall be paid by Buyer in advance of the applicable Contract Month(s) and that the payment of such One-Time Payment when due and payable hereunder shall be a condition to Seller's obligation to deliver Product in respect of such Contract Month(s). This "One Time Payment" is defined and calculated as follows:

$$\text{One-Time Payment} = \sum_{i=1}^{k}(A_i \text{ x } B_i \text{ x } 1{,}000)$$

where: A_i = Contract Price i (in \$/kW-month) for Contract Month i

B_i = Contract Quantity i (in MW) transferred by Seller for Contract Month i

k = *Count of Contract Months*

The One-Time Payment shall be rounded to two decimal places.

CONTRACT PRICE TABLE

Contract Month Reference	Contract Month and Year	Contract Quantity (MW)	Delivery Point	Contract Price ($/kW-month)
June	June 2024	51	PALOVRDE_ITC	$3.00
June	June 2024	25	MALIN500_ISL	$1.50

5. CIRA System Failure

5.1 If a Party is unable to transfer or receive Product due to a CIRA System Failure, the affected Party shall, within two (2) Business Days from its discovery of the CIRA System Failure, provide the other Party with Notice and full details identifying the cause of the CIRA System Failure. Each Party shall use reasonable efforts to cause transfer or receipt of the Product.

5.2 Neither Party's failure to transfer or receive Product due solely to a CIRA System Failure constitutes an Event of Default or failure to deliver Product. In no event shall Buyer be obligated to pay for Product that it does not receive, nor shall Seller be required to pay damages to Buyer pursuant to Section 6.1, due solely to a CIRA System Failure.

6. Damages for Failure to Deliver Product

If Seller fails to transfer to Buyer the Contract Quantity for any Contract Month in accordance with Section 3.3, then with respect to such Contract Month, Seller shall pay to Buyer damages in the amount of set forth in this Article Six as follows in lieu of damages specified in Section 4.1 of the Master Agreement:

For each Contract Month for which the Buyer has made a payment to Seller in accordance with Section 4.1 of this Confirmation, Seller shall pay to Buyer damages in the amount equal to (x) the applicable Contract Price multiplied by (y) the amount of Contract Quantity not delivered by Seller for that Contract Month, multiplied by (z) 1,000 kw/MW, for each Contract Month that Product was not transferred.

7. Confidentiality

Notwithstanding Section 10.11 of the Master Agreement, the Parties may disclose all terms and conditions of this Transaction to any Governmental Body, the CPUC, CAISO, and the Procurement Review Group; 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 Scheduling Coordinator to further disclose such information. Notwithstanding the foregoing, the Parties may disclose the terms of this Confirmation to the CAISO to effectuate Seller's delivery of product and the transfer of the Product and the CAISO may publicly disclose the transfer of the Product from Seller to Buyer as indicated in the Tariff promptly following Seller's delivery of Product. In addition, if 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, other than the Contract Price.

8. Collateral Requirements

Notwithstanding anything in the Master Agreement to the contrary, Performance Assurance shall not be required from either Party in connection with this Transaction.

9. Counterparts

This Confirmation may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered by electronic mail (including pdf or any electronic signature complying with the federal ESIGN Act of 2000, California's Uniform Electronic Transactions Act (Cal. Civ. Code Section 1633.1, et seq.) or other applicable law) or other transmission method and any counterpart so delivered shall have the same legal effect as an original.

[*Signature page follows*]

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

SAN DIEGO GAS & ELECTRIC COMPANY		**SOUTHERN CALIFORNIA EDISON COMPANY**	
By:	_____	By:	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____

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 _____, 2023 (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:
San Diego Gas & Electric Company
8315 Century Park Court CP 21D
San Diego CA 92123-1593
Attn: Contract Administration
Telephone: (858) 650-6176
Duns: 006911457
Federal Tax ID Number: 95-1184800

Name: Party B / Buyer

All Notices:
< company name >
< street address >
< city/state/zip >

Attn: _____
Telephone: (___) ___-____
Facsimile: (___) ___-____
Duns: _____
Federal Tax ID Number: _____

Invoices:
San Diego Gas & Electric Company
8315 Century Park Court
San Diego CA 92123-1593
Attn: Energy Accounting Manager
Telephone: (858) 650-6177

Invoices:
< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: (___) ___-____
Facsimile: (___) ___-____

Scheduling:
San Diego Gas & Electric Company
8315 Century Park Court, CP 21D
San Diego, CA 92123-1593
Attn: Transaction Scheduling Manager
Day Ahead: (858) 650-6168
Real Time: (858) 650-6160

Scheduling:
< company name >
< street address >
< city/state/zip >
Attn: _____
Day Ahead: (___) ___-____
Real Time: (___) ___-____
Facsimile: (___) ___-____

Payments: San Diego Gas & Electric Company 8315 Century Park Court San Diego CA 92123-1593 Attn: Energy Accounting Manager Telephone: (858) 650-6177	**Payments:** < company name > < street address > < city/state/zip > Attn: _____ Telephone: (___) ___-____ Facsimile: (___) ___-____
Wire Transfer: Union Bank of California 445 South Figueroa Street Los Angeles CA 90071 ABA Routing Number: 122000496 Payee: San Diego Gas & Electric Company Account Number: 4430000352 Confirmation: SDG&E – Major Markets	**Wire Transfer:** < bank street address > < bank city/state/zip > ABA Routing Number: _____ Payee: _____ Account Number: _____ Confirmation: _____ Facsimile: (___) ___-____
Credit and Collections: San Diego Gas & Electric Company 8315 Century Park Court CP 21CSan Diego, CA 92123 Attn: Energy Risk Manager Telephone: (858) 650-6190 Email: sdge_mmcredit@sdge.com	**Credit and Collections:** < company name > < street address > < city/state/zip > Attn: _____ Telephone: (___) ___-____ Facsimile: (___) ___-____
With additional Notices of an Event of Default or Potential Event of Default to: San Diego Gas & Electric Company 8330 Century Park Ct. San Diego, California 92123 Attn: General Counsel Telephone: (858) 650-6141	**With additional Notices of an Event of Default or Potential Event of Default to:** < company name > < street address > < city/state/zip > Attn: _____ Telephone: (___) ___-____ Facsimile: (___) ___-____

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

Article Two Transaction Terms and Conditions	☐ Optional provision in Section 2.4. If not checked, inapplicable.
Article Four Remedies for Failure to Deliver or Receive	☒ Accelerated Payment of Damages.

If not checked, inapplicable.

Article Five
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: : [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

(d) Downgrade Event:
☒Not Applicable
☐ Applicable

(e) Guarantor for Party B: N/A
Guarantee Amount: N/A

8.2 Party B Credit Protection

(a) Financial Information:
☐ Option A
☐ Option B Specify: _____
☐ Option C Specify: _____

(b) Credit Assurances:
☒Not Applicable
☐ Applicable

(c) Collateral Threshold:
☒ Not Applicable
☐ Applicable
If applicable, complete the following:

Party A Collateral Threshold: $_____;
provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: $_____
Party A Rounding Amount: $_____

(d) Downgrade Event:
☒Not Applicable
☐ Applicable
If applicable, complete the following:

☐ It shall be a Downgrade Event for Party A if Party A 's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party A is not rated by either S&P or Moody's

☐ Other:
Specify: _____

(e) Guarantor for Party A: N/A

Guarantee Amount: N/A

Article 10
Confidentiality

☒ Confidentiality Applicable If not checked, inapplicable.

Schedule M

☐ Party A is a Governmental Entity or Public Power System
☐ Party B is a Governmental Entity or Public Power System
☐ Add Section 3.6. If not checked, inapplicable
☐ Add Section 8.4. If not checked, inapplicable

Note to Buyers: If Buyer is a form of governmental entity, then Schedule M shall apply and further modifications to this Confirm will be needed.

Other Changes

1. The modifications to Section 1.12, 1.50 and 5.2 of the Master Agreement specified in that certain Errata published by the Edison Electric Institute (version 1.1, July 18, 2007) are hereby incorporated herein as if set forth in full.

2. Section 1.60 is amended by inserting the words "in writing" immediately following the words "agreed to".

3. In Section 2.1, delete the first sentence in its entirety and replace with the following:

"A Transaction, or an amendment, modification or supplement thereto, shall be entered into only upon a writing signed by both Parties evidencing the commercial terms of such Transaction (a

"Confirmation")."

4. Section 2.3 is deleted in its entirety and replaced with the following:

   "2.3 No Oral Agreements or Modifications. Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Transactions may not be orally amended, supplemented or modified and any such amendment, supplement or modification shall only be effective pursuant to a writing signed by both Parties."

5. Section 2.4 is hereby amended by deleting the words "either orally or" in the sixth line.

6. 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.

7. Section 10.6 of the Master Agreement shall be deleted in its entirety and replaced with the following:

   "10.6 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."

8. 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 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 “Confirmation Execution Date” has the meaning specified in the introductory paragraph.

1.13 “Contract Price” means, for any day in any Monthly Delivery Period, the Capacity Price for such period.

1.14 “Contract Quantity” means the quantity of Product (in MW) as set forth in Section 3.5.

1.15 “Contract Term” has the meaning set forth in Section 2.1.

1.16 “CPUC” means the California Public Utilities Commission.

1.17 “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.

1.18 “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.

1.19 "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.

1.20 "Delivery Period" has the meaning specified in Section 3.3.

1.21 "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.

1.22 "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.

1.23 "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.

1.24 "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.

1.25 "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.

1.26 "GADS" means the Generating Availability Data System, or its successor.

1.27 "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.

1.28 "Local Capacity Area" has the meaning set forth in the Tariff.

1.29 "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.

1.30 "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.

1.31 "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.

1.32 "LSE" means load-serving entity.

1.33 "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)).

1.34 "Master Agreement" has the meaning specified in the introductory paragraph.

1.35 "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.

1.36 "Monthly Payment" has the meaning specified in Section 4.1.

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

1.38 "NERC" means the North American Electric Reliability Corporation, or its successor.

1.39 "NERC/GADS Protocols" means the GADS protocols established by NERC, as may be updated from time to time.

1.40 "Net Qualifying Capacity" has the meaning set forth in the Tariff.

1.41 "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]*.

1.42 "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]*.

1.43 "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.

1.44 "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.

1.45 "Product" has the meaning specified in Section 3.1.

1.46 "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.

1.47 "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.

1.48 "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.

1.49 "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.

1.50 "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.

1.51 "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.

1.52 "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.

1.53 "Replacement Unit" means a generating unit providing Replacement Capacity.

1.54 "Resource Category" shall be as described in the CPUC Filing Guide.

1.55 "RMR Contract" has the meaning set forth in the Tariff.

1.56 "S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc. or its successor).

1.57 "Scheduling Coordinator" or "SC" has the meaning set forth in the Tariff.

1.58 "Seller" has the meaning specified in the introductory paragraph.

1.59 "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.

1.60 "Substitution Rules" has the meaning set forth in Section 3.8(b).

1.61 "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]*.

1.62 "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.

1.63 "Transaction" has the meaning specified in the introductory paragraph.

1.64 "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.

1.65 "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.

1.66 "Unit EFC" means the effective flexible capacity or capacity that is qualified to provide Flexible RA Attributes established by the CAISO for the applicable Unit.

1.67 "Unit NQC" means the Net Qualifying Capacity established by the CAISO for the applicable Unit.

1.68 "Unit Delivered Quantity" means the amount of applicable Product (in MW) actually "delivered" by Seller to Buyer by each individual Unit. As used herein, "delivered" shall mean shown in the Supply Plan and, for purposes of Section 4.1, shall include any RA Substitute Capacity under Section 3.8, and in all cases, shall not include (i) any portion of Contract 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] *[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.]*

3.2 Unit Contingent 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 Planned Outage, Force Majeure or any adjustment of the Capacity Attributes of any Unit(s), if the Unit(s) are not available to provide any portion of the Product, 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 _____ through _____, 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 3.8, and;

(b) Seller shall submit, or cause each Unit's SC to submit, written notification to Buyer, no later than fifteen (15) Business Days before the relevant deadline for any applicable Compliance Showing, that Buyer will be credited with Unit Delivered Quantity for the applicable portion of the Delivery

Period in the Unit's SC Supply Plan so that the total amount of Unit Delivered Quantity for each Unit credited equals the Unit Contract Quantity.

3.6 CAISO/CPUC Offer Requirements

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

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]*[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 3.6.

(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 3.8(b)(ii), then Seller shall reimburse Buyer for any and all Non-Availability Charges incurred by Buyer and shall pay Buyer the CPM revenue the CAISO would have paid the Buyer but for Seller failure, due to such failure or inability to utilize the Substitution Rules; provided, that if Buyer is unable to utilize the Substitution Rules because the RA Substitute Capacity does not qualify for substitution under Section 9.3.1.3.1, 9.3.1.3.2, 40.9.4.2.1(1)(i) or (ii) of the Tariff, then Seller shall not be responsible for any such Non-Availability Charges described in this Section 3.8(d) associated with such inability.

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:

$$Monthly\ Payment = \sum_{n=1}^{d} (A_n * B_n * 1000)$$

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)
January	
February	
March	
April	
May	
June	

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 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 Reliability Capacity, or their successor, and Imbalance Reserves 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 CAISO 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 [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, Buyer agrees to deliver (i) cash or (ii) a Letter of Credit, in substantially the same form as attached hereto as Appendix B in the amount of _____ to Seller 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 Buyer's damages. Seller shall return to Buyer 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 Buyer 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	
Unit NQC (MW)	
Prorated Percentage of Unit Factor	
Unit EFC (MW)	*[Comment: If the Product does not include flexible capacity, insert "Not Applicable"]*
Prorated Percentage of Unit Flexible Factor	
Resource Type	
Resource Category (MMC Bucket 1, 2, 3 or 4)	
Path 26 (North or South)	
Local Capacity Area (if any, as of Confirmation Execution Date)	
Unit Contract Quantity (MW) for Capacity Attributes (excluding Flexible RA Attributes)	
Unit Contract Quantity (MW) for Flexible RA Attributes	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	

Appendix B [If applicable]

Form of Letter of Credit

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., New York time, on the Expiration Date (as hereinafter defined).

This Letter of Credit shall be of no further force or effect upon the close of business on _____or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day, unless extended in accordance with the terms of this Letter of Credit. For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in New York, New York.

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

1. The original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings); and

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

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at_____or such other number as specified from time to time by the Bank or by electronic signature. The facsimile or electronic signature transmittal shall be deemed delivered when received. It is understood that drawings made by facsimile transmittal or electronic signature are deemed to be the operative instrument without the need of originally signed documents.

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

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

Banking charges shall be the sole responsibility of the Applicant.

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

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

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

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

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

AUTHORIZED SIGNATURE for Bank

_____

By:

Title:_____

ATTACHMENT A TO APPENDIX B
DRAWING CERTIFICATE TO [ISSUING BANK NAME]
IRREVOCABLE STANDBY LETTER OF CREDIT

Reference Number. _____
(Sample Text)

DRAWING CERTIFICATE
Bank
Bank Address

Subject: Irrevocable Standby Letter of Credit
Reference Number: _____

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

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

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

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

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:

CONFIRMATION LETTER FOR BILATERAL IMPORT CAPABILITY TRANSFER BETWEEN SAN DIEGO GAS & ELECTRIC ("PARTY A") AND [PARTY B NAME] ("PARTY B")

This confirmation letter ("Confirmation") confirms the Transaction between Party A ("Buyer/Seller") and Party B ("Buyer/Seller"), which becomes effective on the date fully executed by both Parties (the "Confirmation Effective 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 is governed by the Master Power Purchase and Sale Agreement between the Parties, effective as of [Date of EEI Master between Parties], together with the Cover Sheet, [the Collateral Annex and Paragraph 10 to the Collateral Annex,] and any other annexes thereto (collectively, as amended, restated, supplemented, or otherwise modified from time to time, the "Master Agreement"). The Master Agreement and this Confirmation are collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings specified for such terms in the Master Agreement or the Tariff (defined below), as applicable. Section references herein are to this Confirmation unless otherwise noted.

1. Definitions

1.1 "Bilateral Import Capability Transfer" is the transfer of Remaining Import Capability from one Market Participant to another, as defined and described in the Tariff.

1.2 "Buyer" has the meaning specified in the introductory paragraph.

1.3 "CAISO" means the California Independent System Operator Corporation, or any successor entity performing substantially the same functions.

1.4 "CIRA" means the CAISO Customer Interface for Resource Adequacy.

1.5 "CIRA System Failure" means a disruption in transfer of Product caused solely by the CIRA System that is not within the control of, or the result of the negligence of, either Party and which could not have been avoided by the exercise of due diligence.

1.6 "Confirmation" has the meaning specified in the introductory paragraph.

1.7 "Confirmation Effective Date" has the meaning specified in the introductory paragraph of this Confirmation.

1.8 "Contract Month" has the meaning set forth in Section 3.3 of this Confirmation.

1.9 "Contract Price" means the price, expressed in dollars per kW-month, specified for each Contract Month as set forth in the Contract Price Table in Section 4.1.

1.10 "Contract Quantity" means, with respect to the Contract Month, the amount of Product, expressed in MW set forth in the Contract Quantity Table in Section 3.3.

1.11 "Contract Term" has the meaning set forth in Section 2.1.

1.12 "CPUC" means the California Public Utilities Commission.

1.13 "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. This definition does not include "market participant" as defined in the CAISO's Business Practice Manual for Definitions and Acronyms as published on the CAISO website.

1.14 "Master Agreement" has the meaning specified in the introductory paragraph of this Confirmation.

1.15 "One-Time Payment" has the meaning specified in Section 4.1 of this Confirmation.

1.16 "Procurement Review Group" has the meaning set forth in CPUC Decision D. 02-08-071.

1.17 "Product" has the meaning specified in Section 3.1 of this Confirmation.

1.18 "Remaining Import Capability" means the quantity in MW of Total Import Capability assigned to a Load Serving Entity up to its Load Share Quantity after the assignment of Existing Contract Import Capability and Pre-RA Import Commitment Capability.

1.19 "Scheduling Coordinator" has the meaning set forth in the Tariff.

1.20 "Seller" has the meaning specified in the introductory paragraph of this Confirmation.

1.21 "Tariff" means the Fifth Replacement FERC Electric Tariff and the associated CAISO protocol provisions, including any current CAISO-published "Operating Procedures" and "Business Practice Manuals," in each case as amended or supplemented from time to time.

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 last Contract Month or (b) the date the Parties' obligations under the Agreement have been fulfilled.

2.2 Binding Nature

This Agreement shall be effective and binding as of the Confirmation Effective Date.

3. Transaction

3.1 Product

Seller shall transfer to Buyer, in the manner set forth in Section 3.3, the Remaining Import Capability (the "Product") corresponding to the Contract Quantity, for each day in each Contract Month, and at the applicable Contract Price.

3.2 Delivery Point

Branch Group	**Bilateral Import Capability Transfer**

CAISO BG/MSL Name	(e.g., MALIN500)

3.3 Delivery of Product

Seller shall transfer to Buyer, within five (5) Business Days following receipt of the One Time Payment, the Product in the amount of the Contract Quantity for the Contract Month(s) by registering the transfer with the CAISO as a Bilateral Import Capability Transfer, and completing any other action or documentation required by the CAISO to effect such transfer.

Contract Quantity: Seller shall transfer the Contract Quantity for each of the following months (each a "Contract Month"):

Contract Quantity Table

Contract Month Reference	Contract Month and Year	Contract Quantity (MW)	Delivery Point	SCID of Benefitting LSE (Buyer to fill out)
(e.g. 4)	(e.g. April – YYYY)	XX		

3.4 Buyer's Re-Sale of Product

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

4. Payment

4.1 One-Time Payment

Buyer shall make a One-Time Payment for the Product. The One-Time Payment is to be received by Seller within five (5) Business Days following the Confirmation Effective Date. The Parties understand and agree that the One-Time Payment shall be paid by Buyer in advance of the applicable Contract Month(s) and that the payment of such One-Time Payment when due and payable hereunder shall be a condition to Seller's obligation to deliver Product in respect of such Contract Month(s). This "One Time Payment" is defined and calculated as follows:

$$\text{One-Time Payment} = \sum_{i=1}^{k}(A_i \times B_i \times 1{,}000)$$

where: A_i = Contract Price i (in \$/kW-month) for Contract Month i

B_i = Contract Quantity i (in MW) transferred by Seller for Contract Month i

k = *Count of Contract Months*

The One-Time Payment shall be rounded to two decimal places.

CONTRACT PRICE TABLE

Contract Month Reference	Contract Month and Year	Contract Quantity (MW)	Delivery Point	Contract Price ($/kW-month)
(e.g. 4)	(e.g. April – YYYY)	$X.XX		

5. CIRA System Failure

5.1 If a Party is unable to transfer or receive Product due to a CIRA System Failure, the affected Party shall, within two (2) Business Days from its discovery of the CIRA System Failure, provide the other Party with Notice and full details identifying the cause of the CIRA System Failure. Each Party shall use reasonable efforts to cause transfer or receipt of the Product.

5.2 Neither Party's failure to transfer or receive Product due solely to a CIRA System Failure constitutes an Event of Default or failure to deliver Product. In no event shall Buyer be obligated to pay for Product that it does not receive, nor shall Seller be required to pay damages to Buyer pursuant to Section 6.1, due solely to a CIRA System Failure.

6. Damages for Failure to Deliver Product

If Seller fails to transfer to Buyer the Contract Quantity for any Contract Month in accordance with Section 3.3, then with respect to such Contract Month, Seller shall pay to Buyer damages in the amount of set forth in this Article Six as follows in lieu of damages specified in Section 4.1 of the Master Agreement:

For each Contract Month for which the Buyer has made a payment to Seller in accordance with Section 4.1 of this Confirmation, Seller shall pay to Buyer damages in the amount equal to (x) the applicable Contract Price multiplied by (y) the amount of Contract Quantity not delivered by Seller for that Contract Month, multiplied by (z) 1,000 kw/MW, for each Contract Month that Product was not transferred.

7. Confidentiality

Notwithstanding Section 10.11 of the Master Agreement, the Parties may disclose all terms and conditions of this Transaction to any Governmental Body, the CPUC, CAISO, and the Procurement Review Group; 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 Scheduling Coordinator to further disclose such information. Notwithstanding the foregoing, the Parties may disclose the terms of this Confirmation to the CAISO to effectuate Seller's delivery of product and the transfer of the Product and the CAISO may publicly disclose the transfer of the Product from Seller to Buyer as indicated in the Tariff promptly following Seller's delivery of Product. In addition, if 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, other than the Contract Price.

8. Collateral Requirements

Notwithstanding anything in the Master Agreement to the contrary, Performance Assurance shall not be required from either Party in connection with this Transaction.

9. Counterparts

This Confirmation may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered by electronic mail (including pdf or any electronic signature complying with the federal ESIGN Act of 2000, California's Uniform Electronic Transactions Act (Cal. Civ. Code Section 1633.1, et seq.) or other applicable law) or other transmission method and any counterpart so delivered shall have the same legal effect as an original.

[*Signature page follows*]

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

SAN DIEGO GAS & ELECTRIC COMPANY		**[INSERT LEGAL NAME OF PARTY B]**	
By:	_____	By:	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____

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 _____, 2023 (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:
San Diego Gas & Electric Company
8315 Century Park Court CP 21D
San Diego CA 92123-1593
Attn: Contract Administration
Telephone: (858) 650-6176
Duns: 006911457
Federal Tax ID Number: 95-1184800

Name: Party B / Buyer

All Notices:
< company name >
< street address >
< city/state/zip >

Attn: _____
Telephone: (___) ___-____
Facsimile: (___) ___-____
Duns: _____
Federal Tax ID Number: _____

Invoices:
San Diego Gas & Electric Company
8315 Century Park Court
San Diego CA 92123-1593
Attn: Energy Accounting Manager
Telephone: (858) 650-6177

Invoices:
< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: (___) ___-____
Facsimile: (___) ___-____

Scheduling:
San Diego Gas & Electric Company
8315 Century Park Court, CP 21D
San Diego, CA 92123-1593
Attn: Transaction Scheduling Manager
Day Ahead: (858) 650-6168
Real Time: (858) 650-6160

Scheduling:
< company name >
< street address >
< city/state/zip >
Attn: _____
Day Ahead: (___) ___-____
Real Time: (___) ___-____
Facsimile: (___) ___-____

Payments: San Diego Gas & Electric Company 8315 Century Park Court San Diego CA 92123-1593 Attn: Energy Accounting Manager Telephone: (858) 650-6177	**Payments:** < company name > < street address > < city/state/zip > Attn: _____ Telephone: (___) ___-____ Facsimile: (___) ___-____
Wire Transfer: Union Bank of California 445 South Figueroa Street Los Angeles CA 90071 ABA Routing Number: 122000496 Payee: San Diego Gas & Electric Company Account Number: 4430000352 Confirmation: SDG&E – Major Markets	**Wire Transfer:** < bank street address > < bank city/state/zip > ABA Routing Number: _____ Payee: _____ Account Number: _____ Confirmation: _____ Facsimile: (___) ___-____
Credit and Collections: San Diego Gas & Electric Company 8315 Century Park Court CP 21CSan Diego, CA 92123 Attn: Energy Risk Manager Telephone: (858) 650-6190 Email: sdge_mmcredit@sdge.com	**Credit and Collections:** < company name > < street address > < city/state/zip > Attn: _____ Telephone: (___) ___-____ Facsimile: (___) ___-____
With additional Notices of an Event of Default or Potential Event of Default to: San Diego Gas & Electric Company 8330 Century Park Ct. San Diego, California 92123 Attn: General Counsel Telephone: (858) 650-6141	**With additional Notices of an Event of Default or Potential Event of Default to:** < company name > < street address > < city/state/zip > Attn: _____ Telephone: (___) ___-____ Facsimile: (___) ___-____

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

Article Two Transaction Terms and Conditions	☐ Optional provision in Section 2.4. If not checked, inapplicable.
Article Four Remedies for Failure to Deliver or Receive	☒ Accelerated Payment of Damages.

If not checked, inapplicable.

Article Five
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: : [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

(d) Downgrade Event:
☒Not Applicable
☐ Applicable

(e) Guarantor for Party B: N/A
Guarantee Amount: N/A

8.2 Party B Credit Protection

(a) Financial Information:
☐ Option A
☐ Option B Specify: _____
☐ Option C Specify: _____

(b) Credit Assurances:
☒Not Applicable
☐ Applicable

(c) Collateral Threshold:
☒ Not Applicable
☐ Applicable
If applicable, complete the following:

Party A Collateral Threshold: $_____;
provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: $_____
Party A Rounding Amount: $_____

(d) Downgrade Event:
☒Not Applicable
☐ Applicable
If applicable, complete the following:

☐ It shall be a Downgrade Event for Party A if Party A 's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party A is not rated by either S&P or Moody's

☐ Other:
Specify: _____

(e) Guarantor for Party A: N/A

Guarantee Amount: N/A

Article 10
Confidentiality

☒ Confidentiality Applicable If not checked, inapplicable.

Schedule M

☐ Party A is a Governmental Entity or Public Power System
☐ Party B is a Governmental Entity or Public Power System
☐ Add Section 3.6. If not checked, inapplicable
☐ Add Section 8.4. If not checked, inapplicable

Note to Buyers: If Buyer is a form of governmental entity, then Schedule M shall apply and further modifications to this Confirm will be needed.

Other Changes

1. The modifications to Section 1.12, 1.50 and 5.2 of the Master Agreement specified in that certain Errata published by the Edison Electric Institute (version 1.1, July 18, 2007) are hereby incorporated herein as if set forth in full.

2. Section 1.60 is amended by inserting the words "in writing" immediately following the words "agreed to".

3. In Section 2.1, delete the first sentence in its entirety and replace with the following:

"A Transaction, or an amendment, modification or supplement thereto, shall be entered into only upon a writing signed by both Parties evidencing the commercial terms of such Transaction (a

"Confirmation")."

4. Section 2.3 is deleted in its entirety and replaced with the following:

   "2.3 No Oral Agreements or Modifications. Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Transactions may not be orally amended, supplemented or modified and any such amendment, supplement or modification shall only be effective pursuant to a writing signed by both Parties."

5. Section 2.4 is hereby amended by deleting the words "either orally or" in the sixth line.

6. 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.

7. Section 10.6 of the Master Agreement shall be deleted in its entirety and replaced with the following:

   "10.6 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."

8. 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 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 “Confirmation Execution Date” has the meaning specified in the introductory paragraph.

1.13 “Contract Price” means, for any day in any Monthly Delivery Period, the Capacity Price for such period.

1.14 “Contract Quantity” means the quantity of Product (in MW) as set forth in Section 3.5.

1.15 “Contract Term” has the meaning set forth in Section 2.1.

1.16 “CPUC” means the California Public Utilities Commission.

1.17 “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.

1.18 “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.

1.19 "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.

1.20 "Delivery Period" has the meaning specified in Section 3.3.

1.21 "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.

1.22 "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.

1.23 "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.

1.24 "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.

1.25 "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.

1.26 "GADS" means the Generating Availability Data System, or its successor.

1.27 "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.

1.28 "Local Capacity Area" has the meaning set forth in the Tariff.

1.29 "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.

1.30 "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.

1.31 "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.

1.32 "LSE" means load-serving entity.

1.33 "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)).

1.34 "Master Agreement" has the meaning specified in the introductory paragraph.

1.35 "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.

1.36 "Monthly Payment" has the meaning specified in Section 4.1.

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

1.38 "NERC" means the North American Electric Reliability Corporation, or its successor.

1.39 "NERC/GADS Protocols" means the GADS protocols established by NERC, as may be updated from time to time.

1.40 "Net Qualifying Capacity" has the meaning set forth in the Tariff.

1.41 "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]*.

1.42 "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]*.

1.43 "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.

1.44 "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.

1.45 "Product" has the meaning specified in Section 3.1.

1.46 "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.

1.47 "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.

1.48 "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.

1.49 "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.

1.50 "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.

1.51 "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.

1.52 "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.

1.53 "Replacement Unit" means a generating unit providing Replacement Capacity.

1.54 "Resource Category" shall be as described in the CPUC Filing Guide.

1.55 "RMR Contract" has the meaning set forth in the Tariff.

1.56 "S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc. or its successor).

1.57 "Scheduling Coordinator" or "SC" has the meaning set forth in the Tariff.

1.58 "Seller" has the meaning specified in the introductory paragraph.

1.59 "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.

1.60 "Substitution Rules" has the meaning set forth in Section 3.8(b).

1.61 "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]*.

1.62 "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.

1.63 "Transaction" has the meaning specified in the introductory paragraph.

1.64 "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.

1.65 "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.

1.66 "Unit EFC" means the effective flexible capacity or capacity that is qualified to provide Flexible RA Attributes established by the CAISO for the applicable Unit.

1.67 "Unit NQC" means the Net Qualifying Capacity established by the CAISO for the applicable Unit.

1.68 "Unit Delivered Quantity" means the amount of applicable Product (in MW) actually "delivered" by Seller to Buyer by each individual Unit. As used herein, "delivered" shall mean shown in the Supply Plan and, for purposes of Section 4.1, shall include any RA Substitute Capacity under Section 3.8, and in all cases, shall not include (i) any portion of Contract 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] *[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.]*

3.2 Unit Contingent 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 Planned Outage, Force Majeure or any adjustment of the Capacity Attributes of any Unit(s), if the Unit(s) are not available to provide any portion of the Product, 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 _____ through _____, 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 3.8, and;

(b) Seller shall submit, or cause each Unit's SC to submit, written notification to Buyer, no later than fifteen (15) Business Days before the relevant deadline for any applicable Compliance Showing, that Buyer will be credited with Unit Delivered Quantity for the applicable portion of the Delivery

Period in the Unit's SC Supply Plan so that the total amount of Unit Delivered Quantity for each Unit credited equals the Unit Contract Quantity.

3.6 CAISO/CPUC Offer Requirements

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

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]*[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 3.6.

(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 3.8(b)(ii), then Seller shall reimburse Buyer for any and all Non-Availability Charges incurred by Buyer and shall pay Buyer the CPM revenue the CAISO would have paid the Buyer but for Seller failure, due to such failure or inability to utilize the Substitution Rules; provided, that if Buyer is unable to utilize the Substitution Rules because the RA Substitute Capacity does not qualify for substitution under Section 9.3.1.3.1, 9.3.1.3.2, 40.9.4.2.1(1)(i) or (ii) of the Tariff, then Seller shall not be responsible for any such Non-Availability Charges described in this Section 3.8(d) associated with such inability.

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:

$$Monthly\ Payment = \sum_{n=1}^{d} (A_n * B_n * 1000)$$

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)
January	
February	
March	
April	
May	
June	

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 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 Reliability Capacity, or their successor, and Imbalance Reserves 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 CAISO 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 [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, Buyer agrees to deliver (i) cash or (ii) a Letter of Credit, in substantially the same form as attached hereto as Appendix B in the amount of _____ to Seller 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 Buyer's damages. Seller shall return to Buyer 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 Buyer 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	
Unit NQC (MW)	
Prorated Percentage of Unit Factor	
Unit EFC (MW)	*[Comment: If the Product does not include flexible capacity, insert "Not Applicable"]*
Prorated Percentage of Unit Flexible Factor	
Resource Type	
Resource Category (MMC Bucket 1, 2, 3 or 4)	
Path 26 (North or South)	
Local Capacity Area (if any, as of Confirmation Execution Date)	
Unit Contract Quantity (MW) for Capacity Attributes (excluding Flexible RA Attributes)	
Unit Contract Quantity (MW) for Flexible RA Attributes	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	

Appendix B [If applicable]

Form of Letter of Credit

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., New York time, on the Expiration Date (as hereinafter defined).

This Letter of Credit shall be of no further force or effect upon the close of business on _____or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day, unless extended in accordance with the terms of this Letter of Credit. For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in New York, New York.

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

1. The original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings); and

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

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at_____or such other number as specified from time to time by the Bank or by electronic signature. The facsimile or electronic signature transmittal shall be deemed delivered when received. It is understood that drawings made by facsimile transmittal or electronic signature are deemed to be the operative instrument without the need of originally signed documents.

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

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

Banking charges shall be the sole responsibility of the Applicant.

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

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

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

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

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

AUTHORIZED SIGNATURE for Bank

_____

By:

Title:_____

ATTACHMENT A TO APPENDIX B
DRAWING CERTIFICATE TO [ISSUING BANK NAME]
IRREVOCABLE STANDBY LETTER OF CREDIT

Reference Number. _____
(Sample Text)

DRAWING CERTIFICATE
Bank
Bank Address

Subject: Irrevocable Standby Letter of Credit
Reference Number: _____

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

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

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

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

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:

CONFIRMATION LETTER FOR BILATERAL IMPORT CAPABILITY TRANSFER BETWEEN SAN DIEGO GAS & ELECTRIC ("PARTY A") AND [PARTY B NAME] ("PARTY B")

This confirmation letter ("Confirmation") confirms the Transaction between Party A ("Buyer/Seller") and Party B ("Buyer/Seller"), which becomes effective on the date fully executed by both Parties (the "Confirmation Effective 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 is governed by the Master Power Purchase and Sale Agreement between the Parties, effective as of [Date of EEI Master between Parties], together with the Cover Sheet, [the Collateral Annex and Paragraph 10 to the Collateral Annex,] and any other annexes thereto (collectively, as amended, restated, supplemented, or otherwise modified from time to time, the "Master Agreement"). The Master Agreement and this Confirmation are collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings specified for such terms in the Master Agreement or the Tariff (defined below), as applicable. Section references herein are to this Confirmation unless otherwise noted.

1. Definitions

1.1 "Bilateral Import Capability Transfer" is the transfer of Remaining Import Capability from one Market Participant to another, as defined and described in the Tariff.

1.2 "Buyer" has the meaning specified in the introductory paragraph.

1.3 "CAISO" means the California Independent System Operator Corporation, or any successor entity performing substantially the same functions.

1.4 "CIRA" means the CAISO Customer Interface for Resource Adequacy.

1.5 "CIRA System Failure" means a disruption in transfer of Product caused solely by the CIRA System that is not within the control of, or the result of the negligence of, either Party and which could not have been avoided by the exercise of due diligence.

1.6 "Confirmation" has the meaning specified in the introductory paragraph.

1.7 "Confirmation Effective Date" has the meaning specified in the introductory paragraph of this Confirmation.

1.8 "Contract Month" has the meaning set forth in Section 3.3 of this Confirmation.

1.9 "Contract Price" means the price, expressed in dollars per kW-month, specified for each Contract Month as set forth in the Contract Price Table in Section 4.1.

1.10 "Contract Quantity" means, with respect to the Contract Month, the amount of Product, expressed in MW set forth in the Contract Quantity Table in Section 3.3.

1.11 "Contract Term" has the meaning set forth in Section 2.1.

1.12 "CPUC" means the California Public Utilities Commission.

1.13 "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. This definition does not include "market participant" as defined in the CAISO's Business Practice Manual for Definitions and Acronyms as published on the CAISO website.

1.14 "Master Agreement" has the meaning specified in the introductory paragraph of this Confirmation.

1.15 "One-Time Payment" has the meaning specified in Section 4.1 of this Confirmation.

1.16 "Procurement Review Group" has the meaning set forth in CPUC Decision D. 02-08-071.

1.17 "Product" has the meaning specified in Section 3.1 of this Confirmation.

1.18 "Remaining Import Capability" means the quantity in MW of Total Import Capability assigned to a Load Serving Entity up to its Load Share Quantity after the assignment of Existing Contract Import Capability and Pre-RA Import Commitment Capability.

1.19 "Scheduling Coordinator" has the meaning set forth in the Tariff.

1.20 "Seller" has the meaning specified in the introductory paragraph of this Confirmation.

1.21 "Tariff" means the Fifth Replacement FERC Electric Tariff and the associated CAISO protocol provisions, including any current CAISO-published "Operating Procedures" and "Business Practice Manuals," in each case as amended or supplemented from time to time.

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 last Contract Month or (b) the date the Parties' obligations under the Agreement have been fulfilled.

2.2 Binding Nature

This Agreement shall be effective and binding as of the Confirmation Effective Date.

3. Transaction

3.1 Product

Seller shall transfer to Buyer, in the manner set forth in Section 3.3, the Remaining Import Capability (the "Product") corresponding to the Contract Quantity, for each day in each Contract Month, and at the applicable Contract Price.

3.2 Delivery Point

Branch Group	**Bilateral Import Capability Transfer**

CAISO BG/MSL Name	(e.g., MALIN500)

3.3 Delivery of Product

Seller shall transfer to Buyer, within five (5) Business Days following receipt of the One Time Payment, the Product in the amount of the Contract Quantity for the Contract Month(s) by registering the transfer with the CAISO as a Bilateral Import Capability Transfer, and completing any other action or documentation required by the CAISO to effect such transfer.

Contract Quantity: Seller shall transfer the Contract Quantity for each of the following months (each a "Contract Month"):

Contract Quantity Table

Contract Month Reference	Contract Month and Year	Contract Quantity (MW)	SCID of Benefitting LSE (Buyer to fill out)
(e.g. 4)	(e.g. April – YYYY)	XX	

3.4 Buyer's Re-Sale of Product

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

4. Payment

4.1 One-Time Payment

Buyer shall make a One-Time Payment for the Product. The One-Time Payment is to be received by Seller within five (5) Business Days following the Confirmation Effective Date. The Parties understand and agree that the One-Time Payment shall be paid by Buyer in advance of the applicable Contract Month(s) and that the payment of such One-Time Payment when due and payable hereunder shall be a condition to Seller's obligation to deliver Product in respect of such Contract Month(s). This "One Time Payment" is defined and calculated as follows:

$$\text{One-Time Payment} = \sum_{i=1}^{k}(A_i \text{ x } B_i \text{ x } 1{,}000)$$

where: A_i = Contract Price i (in \$/kW-month) for Contract Month i

B_i = Contract Quantity i (in MW) transferred by Seller for Contract Month i

k = *Count of Contract Months*

The One-Time Payment shall be rounded to two decimal places.

CONTRACT PRICE TABLE

Contract Month Reference	Contract Month and Year	Contract Price ($/kW-month)
(e.g. 4)	(e.g. April – YYYY)	$X.XX

5. CIRA System Failure

5.1 If a Party is unable to transfer or receive Product due to a CIRA System Failure, the affected Party shall, within two (2) Business Days from its discovery of the CIRA System Failure, provide the other Party with Notice and full details identifying the cause of the CIRA System Failure. Each Party shall use reasonable efforts to cause transfer or receipt of the Product.

5.2 Neither Party's failure to transfer or receive Product due solely to a CIRA System Failure constitutes an Event of Default or failure to deliver Product. In no event shall Buyer be obligated to pay for Product that it does not receive, nor shall Seller be required to pay damages to Buyer pursuant to Section 6.1, due solely to a CIRA System Failure.

6. Damages for Failure to Deliver Product

If Seller fails to transfer to Buyer the Contract Quantity for any Contract Month in accordance with Section 3.3, then with respect to such Contract Month, Seller shall pay to Buyer damages in the amount of set forth in this Article Six as follows in lieu of damages specified in Section 4.1 of the Master Agreement:

For each Contract Month for which the Buyer has made a payment to Seller in accordance with Section 4.1 of this Confirmation, Seller shall pay to Buyer damages in the amount equal to (x) the applicable Contract Price multiplied by (y) the amount of Contract Quantity not delivered by Seller for that Contract Month, multiplied by (z) 1,000 kw/MW, for each Contract Month that Product was not transferred.

7. Confidentiality

Notwithstanding Section 10.11 of the Master Agreement, the Parties may disclose all terms and conditions of this Transaction to any Governmental Body, the CPUC, CAISO, and the Procurement Review Group; 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 Scheduling Coordinator to further disclose such information. Notwithstanding the foregoing, the Parties may disclose the terms of this Confirmation to the CAISO to effectuate Seller's delivery of product and the transfer of the Product and the CAISO may publicly disclose the transfer of the Product from Seller to Buyer as indicated in the Tariff promptly following Seller's delivery of Product. In addition, if 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, other than the Contract Price.

8. Party B Collateral Requirements

TBD

9. Counterparts

This Confirmation may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered by electronic mail (including pdf or any electronic signature complying with the federal ESIGN Act of 2000, California's Uniform Electronic Transactions Act (Cal. Civ. Code Section 1633.1, et seq.) or other applicable law) or other transmission method and any counterpart so delivered shall have the same legal effect as an original.

[*Signature page follows*]

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

SAN DIEGO GAS & ELECTRIC COMPANY		**[INSERT LEGAL NAME OF PARTY B]**	
By:	_____	By:	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____

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 _____, 2023 (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:
San Diego Gas & Electric Company
8315 Century Park Court CP 21D
San Diego CA 92123-1593
Attn: Contract Administration
Telephone: (858) 650-6176
Duns: 006911457
Federal Tax ID Number: 95-1184800

Name: Party B / Buyer

All Notices:
< company name >
< street address >
< city/state/zip >

Attn: _____
Telephone: (___) ___-____
Facsimile: (___) ___-____
Duns: _____
Federal Tax ID Number: _____

Invoices:
San Diego Gas & Electric Company
8315 Century Park Court
San Diego CA 92123-1593
Attn: Energy Accounting Manager
Telephone: (858) 650-6177

Invoices:
< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: (___) ___-____
Facsimile: (___) ___-____

Scheduling:
San Diego Gas & Electric Company
8315 Century Park Court, CP 21D
San Diego, CA 92123-1593
Attn: Transaction Scheduling Manager
Day Ahead: (858) 650-6168
Real Time: (858) 650-6160

Scheduling:
< company name >
< street address >
< city/state/zip >
Attn: _____
Day Ahead: (___) ___-____
Real Time: (___) ___-____
Facsimile: (___) ___-____

Payments: San Diego Gas & Electric Company 8315 Century Park Court San Diego CA 92123-1593 Attn: Energy Accounting Manager Telephone: (858) 650-6177	**Payments:** < company name > < street address > < city/state/zip > Attn: _____ Telephone: (___) ___-____ Facsimile: (___) ___-____
Wire Transfer: Union Bank of California 445 South Figueroa Street Los Angeles CA 90071 ABA Routing Number: 122000496 Payee: San Diego Gas & Electric Company Account Number: 4430000352 Confirmation: SDG&E – Major Markets	**Wire Transfer:** < bank street address > < bank city/state/zip > ABA Routing Number: _____ Payee: _____ Account Number: _____ Confirmation: _____ Facsimile: (___) ___-____
Credit and Collections: San Diego Gas & Electric Company 8315 Century Park Court CP 21CSan Diego, CA 92123 Attn: Energy Risk Manager Telephone: (858) 650-6190 Email: sdge_mmcredit@sdge.com	**Credit and Collections:** < company name > < street address > < city/state/zip > Attn: _____ Telephone: (___) ___-____ Facsimile: (___) ___-____
With additional Notices of an Event of Default or Potential Event of Default to: San Diego Gas & Electric Company 8330 Century Park Ct. San Diego, California 92123 Attn: General Counsel Telephone: (858) 650-6141	**With additional Notices of an Event of Default or Potential Event of Default to:** < company name > < street address > < city/state/zip > Attn: _____ Telephone: (___) ___-____ Facsimile: (___) ___-____

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

Article Two Transaction Terms and Conditions	☐ Optional provision in Section 2.4. If not checked, inapplicable.
Article Four Remedies for Failure to Deliver or Receive	☒ Accelerated Payment of Damages.

If not checked, inapplicable.

Article Five
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: : [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

(d) Downgrade Event:
☒Not Applicable
☐ Applicable

(e) Guarantor for Party B: N/A
Guarantee Amount: N/A

8.2 Party B Credit Protection

(a) Financial Information:
☐ Option A
☐ Option B Specify: _____
☐ Option C Specify: _____

(b) Credit Assurances:
☒Not Applicable
☐ Applicable

(c) Collateral Threshold:
☒ Not Applicable
☐ Applicable
If applicable, complete the following:

Party A Collateral Threshold: $_____;
provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: $_____
Party A Rounding Amount: $_____

(d) Downgrade Event:
☒Not Applicable
☐ Applicable
If applicable, complete the following:

☐ It shall be a Downgrade Event for Party A if Party A 's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party A is not rated by either S&P or Moody's

☐ Other:
Specify: _____

(e) Guarantor for Party A: N/A

Guarantee Amount: N/A

Article 10
Confidentiality

☒ Confidentiality Applicable If not checked, inapplicable.

Schedule M

☐ Party A is a Governmental Entity or Public Power System
☐ Party B is a Governmental Entity or Public Power System
☐ Add Section 3.6. If not checked, inapplicable
☐ Add Section 8.4. If not checked, inapplicable

Note to Buyers: If Buyer is a form of governmental entity, then Schedule M shall apply and further modifications to this Confirm will be needed.

Other Changes

1. The modifications to Section 1.12, 1.50 and 5.2 of the Master Agreement specified in that certain Errata published by the Edison Electric Institute (version 1.1, July 18, 2007) are hereby incorporated herein as if set forth in full.

2. Section 1.60 is amended by inserting the words "in writing" immediately following the words "agreed to".

3. In Section 2.1, delete the first sentence in its entirety and replace with the following:

"A Transaction, or an amendment, modification or supplement thereto, shall be entered into only upon a writing signed by both Parties evidencing the commercial terms of such Transaction (a

"Confirmation")."

4. Section 2.3 is deleted in its entirety and replaced with the following:

   "2.3 No Oral Agreements or Modifications. Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Transactions may not be orally amended, supplemented or modified and any such amendment, supplement or modification shall only be effective pursuant to a writing signed by both Parties."

5. Section 2.4 is hereby amended by deleting the words "either orally or" in the sixth line.

6. 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.

7. Section 10.6 of the Master Agreement shall be deleted in its entirety and replaced with the following:

   "10.6 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."

8. 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 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 “Confirmation Execution Date” has the meaning specified in the introductory paragraph.

1.13 “Contract Price” means, for any day in any Monthly Delivery Period, the Capacity Price for such period.

1.14 “Contract Quantity” means the quantity of Product (in MW) as set forth in Section 3.5.

1.15 “Contract Term” has the meaning set forth in Section 2.1.

1.16 “CPUC” means the California Public Utilities Commission.

1.17 “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.

1.18 “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.

1.19 "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.

1.20 "Delivery Period" has the meaning specified in Section 3.3.

1.21 "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.

1.22 "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.

1.23 "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.

1.24 "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.

1.25 "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.

1.26 "GADS" means the Generating Availability Data System, or its successor.

1.27 "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.

1.28 "Local Capacity Area" has the meaning set forth in the Tariff.

1.29 "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.

1.30 "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.

1.31 "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.

1.32 "LSE" means load-serving entity.

1.33 "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)).

1.34 "Master Agreement" has the meaning specified in the introductory paragraph.

1.35 "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.

1.36 "Monthly Payment" has the meaning specified in Section 4.1.

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

1.38 "NERC" means the North American Electric Reliability Corporation, or its successor.

1.39 "NERC/GADS Protocols" means the GADS protocols established by NERC, as may be updated from time to time.

1.40 "Net Qualifying Capacity" has the meaning set forth in the Tariff.

1.41 "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]*.

1.42 "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]*.

1.43 "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.

1.44 "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.

1.45 "Product" has the meaning specified in Section 3.1.

1.46 "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.

1.47 "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.

1.48 "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.

1.49 "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.

1.50 "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.

1.51 "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.

1.52 "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.

1.53 "Replacement Unit" means a generating unit providing Replacement Capacity.

1.54 "Resource Category" shall be as described in the CPUC Filing Guide.

1.55 "RMR Contract" has the meaning set forth in the Tariff.

1.56 "S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc. or its successor).

1.57 "Scheduling Coordinator" or "SC" has the meaning set forth in the Tariff.

1.58 "Seller" has the meaning specified in the introductory paragraph.

1.59 "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.

1.60 "Substitution Rules" has the meaning set forth in Section 3.8(b).

1.61 "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]*.

1.62 "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.

1.63 "Transaction" has the meaning specified in the introductory paragraph.

1.64 "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.

1.65 "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.

1.66 "Unit EFC" means the effective flexible capacity or capacity that is qualified to provide Flexible RA Attributes established by the CAISO for the applicable Unit.

1.67 "Unit NQC" means the Net Qualifying Capacity established by the CAISO for the applicable Unit.

1.68 "Unit Delivered Quantity" means the amount of applicable Product (in MW) actually "delivered" by Seller to Buyer by each individual Unit. As used herein, "delivered" shall mean shown in the Supply Plan and, for purposes of Section 4.1, shall include any RA Substitute Capacity under Section 3.8, and in all cases, shall not include (i) any portion of Contract 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] *[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.]*

3.2 Unit Contingent 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 Planned Outage, Force Majeure or any adjustment of the Capacity Attributes of any Unit(s), if the Unit(s) are not available to provide any portion of the Product, 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 _____ through _____, 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 3.8, and;

(b) Seller shall submit, or cause each Unit's SC to submit, written notification to Buyer, no later than fifteen (15) Business Days before the relevant deadline for any applicable Compliance Showing, that Buyer will be credited with Unit Delivered Quantity for the applicable portion of the Delivery

Period in the Unit's SC Supply Plan so that the total amount of Unit Delivered Quantity for each Unit credited equals the Unit Contract Quantity.

3.6 CAISO/CPUC Offer Requirements

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

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]*[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 3.6.

(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 3.8(b)(ii), then Seller shall reimburse Buyer for any and all Non-Availability Charges incurred by Buyer and shall pay Buyer the CPM revenue the CAISO would have paid the Buyer but for Seller failure, due to such failure or inability to utilize the Substitution Rules; provided, that if Buyer is unable to utilize the Substitution Rules because the RA Substitute Capacity does not qualify for substitution under Section 9.3.1.3.1, 9.3.1.3.2, 40.9.4.2.1(1)(i) or (ii) of the Tariff, then Seller shall not be responsible for any such Non-Availability Charges described in this Section 3.8(d) associated with such inability.

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:

$$Monthly\ Payment = \sum_{n=1}^{d} (A_n * B_n * 1000)$$

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)
January	
February	
March	
April	
May	
June	

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 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 Reliability Capacity, or their successor, and Imbalance Reserves 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 CAISO 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 [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, Buyer agrees to deliver (i) cash or (ii) a Letter of Credit, in substantially the same form as attached hereto as Appendix B in the amount of _____ to Seller 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 Buyer's damages. Seller shall return to Buyer 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 Buyer 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	
Unit NQC (MW)	
Prorated Percentage of Unit Factor	
Unit EFC (MW)	*[Comment: If the Product does not include flexible capacity, insert "Not Applicable"]*
Prorated Percentage of Unit Flexible Factor	
Resource Type	
Resource Category (MMC Bucket 1, 2, 3 or 4)	
Path 26 (North or South)	
Local Capacity Area (if any, as of Confirmation Execution Date)	
Unit Contract Quantity (MW) for Capacity Attributes (excluding Flexible RA Attributes)	
Unit Contract Quantity (MW) for Flexible RA Attributes	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	

Appendix B [If applicable]

Form of Letter of Credit

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., New York time, on the Expiration Date (as hereinafter defined).

This Letter of Credit shall be of no further force or effect upon the close of business on _____or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day, unless extended in accordance with the terms of this Letter of Credit. For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in New York, New York.

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

1. The original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings); and

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

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at_____or such other number as specified from time to time by the Bank or by electronic signature. The facsimile or electronic signature transmittal shall be deemed delivered when received. It is understood that drawings made by facsimile transmittal or electronic signature are deemed to be the operative instrument without the need of originally signed documents.

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

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

Banking charges shall be the sole responsibility of the Applicant.

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

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

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

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

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

AUTHORIZED SIGNATURE for Bank

_____

By:

Title:_____

ATTACHMENT A TO APPENDIX B
DRAWING CERTIFICATE TO [ISSUING BANK NAME]
IRREVOCABLE STANDBY LETTER OF CREDIT

Reference Number. _____
(Sample Text)

DRAWING CERTIFICATE
Bank
Bank Address

Subject: Irrevocable Standby Letter of Credit
Reference Number: _____

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

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

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

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

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:

LONG-FORM TRANSACTION
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 ***[for EEI:*** *Edison Electric Institute and the National Energy Marketers Association (version 2.1 dated 4/25/00) (the "EEI Agreement");* ***for WSPP:*** W*estern* S*ystems* P*ower* P*ool* Agreement*,* dated September 11, 2023 (the ***"WSPP Agreement")*** effective as of September 11, 2023, 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]** ("Buyer")	**Name: San Diego Gas & Electric Company** ("Seller")
	All Notices: Attn: Phone: Facsimile: Duns: Federal Tax ID Number:	**All Notices:** San Diego Gas & Electric Company 8315 Century Park Court San Diego, CA Zip: 92123 Attn: Electric & Fuel Procurement Contract Administration Phone: (858) 650-6170 Duns: 006911457 Federal Tax ID Number: 95-1184800
	Invoices:	**Invoices:** San Diego Gas & Electric Company 8315 Century Park Ct. San Diego, California 92123-1593 Attn: Energy Accounting Manager Phone: (858) 650-6177
	Wire Transfer:	**Wire Transfer:** BNK: US Bank for: San Diego Gas & Electric Company ABA: Routing # 122000496 ACCT: #4430000352 Confirmation: SDG&E, Major Markets FAX:(213) 244-8316

	Credit and Collections:	**Credit and Collections:** San Diego Gas & Electric Company 8326 Century Park Ct. San Diego, California 92123-1593 Attn: Energy Risk ManagerPhone: (858) 650-6190 Email: sdge_mmcredit@sdge.com
	Defaults: With additional Notices of an Event of Default or Potential Event of Default to:	**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

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 for As-Available Delivery Obligation electric energy and associated Green Attributes in the Contract Quantity. 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 one or more of the facilities, each meeting the requirement of 6.1(a) and as listed in Exhibit A, as may be updated from time to time by written notice from Seller to Buyer (collectively, the "Project"). The Project from which Product is sold by Seller to Buyer shall: (a) 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) be scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source. The Parties acknowledge and agree that the Project consists of a pool of facilities and that Seller is permitted to utilize one or more of these pooled facilities in order to satisfy its obligations hereunder. The Parties further acknowledge and agree that, with respect to Section 3 of this Confirmation, Product shall solely be limited to the actual Product generated and delivered by the pooled facilities used to satisfy the Contract Quantity, and that Buyer is not entitled to any additional Product produced by the pooled facilities in the Project above and beyond the Contract Quantity.
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 ***[***up to ***[*****INSERT*****]*** multiplied by [X]%***]***, unless excused pursuant to the definition of As-Available Delivery Obligation below. Seller in its sole discretion shall determine the hourly Contract Quantity during the Delivery Period.
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.

[for MPB: **Green Attributes Price:** ***]***	"Green Attributes Price" means the price applicable to Product delivered in each calendar year is the then-applicable Forecast Adder for RPS (in $/MWh) for deliveries for the applicable calendar year, subject to annual true-up for the Final Adder for RPS (in $/MWh), when available.
[**Fixed/ Premium Price:*** ***]***	$**[X.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 calendar month following the calendar month in which the Condition Precedent Satisfaction Date occurs.
Delivery Point:	The "Delivery Point" is SP15.
As-Available Delivery Obligation:	"As-Available Delivery Obligation" shall mean the obligation to provide the Contract Quantity is an as-available 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. Seller's failure to deliver shall be excused, and Seller shall have no obligation to make up or replace any failure of the Facility to generate and deliver the quantity from the Project: if (i) the Project is unavailable as a result of a Scheduled or Forced Outage, (ii) by an event or circumstance that affects the Project so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller, (iii) by Buyer's failure to perform, or (iv) by the unavailability of landfill gas which was not anticipated as of the Execution Date, which is not within the reasonable control of, or the result of negligence of, Seller or the party supplying such landfill gas to the Project, and which by the exercise of reasonable due diligence, Seller is unable to overcome or avoid or causes to be avoided, (v) insufficient wind power for the Project to generate energy as determined by the best wind speed and direction standards utilized by other wind producers or purchasers in the vicinity of the Project or if wind speeds exceed the Project's technical specifications, (vi) the unavailability of water or the unavailability of sufficient pressure required for operation of the hydroelectric turbine-generator as reasonably determined by Seller within its operating procedures, neither of which was anticipated as of the Execution Date, which is not within the reasonable control of, or the result of negligence of, Seller or the party supplying such water to the Project, and which by the exercise of due diligence, such Seller or the party supplying the water is unable to overcome or

	avoid or causes to be avoided, or (vii) insufficient solar power for the Project to generate energy as determined by the best solar standards utilized by other solar producers or purchasers in the vicinity of the Project.
Scheduling Obligations:	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.
Condition Precedent:	The commencement of the Delivery Period in accordance with Section 3 below shall be contingent upon the Seller obtaining or waiving CPUC Approval of this Confirmation. Either Party has the right to terminate this Confirmation upon notice in accordance with Section 12 of the 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]***. 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." Any termination made by a Party under this section shall be without liability or obligation to the other Party. 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.

ARTICLE 2. DEFINITIONS

"Annual True-Up" has the meaning set forth in Section 5.4(a), below.

"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 approves this Agreement in its entirety, subject to CPUC review of the Seller's administration of the Agreement.

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.

“Forced Outage” means any unplanned reduction or suspension of production of Product from the Project or unavailability of the Project or transmission facilities in whole or in part that is not a Planned Outage or a willful withholding of Product when the Project is otherwise capable of delivering Product under Good Industry Practices.

“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 (SOx), nitrogen oxides (NOx), 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.

[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.

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.

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. **[STC 2 – GREEN ATTRIBUTES, NON-MODIFIABLE]**

"Integrated Forward Market" has the meaning set forth in the Tariff.

"Planned Outage" means any planned reduction or suspension of the electrical output from the Project or unavailability of the Project or the transmission facilities, in whole or in part as a result of the inspection, maintenance, or repair of equipment.

"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.

"True-Up Payment" has the meaning set forth in Section 5.4(a), below.

"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 ***[SELECT EITHER:*** **"**Fixed Price" OR "sum of the Green Attributes Price plus the Premium 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 ***[for EEI:*** **"**Section 6.2 of the Master Agreement**"; for WSPP: "**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 (20^{th}) 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.

5.4. *[for Market Price Benchmark:* Annual True-Up

(a) Monthly Cash Settlement Amount Annual True-Up. Seller shall calculate a true-up ("Annual True-Up") for each Calculation Period in which the Forecast Adder for RPS was used to calculate the Monthly Cash Settlement Amount as an amount equal to (i) the Forecast Adder for RPS less the Final Adder for RPS, multiplied by (ii) the quantity of Product (in MWhs) that Seller delivered to Buyer and for which Seller has already issued an invoice to Buyer (the "True-Up Payment"). If the True-Up Payment is a positive amount, such amount is owed by Seller to Buyer, and if the True-Up Payment is a negative amount, such amount is owed by Buyer to Seller.

(b) True-up Invoices and Payments. Within thirty (30) Business Days after the Final Adder for RPS is issued in each calendar year, Seller shall issue an invoice to Buyer for amounts owed by, or due to, Seller, as applicable, resulting from the Annual True-Up. Payment for the Annual true-up shall be due and payable by the owing party on or before the later of (i) the twentieth (20th) day of the month in which Seller issues a True-Up Payment invoice and (ii) ten (10) Business Days following Buyer's receipt of the invoice issued by Seller for the True-Up Payment, provided that, if such day is not a Business Day, then on the next Business Day. ***]***

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. [STC 6, NON-MODIFIABLE]

(b) 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. **[STC REC-1, NON-MODIFIABLE]**

(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. **[STC REC-2, NON-MODIFIABLE]**

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 thefacility(ies) that the Product was delivered from for that month.

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. **[STC 17 – APPLICABLE LAW, NON-MODIFIABLE]**

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.

7.3. SOVEREIGN IMMUNITY

[NOTE TO BIDDERS: insert only if applicable to governmental agencies, etc.] For purposes of this Confirmation only, the 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 the Agreement.

Changes to the Agreement shall apply to this Confirmation only. For purposes of this Confirmation, ***[for EEI:*** "Section 10.11 of the Master Agreement"***;*** **"**Section 30"] (Confidentiality) of the ***[INSERT:*** **"**EEI" OR "WSPP"] Agreement is deleted in its entirety and replaced with the following:

> ***[INSERT:*** **"**10.11" OR "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 Agreement"***; for WSPP:*** **"**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 ***[for EEI:*** "Section 10.11 of the Master Agreement"***; for WSPP:*** **"**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 Disclosure 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 ***[for EEI:*** **"**Section 10.11 of the Master Agreement**";*** ***for WSPP:*** "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 ***[for EEI:*** **"**Section 10.11 of the Master Agreement**";*** ***for WSPP:*** "Section 30.1(a) ***"]*** 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: Vice President – Energy Supply	TITLE:

_____ APPROVED AS TO LEGAL FORM

EXHIBIT A

TO THE CONFIRMATION BETWEEN _____AND SAN DIEGO GAS & ELECTRIC COMPANY
DATED: _____

PROJECT FACILITY(IES)

Name of Facility	Resource	Capacity (MW)	CEC RPS ID	WREGIS GU ID	Host Balancing Authority

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 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)

EXHIBIT C

SDG&E PREPARED DIRECT TESTIMONY OF CHRISTOPHER A. SUMMERS (ENERGY PROCUREMENT) (MAY 2022) IN THE 2024 GRC PROCEEDING (A.22-02-016)

Company: San Diego Gas & Electric Company (U 902 M)
Proceeding: 2024 General Rate Case
Application: A.22-05-___
Exhibit: SDG&E-10

PREPARED DIRECT TESTIMONY OF

CHRISTOPHER A. SUMMERS

(ENERGY PROCUREMENT)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

May 2022

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Appendix A – Glossary of Terms

SUMMARY

SDG&E ENERGY PROCUREMENT (In 2021 $)			
O&M	**2021 Adjusted-Recorded ($000)**	**Estimated TY 2024 ($000)**	**Change ($000)**
Non-Shared	7,911	9,377	1,466
Shared	0	0	0
Total O&M	**7,911**	**9,377**	**1,466**

Summary of Requests

- San Diego Gas & Electric Company (SDG&E) requests that the California Public Utilities Commission (Commission or CPUC) approve recovery of $9.4 million of operations and maintenance (O&M) expenses necessary to enable SDG&E's Energy Procurement (EP) function to undertake procurement necessary to provide retail electric service to bundled service customers, as well as to support successful transition of customers who depart bundled service in a manner that ensures equitable cost allocation for all customers.
- The $9.4 million overall request is consistent with O&M expenses recorded in prior years. The request includes an approximate $1,466,000 increase in O&M expenses relative to the 2021 adjusted recorded amounts. This increase from 2021 adjusted recorded amounts is due primarily to the need to fill several vacancies that existed in 2021, as well as an expanded need for expertise given the complex technical and policy issues arising from the evolving technology and regulatory landscape and, among other things, rapid expansion of community choice aggregation (CCA) in SDG&E's service territory.
- The methodology used to develop the labor portion of 2024 O&M cost forecast relies on: (i) base year (BY) 2021 expenses; and (ii) the anticipated cost of incremental regulatory and operational activities undertaken by EP. This incremental activity is necessitated by major structural changes in California's retail energy services market and newly adopted Commission requirements. For example, the EP function must handle multiple new procurement mandates, new requirements related to prepayment and portfolio optimization arising from the

Commission's Power Charge Indifference Adjustment (PCIA) proceeding,[1] implementation of new processes to allocate Renewables Portfolio Standard (RPS) attributes to CCA and Direct Access (DA) customers, development of a Provider of Last Resort (POLR) framework, and other issues arising from increased fragmentation of the market and competition among load-serving entities (LSEs) for limited capacity resources.

- The methodology used to develop the non-labor portion of 2024 O&M cost forecast is a five-year average forecast methodology with added expected incremental cost. The five-year average forecast methodology reduces variances by leveling costs attributable to yearly changes on how EP manages software subscriptions and leverages technology systems, and unusual operating conditions such as the COVID-19 pandemic that occurred in 2020.
- SDG&E's EP function also requires upgraded technology to allow it 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 Information Technology Testimony of William Exon (Exhibit SDG&E-25, Ch 2).

[1] *See* Rulemaking (R.) 17-06-026.

PREPARED DIRECT TESTIMONY OF CHRISTOPHER A. SUMMERS (ENERGY PROCUREMENT)

I. INTRODUCTION

A. Summary of Energy Procurement Costs and Activities

My testimony supports the test year (TY) 2024 forecast of O&M costs for non-shared services for the forecast years 2022, 2023, and 2024 associated with SDG&E's EP function. It also supports the request to recover capital costs associated with certain necessary CAISO-related technology upgrades. Table CS-1 summarizes forecasted O&M costs. Capital costs for CAISO-related technology upgrades are included in the Information Technology testimony of William Exon (Ex. SDG&E-25, Ch 2).

TABLE CS-1
Test Year 2024 Summary of Total Costs

SDG&E ENERGY PROCUREMENT (In 2021 $)	2021 Adjusted-Recorded (000s)	TY2024 Estimated (000s)	Change (000s)
Total Non-Shared Services	7,911	9,377	1,466
Total Shared Services (Incurred)	0	0	0
Total O&M	**7,911**	**9,377**	**1,466**

This testimony requests Commission approval of approximately $9.4 million of annual O&M costs to enable EP to fulfill its responsibilities related to planning, procuring, managing, and administering the energy supply resources needed for SDG&E to deliver clean, safe, and reliable electric service to bundled service customers,[1] compliance with procurement requirements and support successful transition of customers who depart bundled service to be served by a CCA or DA provider in a manner that achieves equitable cost allocation. As of 2021, the value of the supply resources in SDG&E's resource portfolio is more than $10 billion dollars.

The nature of the work performed by EP continues to increase in complexity, driven by factors such as grid modernization, expansion of distributed energy resources (DER) including

[1] The term "bundled service customer" refers to a customer that relies on SDG&E for its retail electric service in addition to distribution and transmission services. EP procures electricity and capacity to serve its bundled service customers. In certain circumstances, the Commission directs SDG&E to also procure on behalf of CCA and DA customers.

energy storage, increasingly specialized procurement of specific resources (renewables paired with storage, geothermal, etc.), portfolio optimization requirements, greenhouse gas (GHG) emissions reduction targets, cap-and-trade compliance and the evolving role of investor-owned utilities (IOUs) in the energy market resulting from the state's policy in favor of customer choice. With the introduction of each new procurement-related mandate, EP must interact with stakeholders, develop new processes, execute new contracts, seek Commission approval, dispatch approved resources and monitor/report on progress while minimizing increases to staffing levels.

EP meets bundled service customer demand by procuring both long-term and short-term resources, optimizing those resources in the wholesale energy and ancillary services markets, prudently administering resource contracts, including utility-owned resources, and accurately settling all energy procurement transactions. In addition, EP is actively involved in developing state procurement policy through advocacy at the Legislature and engagement at the California Public Utilities Commission (CPUC), CAISO, California Energy Commission (CEC), and the California Air Resources Board (CARB). To meet state policy goals and comply with legislative and regulatory requirements, EP also develops comprehensive procurement strategies and tools to capture the benefits of clean and evolving technologies, such as energy storage, demand response (DR), and DERs. While EP's commodity-related costs are recovered through SDG&E's Energy Resource Recovery Account (ERRA), EP's O&M costs are generally recovered through the General Rate Case (GRC).[2]

In addition to sponsoring EP's O&M costs, my testimony supports the need for technology upgrades to enable SDG&E to maintain its legal obligation to provide scheduling services within the CAISO market. Recovery of the associated capital costs is requested in the Direct Testimony of William Exon, (Ex. SDG&E-25, Ch 2).

B. Support To and From Other Witnesses

My testimony references the testimony and workpapers of several other witnesses, either in support of their testimony or as referential support for mine. These include the following:

- Sustainability Policy testimony of Estela de Llanos (Exhibit SDG&E-02)

[2] The costs of certain software and/or subscriptions that are used exclusively to meet energy procurement-related requirements may be recovered through ERRA (*e.g.*, Tullett Prebon pricing subscriptions used exclusively for short run avoided cost price indices).

- Information Technology testimony of William Exon (Ex. SDG&E-25, Ch 2)
- Safety, Risk and Asset Management testimony of Ken Deremer (Ex. SDG&E-31)
- Regulatory Accounts testimony of Jason Kupfersmid (Ex. SDG&E-43)

C. Organization of Testimony

My testimony is organized as follows:

- Introduction;
- Sustainability and Safety Culture
- Description of the activities, non-shared cost forecast and cost drivers for:
  - Origination and Portfolio Design
  - Energy Supply & Dispatch
  - Settlements & Systems / "Back Office"
  - Resource Planning
- Description of required technology upgrades to support capital costs referenced in the Direct Testimony of Mr. Exon, (Ex. SDG&E-25, Ch 2).

II. SUSTAINABILITY AND SAFETY CULTURE

As detailed in the Sustainability Policy testimony of Estela de Llanos (Ex. SDG&E-02); sustainability, safety and reliability are the cornerstones of SDG&E's core business operations and are central to SDG&E's GRC presentation. SDG&E is committed to not only deliver clean, safe, and reliable electric service, but to do so in a manner that supports California's climate policy, adaptation, and mitigation efforts. In support of the legal and regulatory framework set by the state, SDG&E has taken actions to promote the state's vision of a clean energy future. The Sustainability Strategy outlined by Ms. de Llanos serves as SDG&E's guide to enable a more just and equitable energy future in SDG&E's service territory and beyond. It recommends a diverse approach for California leveraging clean electricity, clean fuels, and carbon removal to achieve the 2045 goals through the lens of reliability, affordability, and equity. SDG&E's goal is to contribute to the decarbonization of the economy by diversifying energy resources, collaborating with regional partners, and enabling customer choice that supports an affordable, flexible, and resilient grid. As a "living" strategy, the goals and objectives of the Sustainability Strategy will continue to be updated as technologies, policies, and stakeholder preferences change.

A major focus of the Sustainability Strategy described by Ms. de Llanos is advancement of the state's climate and clean energy goals. California's Senate Bill (SB) 100 establishes a landmark policy requiring renewable energy and zero-carbon resources to supply 100 percent of electric retail sales to end-use customers and 100 percent of electricity procured to serve state agencies by December 31, 2045. SDG&E's recently released "Path to Net Zero: A Decarbonization Roadmap for California" describes, among other topics, SDG&E's commitment to meeting California's SB 100 goals. EP is actively engaged in promoting this effort and, more broadly, in supporting California's push towards sustainability and increased reliance on clean energy resources. The EP function is responsible for procuring a diverse portfolio of clean resources to serve load and meet mandates. This requires EP to engage in forward-looking resource planning activities and to procure resources needed to comply with regulatory requirements such as those established in the context of the Commission's RPS and Integrated Resource Plan (IRP) proceedings. In addition, EP manages SDG&E's GHG compliance activities, including procurement of compliance instruments. EP must also handle contract administration, resource scheduling, and myriad other tasks related to providing customers clean and reliable electric service.

Safety is also a core value for SDG&E and it is committed to providing safe and reliable service. SDG&E's safety-first culture is embedded in every aspect of the Company's work. EP is committed to ensuring the safety of its employees by establishing an environment of compliance with applicable federal, state, and local safety laws, rules, and regulations, as well as SDG&E's internal safety standards.

SDG&E remains focused on identifying and implementing the most cost-effective solutions with the potential to make the greatest impact on reducing GHG emissions, while meeting compliance requirements and maintaining a safe and reliable energy system. SDG&E believes that safety, reliability, and sustainability are inextricably linked and are fundamental to the Company's ability to continue to successfully operate. Please see the Sustainability Policy testimony of Estela de Llanos (Ex. SDG&E-02) for additional detail on SDG&E's Sustainability Strategy and the Safety, Risk and Asset Management testimony of Ken Deremer (Ex. SDG&E-31) for additional detail of SDG&E's Safety Policy.

III. NON-SHARED COSTS

"Non-shared services" are activities that a utility performs solely for its own benefit. Table CS-2 summarizes the total non-shared O&M forecasts for the listed cost categories.

TABLE CS-2
Non-Shared O&M Summary of Costs

SDG&E ENERGY PROCUREMENT (In 2021 $)			
Categories of Management	**2021 Adjusted-Recorded (000s)**	**TY2024 Estimated (000s)**	**Change (000s)**
A. Origination & Portfolio Design	1,594	2,479	885
B. Energy Supply & Dispatch	1,727	2,159	432
C. Back-Office	3,625	3,536	-89
D. Resource Planning	965	1,203	238
Total Non-Shared Services	**7,911**	**9,377**	**1,466**

The EP function generally involves purchase of products including electricity, fuel used in electric generation, resource capacity and ancillary services necessary to satisfy applicable procurement requirements and to provide retail electric service to SDG&E's bundled service customers (and, in some instances, CCA and DA customers). This function is overseen by SDG&E's Vice President of Energy Procurement and Sustainability, who provides direction and officer oversight to 43 employees involved in multiple procurement-related functions including resource planning, contracting activity, resource scheduling, settlements, compliance/reporting, etc.[3] More broadly, the Vice President of Energy Procurement and Sustainability is responsible for providing strategic direction consistent with SDG&E's wider mission, developing policies to strengthen and enhance energy supply functions and performance, and ensuring that all energy procurement is conducted in a manner consistent with applicable federal and state requirements. As discussed below, the energy procurement function includes: (1) Origination and Portfolio Design; (2) Energy Supply and Dispatch; (3) Settlements and Systems/Back Office; and (4) Resource Planning.

[3] The Vice President of Energy Procurement and Sustainability also oversees the Environmental Services function and the Decommissioning/San Onofre Nuclear Generating Station (SONGS) function, both of which are discussed in the testimony of Brittany Syz (SDG&E-02).

A. Origination & Portfolio Design

TABLE CS-3
Summary of Origination & Portfolio Design Costs

A. Origination & Portfolio Design	2021 Adjusted-Recorded (000s)	TY2024 Estimated (000s)	Change (000s)
1. Long-Term Procurement	1,594	2,479	885
Total	**1,594**	**2,479**	**885**

1. Description of Costs and Underlying Activities

The Origination & Portfolio Design (O&PD) function is responsible for developing and implementing the regulatory and commercial strategies needed to support the company's goals of becoming the cleanest, safest, most reliable energy company in America, while creating an optimal energy resource portfolio that furthers California's energy policy objectives. O&PD leads SDG&E's strategy for identifying and contracting with the resources needed to meet SDG&E's retail commodity service obligations, comply with mandated procurement requirements and help the state achieve its clean energy goals.

To achieve its procurement-related objectives, O&PD negotiates and executes contracts with various market participants. At the end of 2021, SDG&E's energy resource portfolio included over 60 contracts comprising more than 4,000 Megawatts (MW) of energy and capacity under contract terms ranging from 1 year to 25 years.[4] Given recent additional CPUC procurement mandates,[5] the number of contracts in SDG&E's resource portfolio is expected to increase in the near-term. Contract counterparties include, among others, large independent power suppliers, Diverse Business Enterprises (DBEs), load-serving entities (LSEs), energy storage developers, power marketers, and municipalities. Long-term resources include solar, wind, biomass, small hydro, combined heat and power, conventional generation, energy storage and resource adequacy (RA)-only contracts. In response to several Commission directives, SDG&E's procurement of new resources has increased significantly in recent years, which requires additional time spent crafting solicitations, reviewing bids, negotiating contracts and submitting executed transactions to the CPUC for approval.

[4] Figures include projects both in construction and operation and reflects data as of December 31, 2021.

[5] *See, e.g.*, procurement directives issued in Rulemaking (R.) 16-02-007/R.20-05-003 (IRP) and R.20-11-003 (Electric Reliability).

Competitive solicitations are conducted by issuing a Request for Offers (RFO) or similar communication to the market, developing a valuation model and methodology, conducting bidders' conferences, evaluating bids submitted, and selecting the most cost-effective resources to meet the RFO objectives and/or Commission requirements. Common to all RFOs, O&PD requests and reviews information on cost, project viability and performance guarantees. Given the evolving nature of the energy industry, and SDG&E's position in the industry, the number of official solicitations has grown exponentially from 8 solicitations in 2019 to 20 in 2021. An expanded number of solicitations and market inquires will be the norm going forward. For example, SDG&E currently estimates that it will hold nearly 20 solicitations in 2022, which includes procurement of new resources in response to regulatory mandates, as well as various portfolio optimization activities aimed at right-sizing its portfolio. This increase in activity is indicative of the need for additional capacity within the state, California's zero-emission goals and portfolio optimization activities to account for load departure.

Following the activities directly related to a procurement solicitation, O&PD negotiates with winning bidders to execute final contracts. Given the evolving nature of procurement and the state's focus on new resources, each new negotiation requires a review and update to contractual language to ensure the contracted resources meet Commission requirements. Once a resource contract is executed, O&PD is responsible for drafting the request for Commission approval (typically through an application or Tier 2 or 3 advice letter). O&PD is responsible for any associated data requests, advocacy and/or litigation related to such filings. An approved Independent Evaluator (IE) is included throughout the procurement process to monitor SDG&E's actions, provide guidance and report on the overall solicitation/negotiation process. To conduct procurement of utility-owned resources, O&PD follows a strict code of conduct that governs communications and defines roles within and outside of the team to ensure utility-owned resources are not afforded preferential treatment during the solicitation process.[6]

In addition to solicitations for procurement of new resources, SDG&E expects increased activity related to allocation and sale of portfolio resource attributes as required under the PCIA framework.[7] Over the coming years SDG&E will allocate its RPS portfolio to applicable LSEs,

[6] *See* D.07-12-052, D.13-10-040.

[7] R.17-06-026.

attempt to sell excess RPS through a market offer process, solicit market interest for various contractual arrangements that might reduce the overall size of the energy portfolio and offer LSEs the opportunity to prepay their customers' PCIA obligation. These are all new processes that require incremental planning, additional due diligence by EP staff, and regulatory approval and reporting.

In addition to holding solicitations, it may be necessary for SDG&E to transact directly with counterparties under certain circumstances, including but not limited to when there exists a lack of liquidity, a need for expediency, a favorable pricing opportunity, opportunity for selling excess resources, etc. In the case of bilateral negotiations, the contract negotiation process is very similar to that used for contracts arising from an RFO. While there is no formal solicitation process, SDG&E does perform analysis to ensure that prices are competitive and seeks CPUC approval, as appropriate, consistent with its approved Bundled Procurement Plan (BPP) requirements.

Approved resources become a part of the SDG&E portfolio and are ultimately dispatched by Energy Supply & Dispatch (ES&D) function, discussed in Section III. B. While ES&D dispatches the resources, those contracts are administered by the Settlements and Systems/Back-Office function, discussed in Section III. C. below, which is responsible for oversight and contract administration of a project through construction and development. These responsibilities include exercising contractual options in a prudent manner, verifying that conditions precedent to the agreement have been satisfied, monitoring project designs, schedules, and milestones so that the project being constructed meets the stated performance requirements in the contract, and coordinating internal SDG&E functions necessary to meet all the terms and conditions of the agreement. These contract administration activities continue through operation until expiration of the contract term. While the Back-Office function has primary responsibility for these activities, O&PD assists with interpretation of contract provisions and renegotiation of terms as necessary due to changed circumstances or conditions, as well as resolving disputes as required.

O&PD, together with the other EP functions, meets monthly with SDG&E's Procurement Review Group (PRG) to provide updates and respond to questions regarding a variety of SDG&E procurement-related issues and transactions. The PRG includes staff of the CPUC's Energy Division, the Public Advocates Office (PAO), and The Utility Reform Network (TURN),

as well as other "non-market participants" interested in SDG&E's procurement activities. The main purpose of SDG&E's involvement with the PRG is to provide details of SDG&E's overall procurement strategy, proposed procurement contracts and processes prior to submission for CPUC approval and to establish a forum for offering input and perspectives on SDG&E's procurement activities.[8]

In addition to transactional activities, O&PD is responsible for developing and implementing regulatory and commercial strategies related to the energy portfolio in coordination with the Resource Planning function, discussed below in Section III. D. O&PD is actively involved in providing analysis and recommendations on matters related to public policy in California. O&PD subject matter experts (SMEs) regularly participate in regulatory proceedings related to energy procurement issues and interface with numerous government agencies, including the CPUC, the CEC, CARB and the California Legislature. For example, O&PD SMEs are involved in active CPUC proceedings including, but not limited to, the IRP proceeding,[9] the RPS proceeding,[10] the Resource Adequacy (RA) proceeding,[11] the Power Charge Indifference Adjustment (PCIA) proceeding,[12] the Integrated Distributed Energy Resources (IDER) Program proceeding,[13] the Green Tariff Shared Renewables (GTSR) Program proceeding, the Provider of Last Resort (POLR) proceeding,[14] and various other procurement-related proceedings targeting energy storage, demand response, biogas, and small-scale renewables. O&PD provides analysis, written testimony, comments and other materials to support SDG&E's positions and proposals in these regulatory proceedings and performs similar functions at CAISO, the CEC, CARB and the Legislature, as applicable. O&PD also provides input into long-range resource planning models and regularly addresses data requests pertaining to EP's resource valuation approach, RPS position, and a variety of other topics.

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8 *See* D.02-08-071 at 24-26.

9 R.20-05-003.

10 R.18-07-003.

11 R.21-10-002.

12 R.17-06-026; R.20-05-003.

13 R.14-10-003.

14 R.21-03-011.

In addition to regular engagement with governmental agencies, O&PD, along with Energy Supply & Dispatch, actively participates in initiatives at the CAISO to shape California's wholesale energy markets. O&PD monitors developments within the larger California and western energy markets, participates in policymaking activities at the CAISO, and monitors CAISO market outcomes to identify and mitigate any market failure or anomalies. O&PD and the Energy Supply & Dispatch function (discussed in Section III. B. below) work together very closely to ensure that the policy initiatives at the CAISO, Legislature and CPUC can be properly implemented into the CAISO commercial market. For example, as the CAISO seeks to expand through its extended day ahead market (EDAM) initiative, O&PD will play a key role in shaping those policies and ultimately integrating them into its trading and scheduling functions.

2. Forecast Method

The forecast method developed for this cost category relies on BY 2021. The base year recorded data with incremental adjustments forecast methodology was utilized as the forecasting method to best represent the structure of the organization, while adding incremental adjustments to account for the anticipated cost of incremental regulatory and operational activities. This incremental activity is necessitated by major structural changes in California's retail energy services market and newly adopted Commission requirements. For example, the O&PD function must handle multiple new procurement mandates, new requirements related to PCIA prepayment and portfolio optimization,[15] implementation of new processes to allocate RPS attributes to CCA and DA customers, development of a POLR framework, and other issues arising from increased fragmentation of the market and competition among LSEs for limited capacity resource

This approach is appropriate because, while requirements and processes can vary and increase from year to year, the types of activities and skills related to the procurement function remain fairly constant. Thus, existing open positions must be filled and additional necessary expertise must be added to support the O&PD function. Given the increasing complexity of the energy market and regulatory landscape, emergence of new resource types that require development of new approaches for valuing and negotiating contracts, imposition of new procurement mandates to improve grid reliability, establishment of new portfolio optimization requirements, and other regulatory imperatives, vacancies in 2021 must be backfilled and

[15] *See* R.17-06-026; *See also* R.20-05-003; Description of "Cost Drivers" in Section III.A.

additional expertise must be secured to meet these changing needs. Using base year 2021 with incremental adjustments allows EP to reflect evolving long-term procurement priorities and yields a TY 2024 forecast that includes labor costs of $2,187,000, with 15.4 full-time equivalent employees (FTEs).[16]

A five-year average forecast methodology with added expected incremental cost was used to forecast O&PD non-labor costs. The five-year average forecast methodology reduces variances by leveling costs attributable to unusual operating conditions such as the COVID-19 pandemic that occurred in 2020. The COVID-19 pandemic significantly impaired employee normal course of business travel for industry-related activities. This impact continued into 2021 which is why base year forecast method is not an appropriate method to forecast O&PD non-labor costs. Using a five-year average, O&PD's 2024 forecast includes non-labor costs of $292,000.

3. Cost Drivers

O&PD is charged with designing and implementing procurement processes that support maturation of developing technologies in the marketplace while ensuring that risks are mitigated and that customers receive a reliable product that complies with all applicable regulatory requirements. Cost drivers behind this forecast are related to changes in the electric procurement market and regulatory environment. While annual procurement levels may vary, activities requiring procurement expertise are growing in number and complexity as California moves to a 60 percent RPS goal by 2030 and the CPUC implements procurement mandates related to clean energy, reliability as well as new requirements necessitated by increasing fragmentation of the electric procurement market. Currently, EP must comply with a myriad of procurement mandates, including the following:

- D.18-12-003 - Bioenergy Renewable Auction Mechanism (BioRAM)
- D.10-12-035; D.15-06-028; E-5163 - Combined Heat and Power (CHP)
- D.19-07-009 - Demand Response Auction Mechanism (DRAM)
- D.16-12-036 - Distribution Investment Deferral Framework (DIDF)

[16] O&PD's labor, non-labor costs and FTEs include the Vice President of Energy Procurement and Sustainability.

- D.18-06-027; D18-10-007; E-4999 - Disadvantaged Community GTSR (DAC-GT) program
- D.16-05-006; D.15-01-051; D.17-07-007 - EcoShare GTSR program
- D.18-06-027; D18-10-007; E-4999 - Community Solar GTSR (CSGT) program
- D.07-12-052 - Independent Evaluators (IE) pool
- D.12-07-014; D.21-06-029; D.20-12-006; D.20-06-031 - Resource Adequacy (RA)
- D.21-12-032 - Renewable Market Adjusting Tariff (ReMAT)
- D.12-11-016; D-17-06-026 - Renewables Portfolio Standard (RPS)
- D.13-10-040 - AB 2514 (Energy Storage)
- D.19-11-016 – IRP "Near-Term" Reliability Procurement (2021-2023)
- D.21-06-035 – IRP "Mid-Term" Reliability Procurement (2023-2026)
- D.21-03-056; D.21-12-015 - Summer Reliability Procurement (2021-2023)

Procurement ordered through IRP and Summary Reliability proceedings is new and involves a high degree of complexity as the Commission increasingly focuses on integration of new battery storage, hybrid resources and other evolving technologies. D.21-06-035 provides an added layer of complexity as evolving technologies are required to come online in specific years, which requires additional due diligence and analysis to attempt to select new technologies from a smaller pool of eligible projects. Each new procurement mandate necessarily requires a review of the portfolio, analysis of new resources, outreach to suppliers in the form of bilateral negotiations and/or solicitations, updates to contracts or new contracting, work with the PRG and Independent Evaluator, engaging in regulatory process to secure Commission approval, monitoring construction progress and ultimately managing the contractual obligations.

While SDG&E is engaged in significant procurement activity to comply with Commission directives to contract with new, incremental resources to ensure adequate capacity, it is also obligated to comply with "portfolio optimization" activities aimed at right-sizing its portfolio given the high level of load departure experienced in its distribution service territory. For example, the Commission adopted a Voluntary Auction/Market Offer (VAMO) process for RPS resources, as well as other portfolio optimization requirements, in the PCIA proceeding (R.17-06-026):

- Annual Allocation of SDG&E's RPS Portfolio[17] – On an annual basis SDG&E must offer all LSEs in its service territory their proportional load share of SDG&E's RPS portfolio. This process requires contract negotiation, Commission approval and annual monitoring to ensure that proper volumes are transferred.
- Market Offer Process[18]- In addition to the annual allocation of SDG&E's RPS portfolio, SDG&E must offer unallocated RPS energy to the market through a sales solicitation.
- Request for Information to Reduce RPS Portfolio Costs[19] – SDG&E must engage the market to see if entities are interesting in contract modifications to lower overall cost of portfolio. This will require launching the process and any commercial negotiations/commission approvals that might result from the process.
- Prepayment of PCIA Obligations[20] – Annual process whereby a select number of LSEs may negotiate a prepayment of their customers' PCIA obligation. This will require an annual open season, contract negotiation, CPUC approval and administration of the prepayment.

It is important to note that while the San Diego region is experiencing a mass migration of customers from utility bundled service to CCA service, this circumstance does not operate to reduce the level of SDG&E's procurement-related transactional activity. Indeed, the number of SDG&E's transactions is likely to *increase* as the result of load migration. SDG&E is still required to comply with procurement requirements related to IRP, RA, RPS, etc. (and in some instances, to conduct backstop procurement on behalf of CCAs and DA providers), as noted above, and must at the same time comply with VAMO obligations and engage in continuous review of its resource portfolio in order to identify excess resources and potentially offer those products to the market which would necessarily require negotiations, contracting, etc. – in short, load departure adds complexity and increases workload.

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[17] D.21-05-030, OP 2.

[18] D.21-05-030, OP 3.

[19] D.21-05-030, OP 6.

[20] D.20-08-004.

In order to execute its procurement priorities, O&PD must fill existing vacancies and additional necessary expertise must be added to support the O&PD function. SDG&E is requesting an incremental $702,000 to account for partial vacancies that occurred in 2021 and expected incremental staff position to support increasing demands and workload. The request includes the following expected incremental staff positions:

- Energy Procurement Advisor: Position will provide policy and commercial analysis, and handle solicitations, contract negotiations and regulatory approval associated with mandated procurement and portfolio optimization activities.
- Market & Policy Analyst: Position will focus on policy and compliance matters, supporting activities in procurement-related Commission proceedings (e.g., RA, RPS, ERRA, etc.) and CAISO initiatives, and other regulatory issues
- Senior Origination Analyst: Position will focus on resource solicitations, bid analysis, regulatory requests, RPS compliance activities, BPP activity and other procurement-related regulatory and transactional matters.

B. Energy Supply & Dispatch

The Energy Supply & Dispatch function includes: (a) Electric Procurement & Trading; (b) Market Analysis; and (c) Market Operations.

TABLE CS-4
Summary of Trading and Scheduling Costs

B. Energy Supply & Dispatch	2021 Adjusted-Recorded (000s)	TY2024 Estimated (000s)	Change (000s)
1. Trading and Scheduling	1,727	2,159	432
Total	**1,727**	**2,159**	**432**

1. Description of Costs and Underlying Activities

The ES&D department optimizes SDG&E's generation and contracted resources within the CAISO markets to serve bundled customers in a least-cost dispatch manner and consistent with SDG&E's Commission-approved BPP. To support these activities, ES&D personnel have CAISO market expertise and leverage several information management systems across functions, including Power Costs System Inc. (PCI), Yes Energy, Morningstar, Wood Mackenzie, S&P Global Platts & Intercontinental Exchange (ICE) and Natural Gas Intelligence.

As noted above, ES&D is broken down into three discrete areas: (a) Electric Procurement & Trading; (b) Market Analysis and (c) Market Operations

a. Electric Procurement & Trading

Within ES&D, the Electric Procurement & Trading function performs short-term planning, procurement, and trading functions for transactions inside of a five-year time horizon. Planning activities include developing short-term forecasting methodologies, performing short-term power planning studies and regulatory analysis, and assessing changes in tariffs and regulations governing least-cost dispatch of electric and gas portfolios. Electric Procurement & Trading is also responsible for all short-term electricity transactions related to dispatchable generation, including executing all trades, purchases, hedges and sales to manage the electricity supply portfolio consistent with SDG&E's BPP.[21]

In addition, Electric Procurement & Trading is responsible for procuring gas needed for dispatchable generation and for performing gas scheduling on the electronic bulletin boards of the interstate and intrastate pipelines it uses to deliver fuel to its gas-fired resources, including SDG&E-owned resources and contracts for tolling resources.

Finally, Electric Procurement & Trading is responsible for the purchase and/or sale of various environmental products like Low Carbon Fuel Standard Credits and Cap-and-Trade compliance instruments. In particular, Electric Procurement & Trading is the lead for SDG&E's GHG compliance activities including development and implementation of policies for procuring GHG allowances and offsets in compliance with the limits established in SDG&E's BPP and conducts necessary reporting related to those activities.

b. Market Operations

The Market Operations function performs day-ahead demand forecasting, conducts analysis of daily portfolio performance, conducts generation outage planning, and seeks to optimize ES&D's scheduling and bidding strategies. The Market Operations group oversees the scheduling and dispatch functions including day-ahead and real-time operations to ensure adequate energy supply. This area is the point of contact with CAISO for all generation dispatch and is staffed 24 hours a day/7 days a week. This area has responsibility for scheduling

[21] 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 EP's portfolio within the customer risk tolerance limits set by the CPUC.

resources into the CAISO's day-ahead, hour-ahead, and 15-minute markets while managing portfolio outages and day-ahead RA obligations. This group is tasked with least-cost dispatch and makes use of models and forecasts to optimize the portfolio and submit bids to CAISO. The group communicates with CAISO on a real-time basis to provide dispatch instructions, manages outages and coordinates with CAISO as needed during times when energy supply is tight.

In addition to scheduling SDG&E's own generating capacity, the Market Operations function schedules and dispatches most resources contracted under EP's approximately 60 PPAs and serves as the point of contact for daily operational administration of those resources. As described above, SDG&E is required to procure an extensive amount of new resources over the coming years. As those resource come online, the workload for Market Operations will increase as it is responsible for complying with CAISO dispatch requirements and for ensuring that all scheduling and market dispatch functions comply with all applicable rules and regulations.

c. Market Analysis

The Market Analysis function works closely with Market Operations and Electric Procurement & Trading function to analyze the market, provide analysis of daily portfolio performance, and optimization of resources and bidding strategies. Market Analysis manages compliance with annual and monthly RA requirements, including purchases of short-term resources as needed. To fulfill this responsibility, Market Analysis supports RA solicitations, prepares system and local RA filings at the CPUC, and demonstrates that it has procured sufficient capacity resources, including reserves, needed to serve aggregate monthly system load. Market Analysis also participates in CAISO-related meetings and working groups to monitor changes at the CAISO and to anticipate associated impacts on SDG&E's operations and portfolio costs. Finally, Market Analysis provides analytical support and analysis for various CAISO policy initiatives.

All areas within ES&D must also comply with various reporting requirements related to its least-cost dispatch operations, including ERRA-related regulatory filings and the CPUC quarterly compliance report (QCR).

2. Forecast Method

The forecast method developed for the labor costs in this cost category is BY 2021. This approach is most appropriate because it represents the most recent recorded ES&D labor costs at a full staffing level. Using baseline 2021 reduces variability between years and is consistent with

the forecast methodology selected for the other cost categories in my testimony and throughout most of this GRC application. Using this approach, ES&D's 2024 forecast includes labor costs of $2,101,000, with 15.8 FTEs.

Non-labor costs consist primarily of telecommunication and supplies expenses needed to support ES&D's labor in fulfilling their responsibilities. A five-year average forecast methodology was used to forecast ES&D's non-labor costs. This method was selected because it represents a reasonable foundation for forecasting the future needs of the organization. The five-year average forecast methodology reduces variances by leveling costs attributable to unusual operating conditions such as the COVID-19 pandemic that occurred in 2020. The COVID-19 pandemic significantly impaired employee normal course of industry-related activities. This impact continued into 2021 which is why base year forecast method is not an appropriate method to forecast ES&D's non-labor costs. Using a five-year average methodology, ES&D's 2024 forecast includes non-labor costs of $58,000.

3. Cost Drivers

ES&D must on a daily basis buy all the electricity SDG&E needs from the CAISO markets to serve SDG&E's customers and bid SDG&E-owned generation and SDG&E contracted resources to the CAISO markets. This daily process of buying and selling must be conducted in accordance with least-cost dispatch requirements established by the CPUC and consists of complex energy transactions with large dollar values. In 2021, ES&D leveraged its existing expertise and systems to absorb the demand for additional scheduling and analysis that resulted from SDG&E's procurement of new resources in response to new procurement obligations established by the Commission in the IRP and Summer Reliability proceedings. However, the number of new resources in SDG&E's portfolio, and corresponding workload demands, will continue to increase as SDG&E seeks to comply with additional procurement requirements imposed in the IRP and Summer Reliability proceedings. Finally, ES&D must further develop expertise related to management of a portfolio with increasingly intermittent resources, energy storage and new resources such as hybrid (solar + energy storage), long duration storage and hydrogen. Looking ahead, the scope, complexity, and importance of E&SD's work will continue to require skilled and competent personnel, accurate and efficient information management systems, and regular training.

To maintain and execute ES&D priorities, ES&D must fill existing vacancies and additional necessary expertise must be added to support the department function. SDG&E is requesting an incremental $421,000 to account for positions that incurred in 2021 as a result of vacancies. One remaining vacancy is expected to be filled in 2022. The request includes the following expected incremental staff positions to support increasing demands and workload:

- Scheduling Supervisor: Position will provide operational supervision and guidance to day-ahead and real-time scheduling desk, manage long/short term outages and RA replacement, and coordinate operational testing and new resource implementation process with the CAISO.
- Market Trading Analyst: Position will provide analytical support to assist ES&D development of its CAISO bidding strategies, value trading products and evaluate the performance of positions, assist in the compliance filings including QCR, ERRA and other reports as required.
- Environmental Products Trader/Electric Fuels Trader: Position will analyze the power, gas and environmental products markets and execute trades as needed to manage the electric supply consistent with SDG&E's BPP and ensure sufficient environmental products are procured for compliance.

C. Settlements and Systems/Back-Office

Back-Office functions refers to various activities conducted by the Settlements and Systems (S&S) department, which includes Settlement and Administration and Settlement Validation.

TABLE CS-5
Summary of Back-Office Costs

C. Back-Office	2021 Adjusted-Recorded (000s)	TY2024 Estimated (000s)	Change (000s)
1. Back-Office	3,625	3,536	-89
Total	**3,625**	**3,536**	**-89**

1. Description of Costs and Underlying Activities

S&S is responsible for Back-Office financial and accounting activities required to reconcile all energy contracts for EP's power procurement, verify CAISO charges and support

the primary operational systems (PCI, Allegro and Versify)[22] used in EP's operations. In the reconciliation process, S&S validates that all contract and market payments and receipts are in accordance with the terms of the contract or tariff provisions associated with the underlying transactions. This process requires annually verifying and processing over 1,600 invoices and billing requests, filing disputes of questionable charges when appropriate, and preparing journal entries for recording expenses and revenues. S&S is also responsible for financial accounting and payment of the commodity, transportation, hedging, and other related transactions associated with the gas burned at the power plants with EP tolling agreements and at the SDG&E-owned power plants.[23]

In addition, S&S must review daily CAISO charges and invoices for accuracy and will enter into disputes with the CAISO as required to correct billing discrepancies. S&S provides guidance and expertise in technical analyses for Market Operations and O&PD using the CAISO meter data, and tariff and power contract data to support regulatory and legislative policy positions.

Other S&S responsibilities include aggregation, tracking, and reporting of energy procurement data, including meter data to regulatory agencies and the CAISO, reviewing, testing, and commenting on proposed CAISO changes to the reconciliation process, and other related tasks. S&S is responsible for the energy supply costs for the ERRA compliance proceeding and for providing corresponding testimony and responses to data requests from stakeholders and regulators.

S&S contract administrators are responsible for approximately 60 PPAs associated with the resources in EP's portfolio. Contract administration activities include interactions with counterparties, coordinating and resolving disputes, monitoring counterparties safety plans, invoice verifications, contract interpretations and serving as points of contact. Contract administrators work to manage proper distribution of settlement payments and charges and, when discrepancies are found, the two functions work together to resolve them. Contract administrators also monitor and verify various contract terms, including scheduled maintenance,

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[22] These systems are primarily used to schedule and bid power to the CAISO, record gas and power transactions, and manage RA.

[23] Miramar Energy Facility, Palomar Energy Center, Cuyamaca Peak Energy Center and Desert Star Energy Center, are further described in Daniel Baerman's Electric Generation testimony (Ex. SDG&E-14).

curtailments, insurance and efficiency monitoring. Within EP, contract administrators also develop and maintain functional and process flow diagrams for energy procurement, support process improvement initiatives, and develop and document business requirements and processes for quality control.

S&S is further responsible for administration of vendor contracts associated with software subscriptions and key software systems, including PCI, Allegro, and Versify, which EP uses to record gas and power transactions, manage RA and to schedule and bid power to the CAISO. S&S works closely with internal Information Technology personnel and external contractors to manage the implementation of system upgrades and enhancements providing overall leadership, strategic planning, guidance, and management to meet objectives, milestones, and budgets associated with capital projects and system changes to support EP department functions.

The Back-Office function protects SDG&E's customers so that customers incur correct costs and receive correct revenues from the bidding, purchase, and sale of energy and ancillary services into the CAISO markets.

2. Forecast Method

The forecast method developed for the labor costs in this category is BY 2021. This is most appropriate because the method is indicative of how SDG&E expects Back Office functions to operate going forward. Base year recorded cost forecasting methodology adjusted for vacancies that occurred primarily in 2021 and incremental expertise is appropriate as it represents the most recent recorded back-office labor costs at a full staffing level. Using this approach, the TY 2024 forecast for Back Office includes labor costs of $2,049,000 with 17.1 FTEs.

Because Back Office may change from year to year on how it manages software subscriptions and leverages technology systems and new offerings to EP operations, reporting and compliance, a five-year average forecast methodology was used to forecast Back-Office non-labor costs. The methodology better reflects what will be needed in the test year compared to base year forecast methodology. Using this approach, the TY 2024 forecast for Back Office includes non-labor costs of $1,487,000.

3. Cost Drivers

S&S annually validates and processes over $1 billion in annual transactions related to electricity procurement. The S&S function process requires the collection, validation, and analysis of large amounts of price, quantity and operational data. Given the large amount of data involved and the complexity of the underlying transactions, S&S relies on experienced staff, advanced computer systems and vendor software solutions to accurately complete the overall settlement process.

Similar to ES&D, S&S has already leveraged existing labor and non-labor resources to absorb the increased settlement activities associated with the early phase of new resources ordered in the IRP proceeding. However, the number of resources will continue to increase in order to meet SDG&E's IRP procurement requirements through 2026. As noted above, S&S also tracks projects under development to ensure that they are meeting required deadlines. This includes regular meetings with developers, coordination with O&SD and providing status reports to regulatory bodies. Looking ahead, S&S will need to manage settlement activities associated with additional resources, as well as numerous additional economic curtailment amendments, and must ensure that it continues to have the capacity to perform its functions successfully.

To fulfill Back-Office responsibilities and priorities, Back-Office must fill existing vacancies and additional necessary expertise must be added to support the department function. SDG&E is requesting an incremental $242,000 to account for partial vacancies that occurred in 2021 and expected incremental staff position to support increasing demands and workload:

- Energy Administrator: Position will work on contract management from contract execution to commercial operation and administration over the specified term of the contract, manage the counterparty relationships, provide support for contract disputes, assist in the briefing of senior management on contract-related issues and prepare testimony to support procurement-relate proceedings.

D. Resource Planning

SDG&E's resource planning function is led by its Integrated Resource Planning (Resource Planning) group. Resource planning involves an iterative process designed to identify the appropriate resources to meet GHG reduction and other policy objectives while continuing to provide safe and reliable service to customers at the lowest possible cost.

TABLE CS-6
Summary of Resource Planning Costs

D. Resource Planning	2021 Adjusted-Recorded (000s)	TY2024 Estimated (000s)	Change (000s)
1. Resource Planning	965	1,203	238
Total	**965**	**1,203**	**238**

1. Description of Costs and Underlying Activities

The Resource Planning function involves consideration of studies, forecasts, regulatory requirements, and information exchanged through stakeholder engagement processes, combined with historical data, existing and potential resource capability, and costs associated with alternative portfolio solutions to identify an optimal resource plan. As part of this effort, the Resource Planning function utilizes a software package that enables modeling of the electric system commonly referred to as production cost models. This model is used to develop CPUC-required filings in proceedings including the IRP proceeding, the ERRA proceeding, etc., and to evaluate resources bid into RFOs and to forecast GHG emissions. Resource Planning supports the company's goal of safely delivering reliable power at the lowest possible cost while meeting the State's policy goals of reducing GHG emissions. This is accomplished through ensuring the availability of the tools required to evaluate resource needs and prudently maintaining required infrastructure for the resources needed to meet all reliability requirements. Resource Planning is actively engaged in all long-term resource planning policy discussions at the CPUC, CARB, CEC, and the Legislature that will ultimately identify the resource mix needed by the state to ensure satisfaction of reliability and clean energy goals. This includes work with CARB's SB 100 initiative, as well as Commission proceedings such as the RPS and IRP proceedings. In those arenas, Resource Planning is actively engaged the policy discussions both internally and externally and develops the resource plans necessary to meet the targets identified in those proceedings.

2. Forecast Method

Forecasting for labor costs is based on the BY 2021 plus incremental activities. This method was selected because it represents a reasonable foundation for forecasting the future needs of the organization. Using this approach, the TY 2024 forecast for Resource Planning includes labor costs of $938,000 with 6.9 FTEs.

Non-labor costs consist primarily of consulting services and technology expenses needed to support Resource Planning's labor in fulfilling their responsibilities. A five-year average forecast methodology was used to forecast Resource Planning's non-labor costs. This method was selected because it represents a reasonable foundation for forecasting the future needs of the organization. The five-year average forecast methodology reduces variances by leveling costs attributable to unusual operating conditions such as the COVID-19 pandemic that occurred in 2020. The COVID-19 pandemic significantly impaired employee normal course of business for industry-related activities. This impact continued into 2021 which is why base year forecast method is not an appropriate method to forecast non-labor costs. Using a five-year average, Resource Planning's 2024 forecast includes non-labor costs of $264,000.

3. Cost Drivers

The level of labor spend for this is area is expected to remain consistent with base year 2021. To maintain and pursue Resource Planning priorities described in the description of costs and underlying activities above, Resource Planning must fill existing vacancies to support the department function. SDG&E is requesting an incremental $96,000 to account for positions that incurred partial year recorded expenses in 2021 as a result of vacancies.

4. Avoided Cost Calculator Update Memorandum Account (ACCUMA)

Resource Planning oversees costs in ACCUMA. ACCUMA is an interest-bearing memorandum account recorded on SDG&E's financial statements. Pursuant to D.16-06-007, the purpose of this account is to track the costs allocated to the utilities for contractors hired by the Commission to perform annual Avoided Cost Calculator updates and to provide technical assistance or research for the purpose of the advancing future refinement of cost-effective methods. Details of the ACCUMA costs are discussed in the Regulatory Accounts testimony of Jason Kupfersmid (Ex. SDG&E-43).

IV. SUPPORT FOR IT CAPITAL COSTS

A. Introduction

To support EP activities, SDG&E seeks to recover capital costs for certain technology upgrades required to maintain its obligation to provide scheduling services within the CAISO

market.[24] The associated capital costs are requested in the Direct Testimony of Mr. Exon (Ex. SDG&E-25, Ch 2). A description of the required CAISO-related technology upgrades is provided below.

B. 2021 CAISO Mandates

These forecasted capital expenditures support the company's goals of remaining a CAISO Scheduling Coordinator (SC), complying with CAISO mandated changes, achieving operational efficiencies, and ensuring that current software capital assets are kept under maintenance levels and fully supported. The CAISO publishes a roadmap of planned initiatives which are implemented and released twice a year; SDG&E must comply with the CAISO's direction to remain a SC. There are also many regulatory requirements that coincide with the 2021 CAISO mandates that necessitate configuration changes or enhancements in several major software applications utilized to meet these requirements, including: (i) PCI, which is an EP system for communication with the CAISO for bidding and scheduling; (ii) Allegro, which is a Sarbanes-Oxley (SOX) system of record for community trading, risk management and accounting; (iii) Versify, which is an EP RA planning, operations, and analytics system; and (iv) Meter Data Processing System (MDPS), which is a meter data management and reporting system. Noncompliance with these required updates would cause SDG&E to lose its ability to be an SC and could also result in potential fines and disallowances in ERRA proceedings. It is critical that EP comply with CAISO requirements by making the necessary updates to its PCI, Allegro, Versify, and MDPS systems.

C. 2022 CAISO Mandates

These forecasted capital expenditures support imperatives similar to those described above under 2021 CAISO mandates – *i.e.,* remaining a CAISO SC, complying with CAISO mandated changes and other regulatory requirements, achieving market and operational efficiencies, and ensuring that current software capital assets are kept under maintenance levels and fully supported. Compliance with the 2022 CAISO mandates will require further new and updated software components and configuration changes to PCI, Versify, MDPS and Allegro. Allegro will be replaced with a new Energy Trading and Risk Management (ETRM) System.

[24] Many of SDG&E's procurement contracts require SDG&E to provide scheduling services for the counterparties.

This will include database migration onto a hosted cloud solution with network monitoring to address Disaster Recovery virtual infrastructure environment and meet security (cyber & SOX) and adhere to drug screening requirements.

D. 2023 CAISO Mandates

These forecasted capital expenditures support imperatives similar to those described above under 2021 CAISO mandates – *i.e*., remaining a CAISO SC, complying with CAISO mandated changes and CPUC requirements, achieving market and operational efficiencies, and ensuring that current software capital assets are kept under maintenance levels and fully supported. Compliance with the 2023 CAISO mandates will require further new and updated software components and configuration changes to PCI, Versify, ETRM System and MDPS. Projects to comply with the 2023 CAISO initiatives require meeting the CAISO published schedule timeline and the use of IT Project Management Office, Vendor, and EP resources.

E. 2024 CAISO Mandates

These forecasted capital expenditures support imperatives similar to those described above under 2021 CAISO mandates – *i.e.,* remaining a CAISO SC, complying with CAISO mandated changes and CPUC requirements, achieving market and operational efficiencies, and ensuring that current software capital assets are kept under maintenance levels and fully supported. Compliance with the 2024 CAISO mandates will require further new and updated software components and configuration changes to PCI, Versify, ETRM System and MDPS. Projects to comply with the 2024 CAISO initiatives require meeting the CAISO published schedule timeline and the use of IT Project Management Office, Vendor, and EP resources.

V. CONCLUSION

The EP functions described above will support SDG&E's effort to ensure that clean, safe, reliable, and affordable energy is available to serve SDG&E's customers. Associated O&M responsibilities require expertise, as well as advanced technology systems, that are broadly consistent with prior year costs. As such, SDG&E requests that the Commission adopt its proposal for $9.4 million of O&M expenses in TY 2024 for EP in order to allow SDG&E to meet all of its electric commodity procurement-related responsibilities through the 2022-2024 rate case cycle.

This concludes my prepared direct testimony.

VI. WITNESS QUALIFICATIONS

My name is Christopher A. Summers. My business address is 8315 Century Park Court, San Diego, California 92123. I am currently employed by San Diego Gas & Electric Company (SDG&E) as the Director of Origination, Energy Supply & Dispatch in the Energy Procurement Department. In this role I oversee all commercial and policy matters related to SDG&E's Energy Procurement functions including oversight of solicitations, contract negotiation, compliance with procurement mandates and scheduling resources into the CAISO.

I began working at SDG&E in 2012 as a Case Administrator in the Regulatory Affairs organization with a focus on energy storage and customer privacy issues. I worked as a Commercial Advisor for a power marketer from 2015-2018 negotiating gas, power and environmental product transactions. I rejoined SDG&E in 2018 and have been continuously employed with SDG&E since that time in roles of increasing responsibility. Prior to my current position, I was a Development Manager with SDG&E's Advanced Clean Technology group and a Business Manager in Regulatory Affairs with a focus on all procurement proceedings before the Commission. Before joining SDG&E in 2012, I was a practicing attorney.

I hold a bachelor's degree in politics and accounting from Saint Mary's College of California and a juris doctor degree from California Western School of Law.

I have not previously testified before the California Public Utilities Commission.

APPENDIX A
GLOSSARY OF TERMS

APPENDIX A – GLOSSARY OF TERMS

ACRONYM	DEFINITION
ACCUMA	Avoided Cost Calculator Update Memorandum Account
BioRAM	Bioenergy Renewable Auction Mechanism
BPP	Bundled Procurement Plan
BY	Base Year
CAISO	California Independent System Operator
CARB	California Air Resources Board
CCA	Community Choice Aggregation
CEC	California Energy Commission
CHP	Combined Heat and Power
CPUC	California Public Utilities Commission
CSGT	Community Solar Green Tariff
DA	Direct Access
DAC-GT	Disadvantaged Community Green Tariff
DBE	Diverse Business Enterprises
DER	Distributed Energy Resource
DIDF	Distribution Investment Deferral Framework
DR	Demand Response
DRAM	Demand Response Auction Mechanism
EDAM	Extended Day Ahead Market
EP	Energy Procurement
ERRA	Energy Resource Recovery Account
ES&D	Energy Supply & Dispatch
ESG	Environmental, Social and Governance
FERC	Federal Energy Regulatory Commission
FTE	Full-Time Equivalent
GHG	Greenhouse Gas
GRC	General Rate Case
GTSR	Green Tariff Shared Renewables
ICE	Intercontinental Exchange
IDER	Integrated Distributed Energy Resources
IE	Independent Evaluator
IOU	Investor-Owned Utility
IRP	Integrated Resource Plan
LSE	Load-Serving Entity
MDPS	Meter Data Processing System
MRI-S	Meter Reporting Interface – Settlement
MW	Megawatts
O&M	Operations and Maintenance
O&PD	Origination & Procurement Design
PAO	Public Advocates Office
PCI	Power Costs System Inc.

PCIA	Power Charge Indifference Adjustment
POLR	Provider of Last Resort
PRG	Procurement Review Group
QCR	Quarterly Compliance Report
RA	Resource Adequacy
ReMAT	Renewable Market Adjusting Tariff
RFO	Request for Offers
RPS	Renewables Portfolio Standard
S&S	Settlements and Systems
SB	Senate Bill
SC	Scheduling Coordinator
SDG&E	San Diego Gas & Electric Company
SME	Subject Matter Expert
SOX	Sarbanes-Oxley
TURN	The Utility Reform Network
TY	Test Year

ATTACHMENT 1

CONFIDENTIAL

Status as of:
December 31, 2025

Commercial Operations	TOTAL PPA'S		
Contract Summary	**Number**	**MW**	**MWH**
QF/CHP	3	5.1	3,303
Renewable	38	2,470.5	5,847,958
Tolling	5	1,054.1	305,906
Energy Storage	8	554.5	510,747
WSPP/EEI	16	0.0	(3,058,813)
Total	**70**	**4,084.2**	**3,609,101**

Pre-Operational	TOTAL PPA'S		
Contract Summary	**Number**	**MW**	**MWH**
QF/CHP	1	17.4	0
Renewable	1	50.0	0
Tolling	0	0.0	0
Energy Storage	4	259.5	90,494
WSPP/EEI	16	0.0	(3,058,813)
Total	**22**	**326.9**	**(2,968,319)**

Expired/Terminated	TOTAL PPA'S		
Contract Summary	**Number**	**MW**	**MWH**
QF/CHP	1	49.9	0.0
Renewable	2	61.2	131,419.9
Tolling	0	0.0	0.0
Energy Storage	0	0.0	0.0
WSPP/EEI	1	0.0	0.0
Total	**4**	**111.1**	**131,420**

Commercial Operations	TOTAL PPA'S		
Technology Type	**Number**	**MW**	**MWH**
Bio-Mass	1	24.0	197,871.4
Conduit-Hydro	4	2.9	3,240.7
Energy Storage - Pumped Hydro	0	0.0	0.0
Energy Storage - Battery	7	441.0	457,055.9
Hybrid - Energy Storage + Solar PV	3	247.0	237,320.7
Landfill Gas	3	7.5	38,840.3
Market	16	0.0	(3,058,813.0)
Natural Gas	6	1,058.2	309,167.0
Solar PV	23	1,346.1	3,149,334.2
Wind	7	957.5	2,275,083.8
Total	**70**	**4,084.2**	**3,609,101**

Pre-Operational	TOTAL PPA'S		
Technology Type	**Number**	**MW**	**MWH**
Bio-Mass	0	0.0	0
Conduit-Hydro	0	0.0	0
Energy Storage - Pumped Hydro	0	0.0	0
Energy Storage - Battery	1	54.0	36,803
Hybrid - Energy Storage + Solar PV	3	180.9	53,691
Landfill Gas	0	0.0	0
Market	16	0.0	(3,058,813)
Natural Gas	0	0.0	0
Solar PV	0	0.0	0
Wind	0	0.0	0
Total	**20**	**234.9**	**(2,968,319)**

Expired/Terminated	TOTAL PPA'S		
Technology Type	**Number**	**MW**	**MWH**
Bio-Mass	0	0.0	0.0
Conduit-Hydro	0	0.0	0.0
Energy Storage - Pumped Hydro	0	0.0	0.0
Energy Storage - Battery	0	0.0	0.0
Hybrid - Energy Storage + Solar PV	0	0.0	0.0
Landfill Gas	0	0.0	0.0
Market	1	0.0	0.0
Natural Gas	1	49.9	0.0
Solar PV	0	0.0	0.0
Wind	2	61.2	131,419.9
Total	**4**	**111.1**	**131,420**

Yellow Highlight - Contains confidential/privileged pursuant to applicable provisions of D.06-06-066, D.06-04-023, G.O. 66-C and PUC Code Sec. 583 and Sec. 454.5.(g)

Note - "N/A" can mean "Not Applicable" or "None or "Data Available"

ERRA Record Period: 2020 | Filing Date: 09/01/20

| CONTRACT NAME | | |

| | | |

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	CAISO Resource ID	Cost Recovery Mechanism	Notes
Clean Energy Alliance (Bell)	Natural Gas + Lithium-ion Energy Stroage	Resource Adequacy	7	09/28/2022	2022	[redacted]	Advice Letter 4085-E	[redacted]	Active	SENTNL_2_CTG 1 through SENTNL_2_CTG 8 VSTAES_6_VESBT1 VLCNTR_6_VCEBT1 VLCNTR_6_VCEBT2 KEARNY_6_NESBT1, KEARNY_6_SESBT2 JOANEC_2_STABT2 GATEWY_2_GESBT1 EDWARD_2_E21SB1, SANBRN_2_ES1BT3, EDWARD_2_ES2BT3, SANBRN_2_ES2SB3, EDWARD_2_E23SB1 BARRE_2_ALASB1 DELAMO_2_ALASB2 VALLEY_5_ORTBT1 WSTWND_2_SBSBT1	MCAM	
Edwards-Sanborn (22)	Energy Storage + Solar PV	Resource Adequacy	25	05/12/2022	2022		Advice Letter 4010-E		Active	EDWARD_2_E21SB1 SANBRN_2_ES1BT3 EDWARD_2_ES2BT3 SANBRN_2_ES2SB3 EDWARD_2_E23SB1	MCAM	
Edwards-Sanborn (23)	Energy Storage + Solar PV	Resource Adequacy	20	10/25/2022	2022		Advice Letter 4096-E; Resolution E-5241		Active	EDWARD_2_E21SB1 SANBRN_2_ES1BT3 EDWARD_2_ES2BT3 SANBRN_2_ES2SB3 EDWARD_2_E23SB1 SANBRN_2_SS2SB4 EDWARD_2_ESSSB1 EDWARD_2_ESSSB2	PCIA/ PABA (vintage 2021)	
Gateway	Energy Storage	Resource Adequacy	10	05/25/2022	2022		Advice Letter 4010-E		Active	GATEWY_2_GESBT1	MCAM	
Ortega Grid LLC	Battery: Lithium Ion	Resource Adequacy	10 0	12/04/2020	2020		Resolution E-5139 w/ h Tier 3 Advice Letter 4026-E		Executed	VALLEY_5_ORTBT1	MCAM	
San Diego Community Power	Natural Gas + Lithium-ion Energy Stroage	Resource Adequacy	60	07/08/2022	2022		Advice Letter 4036-E		Active	SENTNL_2_CTG 1 through SENTNL_2_CTG 8 VSTAES_6_VESBT1 VLCNTR_6_VCEBT1 VLCNTR_6_VCEBT2 KEARNY_6_NESBT1, KEARNY_6_SESBT2 JOANEC_2_STABT2 GATEWY_2_GESBT1 EDWARD_2_E21SB1, SANBRN_2_ES1BT3, EDWARD_2_ES2BT3, SANBRN_2_ES2SB3, EDWARD_2_E23SB1 BARRE_2_ALASB1 DELAMO_2_ALASB2 VALLEY_5_ORTBT1 WSTWND_2_SBSBT1	MCAM	
Gentinel Energy Center, LLC	Natural Gas	Resource Adequacy	47 0	02/12/2021	2021	Jun 2021 - May 2026	ADVICE LETTER 3689-E	$/kW-year Yr 1 - 263.04 Yr 2 - 254.78 Yr 3 - 254.08 Yr 4 - 254.78 Yr 5 - 255.62	Active	SENTNL_2_CTG1 - SENTNL_2_CTG8	20 MW is MCAM & 27 MW is LGBA/CAM	
Valley Center Storage I, LLC	Battery: Lithium Ion	Resource Adequacy	50 0	08/31/2020	2020	Dec 2021 - Dec 2036	Resolution E-5117	$/kW-day Yr1 - 0.20325 Yr 2 - 0.20630 Yr 3 - 0.20939 Yr 4 - 0.21253 Yr 5 - 0.21572 Yr 6 - 0.21896 Yr 7 - 0.22224 Yr 8 - 0.22558 Yr 9 - 0.22896 Yr 10 - 0.23239 Yr 11 - 0.23588 Yr 12 - 0.23942 Yr 13 - 0.24301 Yr 14 - 0.24665 Yr 15 - 0.24655	Active	VLCNTR_6_VCEBT2	MCAM	
Vista Energy Storage, LLC	Lithium Ion Battery Storage	Resource Adequacy	10 0	08/31/2020	2020	Aug 1, 2021 - July 31, 2036	Resolution E-5117	$/kW-day Yr 1 - 0.22279 Yr 2 - 0.22443 Yr 3 - 0.22537 Yr 4 - 0.22772 Yr 5 - 0.22937 Yr 6 - 0.23101 Yr 7 - 0.23193 Yr 8 - 0.23430 Yr 9 - 0.23595 Yr 10 - 0.23759 Yr 11 - 0.23849 Yr 12 - 0.24088 Yr 13 - 0.24253 Yr 14 - 0.24417 Yr 15 - 0.24498	Active	VSTAES_6_VESBT1	MCAM	

ERRA Record Period: 2025

CONTRACTS FOR THE PROCUREMENT OF FUEL SERVICES IN EFFECT OR UNDER NEGOTIATION, INITIATION, REVISION, AMENDMENT, OR TERMINATION

Contract Name	Internal Company	Contract Type	Status	Commodity	Effective Date
47975 SWG	SCGC LEG	Transportation	Approved	Natural Gas	11/30/2013
2 - 9003 SoCal	SCGC LEG	Transportation	Approved	Natural Gas	10/1/2008
59726 SoCalGP SWE	SCGC LEG	Transportation	Approved	Natural Gas	10/1/2020
59727 SoCal TW NEILS	SCGC LEG	Transportation	Approved	Natural Gas	10/1/2023
59728 SoCal HS MPNJ	SCGC LEG	Transportation	Approved	Natural Gas	10/1/2020
59729 SoCal NS MPWR	SCGC LEG	Transportation	Approved	Natural Gas	10/1/2020
A1 M Blvd.	SCGC LEG	Transportation	Approved	Natural Gas	5/1/2020
Allied Energy Resources - NAGSB	SCGC LEG	NAGSB	Approved	Natural Gas	2/1/2006
Amerex - BROKER	SCGC LEG	Broker Agreement	Approved	Natural Gas	6/1/2009
Anadarko - NAGSB	SCGC LEG	NAGSB	Approved	Natural Gas	9/1/2003
Arabian Energy - NAGSB	SCGC LEG	NAGSB	Approved	Natural Gas	2/1/1001
Ar zona Public Service - G-SB	SCGC LEG	GISB	Approved	Natural Gas	3/22/1999
ARM Energy Mgmt - NAGSB	SCGC LEG	NAGSB	Approved	Natural Gas	8/ /2019
ATO Power - NAGSB	SCGC LEG	NAGSB	Approved	Natural Gas	2/26/2010
Bank of Montreal - BOA	SCGC LEG	SOA	Approved	Natural Gas	7/23/2002
Barclays Bank - BOA	SCGC LEG	SOA	Approved	Natural Gas	10/1/2008
BGC Financ al - BROKER	SCGC LEG	Broker Agreement	Approved	Multiple	6/22/2018
Bishop Trading - NAGSB	SCGC LEG	NAGSB	Approved	Natural Gas	10/1/2015
BNP Paribas Energy Trading GP -	SCGC LEG	SOA	Approved	Natural Gas	10/1/200
BP Corporation North America - NPA	SCGC LEG	SOA	Approved	Natural Gas	7/1/2003
BP Energy - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	6/1/2003
Calpine Energy Services - NAGSB	SCGC LEG	NAGSB	Approved	Natural Gas	7/1/2019
Calpine Energy Solutions - NAGSB	SCGC LEG	NAGSB	Approved	Natural Gas	6/27/2012
Canadian Imperial Bank of Commerce - BOA	SCGC LEG	SOA	Approved	Natural Gas	7/1/1997
Cargill - NAGSB	SCGC LEG	NAGSB	Approved	Natural Gas	2/1/2002
Castleton Commodi es - NAGSB	SCGC LEG	NAGSB	Approved	Natural Gas	11/1/2005
Chevron - NAGSB	SCGC LEG	NAGSB	Approved	Natural Gas	11/1/2003
Choice NG and Power - BROKER	SCGC LEG	Broker Agreement	Approved	Multiple	7/6/2015
C MA Energy - NAGSB	SCGC LEG	NAGSB	Approved	Natural Gas	7/1/2009
C ndel Energy Marketing - NAGSB	SCGC LEG	NAGSB	Approved	Natural Gas	11/1 /2019
C Bank - BOA	SCGC LEG	SOA	Approved	Natural Gas	8/1/2001
C Npmgp Energy - NAGSB	SCGC LEG	NAGSB	Approved	Natural Gas	2/27/2007
C ty of Escondido - F rancnise Fee	SCGC LEG	Other	Approved	Natural Gas	11/19/2007
Concord Energy - NAGSB	SCGC LEG	NAGSB	Approved	Natural Gas	8/27/2002
ConocoPhilips - NAGSB	SCGC LEG	NAGSB	Approved	Natural Gas	10/1/2002
Constellation Energy - NAGSB	SCGC LEG	NAGSB	Approved	Natural Gas	2/1/2002
Continuum Energy - NAGSB	SCGC LEG	NAGSB	Approved	Natural Gas	9/1/201
CRC Marketing - NAGSB	SCGC LEG	NAGSB	Approved	Natural Gas	2/21/2012 1
Crest I Busine Energy - BOA	SCGC LEG	SOA	Approved	Natural Gas	7/1/2008
Cross Timbers Energy - NAGSB	SCGC LEG	NAGSB	Approved	Natural Gas	8/1/2019
DCP Midstream - NAGSB	SCGC LEG	NAGSB	Approved	Natural Gas	9/1/2009
DEB - NAGSB	SCGC LEG	NAGSB	Approved	Natural Gas	7/15/2011
Deutsche Bank - BOA	SCGC LEG	SOA	Approved	Natural Gas	10/1/2005
Direct Energy - NAGSB	SCGC LEG	NAGSB	Approved	Natural Gas	12/7/2021
DRW Energy Trading - NAGSB	SCGC LEG	NAGSB	Approved	Natural Gas	8/1/2012
EDF Trading - NAGSB	SCGC LEG	NAGSB	Approved	Natural Gas	12/12/2008
Elk Mountain Energy - NAGSB	SCGC LEG	NAGSB	Approved	Natural Gas	8/22/2012
Ensamble Jn Ventures - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	9/13/2016
Energy Trade Management - BROKER	SCGC LEG	Broker Agreement	Approved	Natural Gas	3/22/2010
Energy Transfer Company - A- 4956	SCGC LEG	NAGSB	Approved	Natural Gas	7/14/200
Enserco Energy - NAGSB	SCGC LEG	NAGSB	Approved	Natural Gas	5/1/2009
ENSTOR Energy - NAGSB	SCGC LEG	NAGSB	Approved	Natural Gas	2/1/2003
Enterprise Produc s Operating - A- 4956	SCGC LEG	NAGSB	Approved	Natural Gas	2/ 2009
Equion Energy Group LLC - NG - BROKER	SCGC LEG	Broker Agreement	Approved	Natural Gas	2/21/2025
ETC Marketing - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	11/6/200
Exell Energy Resources - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	12/1/2007
Exxon on Markets 1 - NG - BROKER	SCGC LEG	Broker Agreement	Approved	Natural Gas	2/1/2007
Exx on Generation - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	5/2/2003
Freedom Energy - NAGSB	SCGC LEG	NAGSB	Approved	Natural Gas	9/6/2019
Freepoint Commodities - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	2/6/2012
Frontier Field Services - NAGSB	SCGC LEG	NAGSB	Approved	Natural Gas	6/30/2016
GassyEnergy - NAGSB	SCGC LEG	NAGSB	Approved	Natural Gas	2/23/2006
GLENCORE - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	12/9/2020
Harbinger Partners - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	2/17/2020
Hardrock Energy Services - NAGSB	SCGC LEG	NAGSB	Approved	Natural Gas	2/1/2002
ICAP Americ - BROKER	SCGC LEG	Broker Agreement	Approved	Natural Gas	6/1/2008
ICC Energy - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	10/1/2006
ICE - ICN BROKER	SCGC LEG	Broker Agreement	Approved	Natural Gas	6/2/202
ICE Futures Utr - BROKER	SCGC LEG	Broker Agreement	Approved	Multiple	2/2/2017
ICE NGX Canada - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	6/2 /202
IPC - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	8/16/2006
J Aron - SOA	SCGC LEG	SOA	Approved	Natural Gas	9/2/2013
J Aron - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	6/1/2003
JP Morgan Ventures Energy Corp	SCGC LEG	SOA	Approved	Natural Gas	10/1/2007
JP Morgan Ventures Energy Corp -	SCGC LEG	NAESB	Approved	Natural Gas	10/1 /2008
KCI Commod ties - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	7/28/2017
Kerr McGee Energy Services C- 4956	SCGC LEG	NAESB	Approved	Natural Gas	2/23/2006
KM Gas - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	2/1/2026
Koch Energy - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	8/19/2026
Lucid Energy - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	8/21/2020
Macquarie Energy - SOA	SCGC LEG	SOA	Approved	Natural Gas	8/15/1996
Macquarie Energy - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	2/1/2003
Mercuri a Energy - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	12/7/2018
Merrquan Energy - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	2/3/2015
Merrill Lynch Commod ties - SOA	SCGC LEG	SOA	Approved	Natural Gas	10/1/2003
MECO - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	7/19/2013
Morgan Stan ley Capital Group Inc.d	SCGC LEG	Other	Approved	Natural Gas	11/2/1998
National Fuel Marketing - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	8/1/2002
Natural Gas Exchange - Broker	SCGC LEG	Broker	Approved	Natural Gas	11/1/12009
NDR Energy - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	8/19/2015
Nevada Power - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	8/1/2019
Nexfco Energy - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	7/1/2004
NJR Energy Services - NAGSB	SCGC LEG	NAGSB	Approved	Natural Gas	10/1/2006
North American Energy Solutions -	SCGC LEG	NAESB	Approved	Natural Gas	8/27/2012
NRG Business Marketing - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	5/1/2023
NYMEX - BROKER	SCGC LEG	Broker Agreement	Approved	Natural Gas	2/13/2007
Occidental Energy - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	5/1/2005
One Net on Energy - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	2/1/2003
Pacif c Gas and Elect c - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	5/1/2003
Pacif c Summit Energy - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	10/1/12005
Patten Energy - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	7/3/2012
Patten Energy Enterprises - G-SB	SCGC LEG	GISB	Approved	Natural Gas	7/1/2003
PetroChina International - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	7/13/2015
Phoenix Corporation - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	10/1/2006
Red Willow Production - G-SB	SCGC LEG	GISB	Approved	Natural Gas	7/1/2003
SES SoCal Transmission	SCGC LEG	Transportation	Approved	Natural Gas	11/1/2013
0291	SCGC LEG	Transportation	Approved	Natural Gas	7/1 /202
Saddleback - BROKER	SCGC LEG	Broker Agreement	Approved	Natural Gas	8/1/2006
Sage Energy - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	8/31/2010
Salt River Project - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	10/1/200
Samson Resources - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	8/31/2003
928419 SoCal	SCGC LEG	Transportation	Approved	Natural Gas	8/1/2008
Sembrade Energy Services -	SCGC LEG	NAESB	Approved	Natural Gas	1/1/2011
Sempra Energy - EPNA - Other	SCGC LEG	Other	Approved	Natural Gas	10/2/1998
Sempra Energy - Union tr	SCGC LEG	Other	Approved	Natural Gas	10/2/1998
Sequent Energy - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	9/1 /2007
Shell Energy - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	9/1/2009
Sie Ore Commodities - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	7/19/2019
SMUD - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	11/2007
SoCal Gas Co Capaci ty Products - various	SCGC LEG	NAESB	Approved	Natural Gas	8/1/12005
SoCal Gas Storage 2025	SCGC LEG	Other	Approved	Natural Gas	7/1/2025
Southern California Gas Company - GSB	SCGC LEG	GISB	Approved	Natural Gas	7/1/1998
Spotlight Energy - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	7/13/2021
Sprague Puerto Rico LLC - NG -	SCGC LEG	Broker Agreement	Approved	Multiple	2/13/2026
Sure Energy Marketing - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	12/10/2002
Suttora Energy - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	7/19/2012
Talen Energy Marketing - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	2/28/2003
Targa Gas Marketing - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	8/1/2008
Tenaska Gas Storage - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	1/1/2012
Tenaska Marketing Ventures - A- 4956	SCGC LEG	NAESB	Approved	Natural Gas	1/1/2012
TFS Brokers - BROKER	SCGC LEG	Broker Agreement	Approved	Natural Gas	8/1/2008
Tiger Natural Gas - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	2/22/2008
Total Gas and Power - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	7/1/200
Tri-star Producer Services of TX -	SCGC LEG	Other	Approved	Natural Gas	10/6/1998
Tullett Prebon Americas Corp - BROKER	SCGC LEG	Broker Agreement	Approved	Multiple	2/11/2026
Twin Eagle - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	10/ /2012
Twine Gas and Power - GISB	SCGC LEG	GISB	Approved	Natural Gas	7/1/2001
UBS AG - SOA	SCGC LEG	SOA	Approved	Natural Gas	7/1/2008
Vitol Resources - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	7/1/2003
Vitol Energy - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	2/1/2003
Watson Energy - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	12/12/2003
Wells Fargo Advisors - BROKER	SCGC LEG	Broker Agreement	Approved	Natural Gas	1/3/2008
Wells Fargo Commod ies - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	11/1/2007
WPX Energy - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	2/1/2013
XTO Energy - NAESB	SCGC LEG	NAESB	Approved	Natural Gas	2/2007

2025 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, CONVERTED 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]												**42.12**

Monthly Energy Purchases

QFID	Technology	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]												$ 2,372.08

Monthly Capacity Purchases

QFID	Technology	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]												$ 140.39

ATTACHMENT 2

CONFIDENTIALITY DECLARATION OF MORIAH SALDAÑA

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DECLARATION OF MORIAH SALDAÑA

A.26-06-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 2025, (ii) Costs Related to those Activities Recorded to the Energy Resource Recovery Account and Transition Cost Balancing Account in 2025 and (iii) Costs Recorded in Related Regulatory Accounts in 2025

I, Moriah Saldaña, declare as follows:

1. I am an Electric & Fuel Procurement Power Marketing Senior II 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, 2025 through December 31, 2025, 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 "Payments to QF/CHP" • Table entitled "2025 QF MONTHLY PAYMENTS"	XI	Detail of monthly variable cost on energy and utility operation, confidential for 3 years.
All highlighted areas in the body, tables or footnotes of Section VI.A entitled "Renewable Resources (Non QF/CHP)" sections: 3. Solar 5. Hybrid – Energy Storage/Solar PV	VII.G	Contract terms; confidential for 3 years
All highlighted areas in the body, tables or footnotes of Section VI.B.2 entitled "Battery Energy Storage Systems (BESS)"	VII.B VII.E	Contract terms; confidential for 3 years
All highlighted areas in the body, tables or footnotes of Section VI.F entitled "Bundled Energy & REC Sales"	VII.B	Contract terms; confidential for 3 years
All highlighted areas in the body, tables or footnotes of Section VI.G entitled "Pre-Commercial Contracts" 1. Energy Storage 2. Hybrid (Solar/Battery) 3. QF	VII.B VII.E VII.G	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-C. Accordingly, SDG&E seeks confidential treatment of such data under those provisions, as applicable.

All highlighted areas in ATTACHMENT 1	VII.B VII.E 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 June 1, 2026, at San Diego, California.

/s/ Moriah Saldaña
Moriah Saldaña
Electric & Fuel Procurement
Power Marketing Senior II
San Diego Gas & Electric Company

ACRONYM GLOSSARY

AB	Assembly Bill
AL	Advice Letter
Allegro	Allegro Development Corporation
AZ	Arizona
BESS	Battery Energy Storage System
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
CAM	Cost Allocation Mechanism
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
CSE1	Centinela Solar Energy 1
CSE2	Centinela Solar Energy 2
CTC	Competitive Transition Charge
DRAM	Demand Response Auction Mechanism
E&FP	Electric & Fuel Procurement Department
ECEC	El Cajon Energy Center
EEC	Escondido Energy Center
ETO&S	Energy Trading Operations & Support
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
GCOD	Guaranteed Substantial Completion Date
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
MCAMBA	Modified Cost Allocation Mechanism 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
Pub. Util. 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
PURPA	Public Utility Regulatory Policies Act
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
TMNBCBA	Tree Mortality Non-Bypassable Charge Balancing Account
TOD	Time of Delivery

TY	Test Year
UOG	Utility Owned Generation
USAs	Utility Services Agreements
VAMO	Voluntary Allocation & Market Offer
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