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Witness: Daniel L. Sullivan
Date: June 1, 2017

**SAN DIEGO GAS & ELECTRIC COMPANY
PREPARED DIRECT TESTIMONY OF
DANIEL L. SULLIVAN**

****REDACTED, PUBLIC VERSION****

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

June 1, 2017



TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	DESCRIPTION OF EXPENSES.....	2
	A. CTC Contract Costs	2
	B. Contract Costs (non-CTC)	3
	C. Generation Fuel & In-Lieu Payments	3
	D. Other CAISO Related Costs	3
	E. CAISO Supply & Load Costs.....	3
	F. Hedging Costs & Financial Transactions	4
	G. Western Renewable Energy Generation Information (“WREGIS”) Costs.....	4
	H. Congestion Revenue Rights CAISO Costs.....	4
	I. CAISO Convergence Bidding Costs.....	4
	J. Rebalancing Costs related to Otay Mesa Energy Center (“OMEC”)/Calpine.....	4
	K. Greenhouse Gas & Carrying Costs.....	4
III.	Electric & Fuel Procurement FUNCTIONS	4
	A. Long-Term Procurement Functions.....	5
	B. Trading & Scheduling Functions	5
	C. Back-Office Functions	6
	D. Mid-Office Functions.....	7
IV.	SUPPLY PORTFOLIO ADMINISTRATION in general	7
	A. Kick-Off Meetings	9
	B. Invoice Verification	9
	C. WREGIS Administration	10
	D. Active Monitoring.....	10
	E. Contract System Administration.....	11
	F. SDG&E’s Long-Term Energy Contract Portfolio	11

G.	Non-QF Contract Types.....	12
H.	Terminated Contracts.....	13
I.	Contract Amendments, Modifications and Letter Agreements	13
J.	Contract Administration of Fuel Procurement Contracts	13
K.	Hypothetical Maximum Disallowance for Standard of Conduct 4 Violations	14
V.	Contract Portfolio and STATUS.....	16
A.	Renewable Resources	16
1.	BIO-GAS & DIGESTER GAS.....	17
2.	WIND.....	20
3.	HYDRO	25
4.	SOLAR	26
5.	TERMINATED RENEWABLE PPAS	31
B.	QF/CHP Resources	32
1.	QF PPA ADMINISTRATION	32
2.	TERMINATED QF PPAs.....	35
3.	PAYMENTS TO QFS/CHP	35
4.	EFFICIENCY MONITORING.....	35
5.	INSURANCE MONITORING.....	36
6.	QF/CHP PERFORMANCE.....	36
C.	Bilateral PPA's.....	40
D.	Tolling Agreements	41
E.	Market Purchases	43
F.	Miscellaneous Contract Issues.....	43
VI.	CONCLUSION.....	45
VII.	QUALIFICATIONS	45
	ATTACHMENTS & EXHIBITS	1

1 **PREPARED DIRECT TESTIMONY OF**

2 **DANIEL L. SULLIVAN**

3 **ON BEHALF OF SDG&E**

4 **I. INTRODUCTION**

5 The purpose of my testimony is to describe the expenses that are recorded in San Diego
6 Gas & Electric Company's ("SDG&E") Energy Resource Recovery Account ("ERRA"),
7 Transition Cost Balancing Account ("TCBA"), and Local Generation Balancing Account
8 ("LGBA") for the record period of January 1, 2016 through December 31, 2016. My testimony
9 will explain SDG&E's contract administration activities during the record period associated with
10 SDG&E's Power Purchase Agreements ("PPAs"). Some of the testimony below, and
11 information provided in the attached exhibits and Attachment 1, are considered confidential and
12 privileged pursuant to applicable provisions of California Public Utilities Commission
13 ("Commission") Decision ("D.") 06-06-066, General Order ("G.O.") 66-C and California Public
14 Utilities Code ("P.U. Code") Sec. 583 and Sec. 454.5(g). Confidential provisions are identified
15 by yellow highlights and redacted for public filings. The ERRA does not include contract
16 administration costs such as labor or operation & maintenance ("O&M"). Such costs are
17 included as part of SDG&E's General Rate Case ("GRC").

18 SDG&E respectfully requests the Commission's approval of SDG&E's contract
19 administration and power procurement-related expenses for 2016, which are identified, explained
20 and supported in this testimony.

1 **II. DESCRIPTION OF EXPENSES**

2 The expenses recorded in ERRA, TCBA, and LGBA for the record period are
3 summarized in Attachments A, B and C of the accompanying Direct Testimony of SDG&E
4 witness Sheri Miller. These expenses are recorded in compliance with D.02-12-074.

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

9 Also, described in Ms. Miller’s testimony, the purpose of the LGBA is to record the
10 revenues and costs of generating contracts where the Commission has determined that the
11 resource is subject to a cost allocation mechanism. In the record period, the only contract
12 included in SDG&E’s LGBA was the Escondido Energy Center (“EEC”). The LGBA activity is
13 described in more detail in Ms. Miller’s testimony. The LGBA was authorized by D.13-03-029
14 and established in Advice Letter (“AL”) 2499-E with an effective date of July 31, 2013.

15 **A. CTC Contract Costs**

16 In accordance with D.02-12-074, this category captured expenses recorded in ERRA up
17 to the market benchmark value of the QF and transition Combined Heat & Power (“CHP”)
18 PPAs. In D.11-12-018, the responsibility of calculating the benchmark changed from the Energy
19 Division to SDG&E. SDG&E calculated a benchmark of \$46.54/MWh in 2016. The residual
20 expenses for QFs were calculated by multiplying the purchased MWh by the effective market
21 benchmark. This category also includes indirect Green House Gas (“GHG”) costs associated
22 with the PPAs. Any expenses above the benchmark were recorded in the TCBA pursuant to

1 Assembly Bill (“AB”) 1890. The 2016 activity in SDG&E’s TCBA is described in more detail
2 in Attachment B of the testimony of SDG&E witness Sheri Miller.

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

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

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

11 All monthly recorded fuel and transportation expenses for SDG&E’s utility-owned
12 generation, and fuel purchased for SDG&E’s tolling agreements, were recorded in ERRR. In-
13 Lieu Payments were collected for Palomar fuel costs and recorded in ERRR.

14 **D. Other CAISO Related Costs**

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

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

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

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

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

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

5 This category reflects costs relating to participation in the Renewable Energy Certificate
6 (“REC”) management program administered by WREGIS.

7 **H. Congestion Revenue Rights CAISO Costs**

8 This category includes costs and revenues relating to Congestion Revenue Rights
9 (“CRR”) activity charged to SDG&E by the CAISO.

10 **I. CAISO Convergence Bidding Costs**

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

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

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

16 **K. Greenhouse Gas & Carrying Costs**

17 This category includes costs and cost adjustments related to SDG&E’s procurement of
18 GHG compliance instruments to comply with California Air Resources Board’s Cap-and-Trade
19 program pursuant to Assembly Bill 32.

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

21 The Electric & Fuel Procurement Department (“E&FP”) is responsible for managing
22 SDG&E’s electric generating portfolios, procuring new resources, managing Renewable
23 Portfolio Standard (“RPS”) compliance, energy and gas contract administration and settlements.

1 This section generally describes the responsibilities of the major functions provided by various
2 sections of E&FP. Also, attached in Exhibit A is an organizational chart of the E&FP
3 department as of the end of the record period.

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

5 The Origination & Portfolio Design (“O&PD”) Section provides long-term procurement
6 functions in support of utility owned generation (“UOG”), renewable energy, QFs, demand-side
7 resources and other resources as required. They negotiate and execute agreements, both PPA
8 and ownership, to meet SDG&E’s long-term energy and capacity requirements. O&PD manages
9 the procurement of long-term renewable and conventional resources in accordance with the
10 Commission on both bilateral basis and solicitations. They conduct periodic Request for Offers
11 (“RFOs”) and negotiate contracts, and provide input to policy making for future procurement
12 needs. O&PD manages PPAs during the construction phase, up to the commercial operation date
13 (“COD”).

14 **B. Trading & Scheduling Functions**

15 The Energy Supply & Dispatch (“ES&D”) Section provides trading and scheduling
16 functions in support of UOG, tolling agreements, renewable energy, QFs, demand-side resources
17 and other resources as required. They manage the portfolio of assets consistent with the
18 Commission-approved procurement plans and gas supply plans for UOG. ES&D manages the
19 least-cost dispatch of the UOG and tolling agreements, purchases and sales of gas and power,
20 and hedges to maintain the portfolio’s price risk exposure within the Customer Risk Tolerance
21 limits. They perform all scheduling and interface functions with the CAISO, and participate in
22 CAISO-related meetings and working groups. ES&D manages compliance with annual and
23 monthly resource adequacy (“RA”) requirements and oversees the real-time scheduling,

1 dispatch, and trading functions. ES&D staffs a real-time desk to manage real-time energy
2 transactions and scheduling activities and ensures that ES&D complies with various regulatory
3 and financial constraints/requirements. Details of the least-cost dispatch are described in more
4 detail in the testimony of SDG&E witness Joseph Pasquito.

5 **C. Back-Office Functions**

6 The Settlements and Systems (“S&S”) Section provides back-office support for UOG,
7 renewable energy, QFs, demand-side resources and other resources as required. They monitor
8 and administer all existing energy and gas contracts delivering energy and capacity to SDG&E
9 and participate in various regulatory proceedings relating to contract administration. S&S
10 monitors and administers PPAs for QFs, renewable energy resources and tolling agreements.
11 S&S also administers the gas supply contracts for UOG and tolling plant gas procurement. They
12 verify, validate, and process invoices and billing requests for bilateral transactions, and prepare
13 journal entries to record expenses and revenues. In terms of interaction of CAISO, S&S
14 validates and processes settlement statements and invoices from the CAISO, disputes any
15 questionable charges, and reports generation and load meter data. They also coordinate
16 Sarbanes-Oxley 404 compliance and control activities for many E&FP Functions. The Systems
17 Section is responsible for system administration for departmental software supported by
18 SDG&E's Information Technology department. The primary applications are the a) Allegro
19 Development Corporation’s electronic database (“Allegro”), a repository and payment database,
20 b) Power Costs Inc. (“PCI”) dispatch program, c) Versify Solutions (V Performance) for RA
21 requirements and d) Electricity Scheduling and Settlement Application (“ESSA”), an in-house
22 developed system used for meter data reporting.

1 **D. Mid-Office Functions**

2 SDG&E’s Energy Risk Management (“ERM”) department, which reports to SDG&E’s
3 Controller and Chief Financial Officer division, provides mid-office support functions to E&FP
4 by identifying, managing, monitoring and reporting on market, credit, financial and operational
5 risks. The ERM department conducts daily reviews of electric procurement physical and
6 financial positions, including Commission-approved risk metrics, trader authority limits,
7 counterparty credit risk positions and compliance with financial liquidity/collateral limits. ERM
8 also supports the Front Office in the development of hedging plans and monitors compliance
9 with the approved plans.

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

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

15 The Settlements and Contract Management and Administration (“S&CMA”) Sections
16 within the E&FP department are responsible for: (a) contract administration, (b) preparing,
17 reviewing and issuing invoices, (c) issuing payments associated with energy transactions and
18 generation fuel agreements, and (d) providing mandated regulatory and financial reporting.

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

SDG&E Power Plants	MW ¹
Miramar Energy Facility 1 & 2	96
Cuyamaca Energy Center	45
Palomar Energy Center	575
Desert Star Energy Center	495
Vista Fuel Cell	0.4
Rooftop Solar (combined)	4

1 SDG&E’s power purchase agreements (“PPA”) include the following:

Contract Summary ²	TOTAL PPA'S		OPERATIONAL PPA'S	
	Number	MW	Number	MW
Energy Storage	2	60.0	1	40.0
QF/CHP	11	248.9	10	244.3
Renewable	56	2,629.8	50	2,575.6
Tolling	6	1,598.7	4	790.7
Use Limited Dispatch	1	25.0	1	25.0
WSPP	2	243.0	2	243.0
Total	78	4,805.5	68	3,918.7
Technology Type	Number	MW	Number	MW
Bio-Mass	1	24.0	0	0.0
Conduit-Hydro	6	13.3	5	8.3
Digester Gas/Conduit Hydro	1	4.6	1	4.6
Battery Storage	1	20.0	0	0.0
Landfill Gas	10	25.6	10	25.6
Market	2	243.0	2	243.0
Natural Gas	16	1,870.8	13	1,058.2
Pumped-Storage Hydro	1	40.0	1	40.0
Solar PV	25	1,331.1	21	1,305.9
Wind	15	1,233.0	15	1,233.0
Total	78	4,805.5	68	3,918.7
Year-End Status	Number	MW		
Operational	67	3,917.1		
Pre-Operational	5	856.6		
Expired	1	1.5		
Terminated	5	30.2		
Total	78	4,805.5		

2

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

² These PPA MW’s are reported on Attachment 1 of this testimony and represent either the installed capacity or the tested capacity of the generators.

1 Although not in SDG&E’s portfolio until 2017, SDG&E administered contractual
2 milestones for some PPAs, including Pio Pico Energy Center (“PPEC”) (308 MW) described
3 later in this testimony.

4 Below are the tasks S&CMA performs on a routine basis to ensure compliance with
5 contract terms and regulatory requirements.

6 **A. Kick-Off Meetings**

7 Before new projects reach COD, S&CMA conducts a kick-off meeting with the new
8 counterparty to introduce staff, review the scheduling communication protocols, and discuss the
9 invoicing and settlement procedures. The purpose of the meeting is to ensure a smooth transition
10 from the construction phase to operation.

11 **B. Invoice Verification**

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

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

1 **C. WREGIS Administration**

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

11 **D. Active Monitoring**

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

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

³ STC 6 requires the Sellers to warrant throughout the term of the PPA that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in the P.U. Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Buyer qualifies under the requirements of the California RPS. 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.

- I. request the Seller's copy of CEC's certification;
- II. request that the Seller register the contracted facility with WREGIS;
- III. verify that the Seller provided its CEC RPS ID through the WREGIS certificates and upload periodically; and
- IV. 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, all RPS projects reported to SDG&E that they complied with the STC 6 based on above activities (i), (ii) and (iii). All Sellers responded to SDG&E's questionnaire at year end according to (iv) above, confirming their compliance.

E. Contract System Administration

During the record period, E&FP's front, mid and back offices used Allegro as its primary contract management trading and tracking system. Allegro also offers repository features for S&CMA contract administration, with flexibility to research the contract information. It also creates an audit trail when changes are made to contracts in the system. There were no significant changes in the systems, processes, and/or tools used in contract management organization during the record period.

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

During the Record Year, S&CMA managed seventy-eight (78) contracts in its electric 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

- 1 • Payment Terms.
- 2 • New Contracts.
- 3 • Contract Modifications, Letter Agreements and Amendments filed Advice
- 4 Letters or Applications
- 5 • Amendments & Modifications for Review in the ERRA Application (not filed in
- 6 an advice letters or applications)
- 7 • Terminated Contracts

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

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

- 12 • *Renewable Contracts:* Power purchase and sale contracts with power suppliers
13 whose generation fuel (wind, solar, etc.) are certified as renewable. This type
14 includes both bilateral agreements and standard agreements.
- 15 • *Bilateral Contracts:* Contracts that are not originated from an RFO and are not
16 tariff or regulatory mandated contracts. The Buyer and Seller negotiate the terms
17 and are bound by the provisions. Bilateral contracts typically include the
18 purchase of energy and/or capacity, and may be firm or dispatchable.
- 19 • *Tolling Agreements:* These are dispatchable contracts, and SDG&E purchases and
20 transports the natural gas to the power plants. SDG&E pays for capacity based on
21 the availability of the plant and pays variable O&M charges, startup costs, etc.
22 SDG&E economically bids the plant and available ancillary services into the
23 CAISO market.

1 **H. Terminated Contracts**

2 SDG&E administers each contract from execution to expiration to ensure the parties
3 abide by the terms of the contract. Contracts expire when the term of a contract ends or may be
4 terminated earlier when a counterparty fails to perform a material covenant or obligation, or
5 SDG&E notifies the counterparty of an Event of Default. Once notified, the counterparty is
6 required to cure the default within a specific amount of time pursuant to the terms of the contract.
7 If the counterparty fails to cure or remedy the default within the allotted period required by the
8 contract, SDG&E may terminate the contract. The terminated contracts are discussed in the
9 relevant sections below and in Attachment 1. Copies of the termination letters are included in
10 Exhibit B of this testimony.

11 **I. Contract Amendments, Modifications and Letter Agreements**

12 During the record period, SDG&E modified and amended several contracts. Some
13 contract modifications were material in nature and required Commission approval, whereas,
14 some other modifications were not. Attachment 1 of this testimony summarizes changes and
15 modifications to contracts during the record period.

16 **J. Contract Administration of Fuel Procurement Contracts**

17 During the record period, SDG&E had procurement fuel service contracts in effect or
18 under negotiation, initiation, revision, amendment, or termination. Attachment 1 of this
19 testimony includes a tab entitled “Gas Contracts” that identifies: (a) all fuel services contracts in
20 effect or otherwise acted upon during the record period, (b) the execution date of each, (c) the
21 status of the contract as of the end of the record period, and (d) the effective dates of and reasons
22 for any actions taken during the record period. The prices and volumes are not applicable to
23 these contracts.

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

2 For the record period, SDG&E calculated \$18.6 million ⁴ as the hypothetical Maximum
3 Disallowance for Standard of Conduct 4 Violations which equates to twice the estimated
4 administrative expenses of \$9.3 million calculated in the table below. In D.02-12-074 (mimeo,
5 page 55) of R.01-10-024, the Commission set “each utility’s maximum disallowance risk equal
6 to two times their annual administrative expenses for all procurement functions, including those
7 related to DWR contract administration, utility-retained generation, renewables, QFs, demand-
8 side resources, and any other procurement resources.” This hypothetical disallowance cap was
9 established in Ordering Paragraph 25 of D.02-12-074, and modified by Ordering Paragraph 3.a.
10 of D.03-06-067 (R.01-10-024).

11 The record period falls under the 2016 GRC period which is effective from 2016 through
12 2018. In the tables below, SDG&E provides a hypothetical disallowance cap utilizing the GRC
13 Authorized Revenues for Procurement Expenses, and shows how those costs are hypothetically
14 distributed in three major functions: Long-Term Procurement, Trading & Scheduling, and
15 Middle and Back Office. More information about the test-year (“TY”) 2016’s O&M costs for
16 non-shared services are summarized in SDG&E witness Sue Garcia’s testimony in the 2016
17 GRC proceeding (A.14-11-003) and attached Exhibit D is a copy of this testimony.⁵

18

⁴ SDG&E provides this information on a hypothetical basis as it is typically requested by the Office of Ratepayer Advocates (“ORA”). SDG&E sees no practical usefulness of this number in this case.

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

SDG&E E&FP Expenses							
SMillions	Administration Expenses for all Procurement Functions	SDG&E's Authorized Revenue Requirement for Procurement Expenses (2016\$)			Hypothetical Maximum Disallowance for Standard of Conduct 4 Violations		
		Labor	Non-Labor	Total			
1	Long Term Procurement	\$2.231	\$0.385	\$2.616			
2	Trading and Scheduling	\$2.387	\$0.766	\$3.153			
3	Middle and Back Office	\$2.477	\$1.065	\$3.542			
4	Total	\$7.094	\$2.217	\$9.312	\$18.623		
1	Long Term Procurement	\$2.45					
2	Trading and Scheduling	\$2.97					
3	Middle and Back Office	\$3.34					
4	Total	\$8.76					

Electric		2013 \$	2013 \$	2016\$	2016\$		
		L	NL	L	NL		
1EP001	Long Term Procurement	\$1.97	\$0.36	\$2.12	\$0.37		
1EP002	Trading and Scheduling	\$2.22	\$0.74	\$2.39	\$0.77		
1EP003	Middle and Back Office	\$2.31	\$1.03	\$2.48	\$1.07		

Generation		2013 \$	2013 \$	2016\$	2016\$		
		L	NL	L	NL		
1EP001	Long Term Procurement	\$0.01	\$0.00	\$0.01	\$0.00		
1EP002	Trading and Scheduling	\$0.00	\$0.00	\$0.00	\$0.00		
1EP003	Middle and Back Office	\$0.00	\$0.00	\$0.00	\$0.00		

Natural Gas		2013 \$	2013 \$	2016\$	2016\$		
		L	NL	L	NL		
1EP001	Long Term Procurement	0.09	0.02	0.10	0.02		
1EP002	Trading and Scheduling	0.00	0.00				
1EP003	Middle and Back Office	0.00	0.00				

Total		2013 \$	2013 \$	2016\$	2016\$	Total
		L	NL	L	NL	
1EP001	Long Term Procurement	2.08	0.37	2.45	0.39	2.62
1EP002	Trading and Scheduling	2.22	0.74	2.97	0.77	3.15
1EP003	Middle and Back Office	2.31	1.03	3.34	1.07	3.54
					Total	9.31
Escalation Rates						
		Elec/Gen/Gas	Elec/Gen	Gas		
		Labor	NLbr	NLbr		
		1.074100	1.030200	1.035900		

1 **V. CONTRACT PORTFOLIO AND STATUS**

2 This section lists each of the executed contracts in SDG&E’s portfolio by technology
3 type and provides a brief description of the contract or project status. SDG&E also describes any
4 issues that may have occurred in the reporting period.

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

- 7 1) Resource Adequacy Power Purchase
- 8 2) 2017 Resource Adequacy Capacity Product Confirm
- 9 3) Energy Efficiency Resource Purchase Agreement
- 10 4) Power Purchase Agreement (Renewable)
- 11 5) Energy Storage System Power Purchase Tolling Agreement
- 12 6) Bio- RAM PPA
- 13 7) Enhanced Community Renewables (“ECR”) Ram PPA
- 14 8) Combined Heat and Power (“CHP”) Power Purchase Agreement
- 15 9) Power Purchase Tolling Agreement (Utility Pre-Dispatch Facility (“UPF”))

16 The pro forma PPAs are attached in a PDF format in Exhibit C of this testimony.

17 In addition to the PPAs listed above, SDG&E had a Bioenergy Market Adjusting Tariff
18 (“Bio-Mat”), CHP PPA (for CHP Facilities less than 5 MW) and Feed-In Tariff (“FIT”)-
19 Renewable Market Adjusting Tariff (“ReMat”) (closed in June 2016) available during the
20 record period.

21 **A. Renewable Resources**

22 SDG&E’s renewable portfolio is comprised of resources from PPAs stemming from
23 competitive solicitations, bilateral agreements, and standard agreements. This section provides a

1 description of each renewable energy resource project in SDG&E’s electric portfolio that
2 delivered energy to SDG&E during the record period, arranged by technology type, along with
3 discussions of activities unique to each project. Additional details about each project can be
4 found in the Electric Contracts tab of Attachment 1 of this testimony.

5 **1. BIO-GAS & DIGESTER GAS**

6 SDG&E had ten (10) bio-gas projects and one (1) digester/hydro gas project for a
7 combined total of 30.2 MW that delivered energy to SDG&E during the record period.

- 8 • *Minnesota Methane San Diego LLC (“MM San Diego”)*:
 - 9 ▪ *The MM San Diego (“Miramar”)* - This ten-year Response Auction Mechanism
10 (“RAM”) PPA was executed on November 9, 2012. The plant began delivering
11 energy to SDG&E in 2013. The PPA price during the record period was
12 \$87.00/MWh adjusted by time-of-delivery (“TOD”) factors. The project size is
13 4.5 MW and is in San Diego, California.
 - 14 ▪ *MM Prima Deshecha Energy LLC (“Prima”)*: This fifteen-year PPA was
15 executed on September 6, 2005. The plant began delivering energy to SDG&E in
16 2007. During the term, the PPA price increased from \$48.50/MWh to
17 \$68.53/MWh. The project size was 6.1 MW during the record period, and the
18 project is in Orange County, California.

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

- 22 • *City of San Diego (“Point Loma”)*: This PPA was executed on December 9, 2002.
23 The contract was amended on December 22, 2006 extending the agreement five years

1 through December 31, 2012 with options to extend the PPA by one year up to an
2 additional five years. [REDACTED]

3 [REDACTED]. The plant began delivering energy to SDG&E in 2002 under a the
4 current PPA. The PPA price during the record period was [REDACTED]. The total
5 plant size is a 4.6 MW hybrid sewage treatment plant with a 3.4 MW digester gas
6 plant, and a 1.2 MW conduit hydroelectric plant, located in San Diego, California.

7 • *Otay Landfills 1, 2, 3, V and VI*

8 ■ *Otay 1 Landfill:* This ten-year Customer Renewable Credit (“CRE”) FIT PPA
9 was executed on May 1, 2009. The plant began delivering energy to SDG&E in
10 2009. The PPA has a fixed price of \$100.43/MWh adjusted by TOD factors. The
11 plant size is 1.5 MW and is in Chula Vista, California.

12 ■ *Otay 2 Landfill:* This twenty-year PPA was executed a CRE FIT Agreement with
13 SDG&E on February 22, 2011. The plant began delivering energy to SDG&E in
14 2011. The PPA has a fixed price of \$100.98/MWh adjusted by TOD factors. The
15 plant size is 1.5 MW and is in Chula Vista, California.

16 ■ *Otay Landfill 3:* This ten-year bilateral PPA was executed on August 31, 2005.
17 The plant began delivering energy to SDG&E in 2007. The PPA price is
18 \$57.00/MWh. The project size is 3.8 MW and is in Chula Vista, California. The
19 existing PPA expired in March, 2017. In June 2016, after a ReMat RFO, Otay
20 Landfill Gas, LLC, filed a Complaint with the Commission against SDG&E
21 alleging that SDG&E improperly denied service for this unit under SDG&E’s
22 ReMAT tariff. SDG&E answered the Complaint. This Complaint is pending a
23 decision at the Commission.

1 ▪ *Otay Landfill V*: This twenty-year CRE PPA was executed on December 27,
2 2011. The plant began delivering energy to SDG&E in 2013. The energy price is
3 \$108.98/MWh adjusted by TOD factors. The project size is 1.5 MW and is in
4 Chula Vista, California.

5 ▪ *Otay VI*: This twenty-year CRE FIT PPA was executed on December 27, 2011.
6 The plant began delivering energy to SDG&E in 2013. The energy price is
7 \$108.98/MWh adjusted by TOD factors. The project size is 1.5 MW and is in
8 Chula Vista, California.

9 • *San Marcos, Sycamore Energy 1 and 2 Landfills*:

10 ▪ *San Marcos Energy, LLC*: This twenty-year CRE FIT Agreement with SDG&E
11 was executed on November 20, 2009. The plant began delivering energy to
12 SDG&E in 2011. The PPA has term at price of \$117.30/MWh adjusted by TOD
13 factors. The plant size is 1.5 MW and is in San Marcos, California.

14 ▪ *Sycamore Energy 1, LLC* – This twenty-year CRE FIT PPA was executed on
15 November 20, 2009. The plant began delivering energy to SDG&E in 2011. The
16 PPA has a price of \$117.30/MWh adjusted by TOD factors. The plant size is 1.5
17 MW and is in Santee, California.

18 ▪ *Sycamore Energy 2, LLC* - This ten-year ReMat PPA executed on March 7, 2014.
19 The plant began delivering energy to SDG&E in 2014. The PPA price is
20 \$89.23/MWh. The plant size is 2.3 MW and is in Santee, California. [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

1 **2. WIND**

2 SDG&E has agreements with fifteen (15) operating wind projects that provided a total
3 combined capacity of approximately 1,233 MW. Descriptions of the projects, the associated
4 agreements, and administration activities are provided below:

- 5 ○ *Coram Energy, LLC*: This fifteen-year bilateral PPA was executed on July 12, 2010.
6 The plant began delivering energy to SDG&E in 2011. The PPA price started at
7 \$95.00/MWh in 2011 and escalates to \$109.20/MWh throughout the term adjusted by
8 TOD factors. The project size is 7.5 MW and is in the Tehachapi area of California.
- 9 ○ *Energía Sierra Juárez*: This twenty-year bilateral PPA was executed on April 6,
10 2011 and with iEnova - a Sempra affiliate. The plant began delivering energy to
11 SDG&E in 2015. The PPA price is \$106.50/MWh adjusted by TOD factors. The
12 project size is 155.1 MW and is in Ejido Jacume, Mexico but is interconnected and
13 delivers energy to SDG&E’s East County Substation.
- 14 ○ *FPL Energy Green Power Wind, LLC (a.k.a. “WTE” and “FPL”)*: This fifteen-year
15 bilateral PPA was executed on October 31, 2002. The plant began delivering energy
16 to SDG&E in 2004. The PPA price is \$52.60/MWh. The project size is 16.5 MW
17 and is in the Gorgonio Pass area of Riverside County, California.
- 18 ○ *Avangrid Renewables, LLC*. (formerly known as Iberdrola Renewables, LLC):
19 Avangrid has three projects under agreements with SDG&E.
 - 20 ● *Mountain Wind*: This fifteen-year bilateral PPA was executed on October 31,
21 2002. The plant began delivering energy to SDG&E in 2003. The PPA price is
22 \$49.15/MWh. This project size is 22.8 MW and is in the Palm Springs area of
23 California.

- *Phoenix Wind*: This fifteen-year bilateral PPA was executed on November 7, 2003. The project began delivering energy to SDG&E in 2003. The PPA price is \$49.15/MWh. This project size is 2.1 MW and is in the Palm Springs area of California.

[REDACTED]

- *Manzana Wind*: This twenty-year bilateral PPA was executed on February 14, 2012. The plant began delivering energy to SDG&E in 2012. The PPA price is \$95.00/MWh less the average real-time locational marginal price (“LMP”). The total project size is 189 MW and is in Rosamond, California. SDG&E purchases 53%, or 100 MW, of the total project. The PPA allows economic curtailment up to 5% of the annual contract quantity. SDG&E exercised its economic curtailment rights in 2016.

- *Oasis Power Partners, LLC*: This bilateral fifteen-year PPA was executed on October 30, 2002. The plant began delivering energy to SDG&E in 2004. The PPA price is \$49.20/MWh. SDG&E and Oasis have been transacting ISTs under their Market Redesign and Technology Update (“MRTU”) Agreement since April 2009. The project size is 60 MW and is in the Tehachapi area of California.

1 ○ *Pacific Wind Lessee, LLC*: This twenty-year bilateral PPA was executed on April 20,
2 2010. The plant began delivering energy to SDG&E in 2012. The PPA price is
3 \$115.47/MWh. The project size is 140 MW and is in Rosamond, California.

4 ○ *Kumeyaay Wind LLC (“Kumeyaay”)*: This twenty-year bilateral PPA was executed
5 on May 31, 2004. The plant began delivering energy to SDG&E in 2006. The PPA
6 price is \$51.75/MWh. SDG&E and Kumeyaay have been transacting ISTs under
7 their MRTU Agreement since April 2009. The project size is 50 MWs and is located
8 on the Campo Indian Reservation in eastern San Diego County, California.

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 ○ *Naturener Glacier1*: This fifteen-year bilateral PPA was executed on May 16, 2008.
16 The plant began delivering energy to SDG&E in 2008. The transaction is a
17 combination of two products. First, SDG&E buys the output, including the green
18 attributes. Second, Glacier I buys back the output, excluding green attributes, at the
19 same delivery point. The contract prices for the products are \$89.00/MWh and
20 \$68.00/MWh, respectively. The project size 106.5 MW and is in Ethridge,
21 Montana.

22 ○ *Naturener Glacier 2*: This fifteen-year bilateral PPA was executed on May 23, 2008.
23 The plant began delivering energy to SDG&E in 2009. The transaction is a

1 combination of two products. First, SDG&E buys the output, including the green
2 attributes. Second, Glacier 2 buys back the output, excluding green attributes, at the
3 same delivery point. On May 5, 2009, this PPA was amended, and the prices for the
4 products are \$98.00/MWh and \$68.00/MWh, respectively. The project size is 103.5
5 MW is in Ethridge, Montana.

- 6 ○ *Naturener Rim Rock*: This twenty-year bilateral PPA was executed on May 5, 2009.
7 The plant began delivering energy to SDG&E in 2013. The transaction is a
8 combination of two products. First, SDG&E buys the output, including the green
9 attributes. Second, Rim Rock buys back the output, excluding green attributes, at the
10 same delivery point. The contract prices for the products are \$105.99/MWh and
11 \$62.00/MWh, respectively. The project size is 189 MW and is in Toole and Glacier
12 County, Montana.

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

- 19 ○ *Oak Creek Wind Power, LLC*: This ten-year RAM PPA was executed on April 16,
20 2013. The plant began delivering energy to SDG&E in 2014. The PPA price is
21 \$67.00/MWh adjusted by TOD factors. The project size is 3.5 MW and is in Imperial
22 Valley, California.

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- *Ocotillo Express, LLC*: This twenty-year bilateral PPA was executed on February 1, 2011. The project began delivering energy to SDG&E in 2013. The PPA price is \$105.00/MWh. The project size is 265.3 MW and is in Imperial Valley, California.

[REDACTED]

- *San Gorgonio Westwinds II ("SGWII")*: This ten-year RAM PPA was executed on April 16, 2013. The plant began delivering energy to SDG&E in 2015. [REDACTED] The project size is 11.2 MW and is in Palm Springs, California.

[REDACTED]

- 1 ○ *Catalina Solar*: This twenty-five-year bilateral PPA was executed on June 3, 2011.
2 The plant began delivering energy to SDG&E in 2013. The PPA price started at
3 \$112.19/MWh in year 2013 and escalates to \$142.45/MWh throughout the term of the
4 PPA adjusted by TOD factors. The project size is 109.4 MW and is in the Mojave
5 Desert in Kern County, California.
- 6 ○ *Centinela Solar Energy 1*: This is a twenty-year bilateral PPA executed on May 10,
7 2010. The plant began delivering energy to SDG&E in 2013. The PPA price is
8 [REDACTED]. The project size is 125 MW and is in
9 Calexico, California. [REDACTED]
10 [REDACTED]
11 SDG&E exercised its curtailment rights in 2016.
- 12 ○ *Centinela Solar Energy 2*: This twenty-year bilateral PPA was executed on July 29,
13 2010 as an expansion of the Centinela Solar 1 plant. The expansion plant began
14 delivering energy to SDG&E in 2014. The PPA price is [REDACTED]
15 [REDACTED]. The project size is 45 MW and is in Calexico, California. [REDACTED]
16 [REDACTED]
17 [REDACTED] SDG&E exercised its curtailment
18 rights in 2016.
- 19 ○ *CSOLAR IV South*: This twenty-five-year bilateral PPA was executed on November
20 10, 2010. The plant began delivering energy to SDG&E under the PPA in 2013. The
21 PPA price is \$125.85/MWh adjusted by TOD factors. The project size is 130 MW
22 and is in Calexico, California. SDG&E exercised its economic curtailment rights in
23 2016.

1 ○ *CSolar IV West*: This twenty-five-year bilateral PPA was executed on March 8,
2 2011. The plant began delivering energy to SDG&E in 2015. The PPA price was
3 revised to [REDACTED] in the Amended and Restated
4 Second Amendment to the PPA executed on October 28, 2013. [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED] The project size is 150 MW and is in
8 Imperial Valley, California.

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 ○ *Desert Green Solar Farm*: This twenty-five-year bilateral PPA was executed on
20 March 31, 2011. The plant began delivering energy to SDG&E in 2014. The PPA
21 price is [REDACTED]. The project size is 6.3 MW and is in Borrego Springs,
22 California.

1 ○ *Imperial Valley Solar 1 (Silver Ridge Mt Signal)*: This twenty-five-year bilateral PPA
2 was executed on February 3, 2012. The plant began delivering energy to SDG&E in
3 2013. The PPA price is \$98.59/MWh adjusted by TOD factors. The project size is
4 200 MW and is in Calexico, Imperial County, California. SDG&E exercised its
5 curtailment rights in 2016.

6 ○ *Maricopa West Solar PV*: This twenty-year RAM PPA was executed on April 16,
7 2013. The plant began delivering energy to SDG&E in 2015. The RAM PPA price is
8 [REDACTED] The project size is 20 MW and is in the
9 unincorporated area of the County of Kern, California.

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 ○ *NLP Granger A82 Solar*: This ten-year ReMat PPA was executed on April 3, 2014.
15 The plant began delivering energy to SDG&E in 2016. The PPA price is
16 [REDACTED]. The project size is 3 MW and is in Valley
17 Center, California.

18 ○ *NLP Valley Center Solar*: This ten-year ReMat PPA was executed on July 20, 2015.
19 The plant began delivering energy to SDG&E in 2016. The PPA price is
20 [REDACTED]. The project size is 2.3 MW and is in Valley
21 Center, California.

22 ○ *NRG Solar Borrego I*: This twenty-five-year bilateral PPA was executed on January
23 25, 2011. The plant began delivering energy to SDG&E in 2013. The PPA price is

1 \$130.00/MWh adjusted by TOD factors. The project size is 26 MW and is in
2 Borrego Springs, California.

- 3 ○ *SG2 Imperial Valley*: This twenty-five-year bilateral PPA was executed on June 24,
4 2011. The plant began delivering energy to SDG&E in 2014. The PPA price started
5 at [REDACTED]
6 [REDACTED]. The project size is 150 MW and is in Imperial
7 Valley, California.

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]

- 11 ○ *Sol Orchard LLC*: These four (4) twenty-five year bilateral PPAs were executed on
12 April 11, 2011. All the plants began delivering energy to SDG&E in 2013. The PPA
13 prices started at \$118.86/MWh adjusted by TOD factors.

- 14 ■ *Sol Orchard San Diego 20 LLC (“Ramona 1”)*: The project size is 2.0 MW
15 and is in Ramona, California.

- 16 ■ *Sol Orchard San Diego 21 LLC (“Ramona 2”)*: The project size is 5.0 MW
17 and is in Ramona, California.

- 18 ■ *Sol Orchard San Diego 22 LLC (“Valley Center 1”)*: The project size is 2.5
19 MW and is in Valley Center, California.

- 20 ■ *Sol Orchard San Diego 23 LLC (“Valley Center 2”)*: The project size is 5.0
21 MW and is in Valley Center, California.

- 22 ○ *TallBear Seville*: This twenty-year RAM PPA was executed on December 13, 2012.
23 The project began energy deliveries in 2015. The RAM PPA price is [REDACTED]

1 [REDACTED] The project size is 20 MW and is in Imperial County,
2 California. [REDACTED]

3 [REDACTED]
4 [REDACTED]

5 **5. TERMINATED RENEWABLE PPAS**

6 The following renewable PPAs were terminated during the record period:

- 7 ○ Pristine Sun Fund 2 – 2226 Marsaglia – This 0.8 MW solar facility FIT PPA was

8 [REDACTED]
9 [REDACTED]

- 10 ○ Pristine Sun Fund 2 – 2273 Saltus – This 1.5 MW solar facility FIT PPA was

11 [REDACTED]
12 [REDACTED]

- 13 ○ SEPV Boulevard, LLC – This 2.9 MW solar facility FIT PPA was [REDACTED]

14 [REDACTED]
15 [REDACTED]

- 16 ○ Rugraw, LLC – This 5 MW solar facility RAM PPA was [REDACTED]

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

- 20 ○ Hecate Energy Bancroft, LLC – This 20 MW Energy Storage PPA was [REDACTED]

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

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[REDACTED]

[REDACTED]

[REDACTED]

B. QF/CHP Resources

At the end of the record period, SDG&E purchased energy from ten (10) QF/CHP PPAs for a total of 244.3 MW. These projects consisted of the following:

QF/CHP PPA Type	Number of PPAs
Non-standard Agreements	1
Standard Offer 4 (“SO4”) Agreement	4
CHP Agreements	3
Standard Offer 1 (“SO1”) Agreement	2

All projects that have agreements with SDG&E are located within SDG&E’s electric service territory except for the Yuma Cogeneration Association (“YCA”) unit, which is in Yuma, Arizona and delivers energy to SDG&E’s Southwest Powerlink at North Gila.

1. QF PPA ADMINISTRATION

During the record period, the following table lists the amendments that were executed to non-legacy QFs PPAs signed because of the QF Settlement Agreement.

Line No.	QF Project Name	Technology	Type of Agreement	Execution Date	Termination /Expiration Date
1	CP Kelco	Cogeneration	Letter Agreement ⁶	July 7, 2016	
2	CP Kelco	Cogeneration	Letter Agreement	December 7, 2016	

1 Although all the QFs, under PPAs with SDG&E were affected by the QF Settlement
2 Agreement, there were no dispute resolution agreements resulting from any contractual disputes
3 and requesting Commission’s approval in the ERRA filing.

4 The following table lists the quantity, and nameplate capacity of all exporting and non-
5 exporting QF agreements that were operational in SDG&E’s service territory during the record
6 period.

Technology	Operational	Operational (kW)	Non-Operational	Non-Operational (kW)
Biogas	2	220	0	0
Cogeneration	24	228,739	1	20
Hydroelectric	2	1,835	0	0
Steam Turbine	2	6,634	0	0
Total	30	237,428	1	20

7 The table above does not include CHP agreements. The following table lists the
8 percentages of generation (MWh) supplied by QF projects relative to SDG&E’s total energy
9 supply for the record period.

⁶ In accordance with the terms of the QF/CHP Settlement, SDG&E entered into a Transition Agreement with CP Kelco on December 20, 2012.



Total QF Supply (MWh)	SDG&E's Total Energy Supply (retail sales MWh)	% of QF generation relative to SDG&E's total energy supply
826,282	15,653,136	5.28%

1 The following table lists the percentages of QF renewable energy (kWh) relative to total
2 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
1,489	826,282	0.18%

3 The following table lists the percentages of renewable energy (kWh) relative to total RPS
4 supply.

QF Renewable Purchases (MWh)	Total RPS Purchases (MWh)	% of QF RPS eligible Renewable Energy relative to total RPS supply
1,489	6,744,630	0.02%

5 The following table lists the Legacy QFs and identifies the pricing option terms it
6 selected in their Amendment to Legacy PPA executed because of the CHP Program Settlement.

Legacy QF/CHP Project Name	Technology	Pricing Option	Execution Date
CP Kelco	Cogeneration	A	Dec 20, 2012
Goal Line, L.P.	Cogeneration	A & C.1	May 1, 2012
Naval Station	Cogeneration	A	May 1, 2012
North Island	Cogeneration	A	May 1, 2012
NTC/MCRD	Cogeneration	A	May 1, 2012
YCA	Cogeneration	A & C.1	April 1, 2012

7 Option A is a similar payment to SDG&E's published SRAC. Option C.1 requires the
8 parties to negotiate a tolling agreement.

9 The following table identifies any effective QF/CHP PPAs that were amended, modified
10 or renegotiated during the record period and SDG&E's reasons and analyses supporting the

1 amendment, modification or renegotiation. Included in the table is a summary of important
2 changes to the projects and a side-by-side comparison of the existing PPA terms with the current
3 amendment.

QF/CHP	Type	Reason	Analysis
CP Kelco	Letter Agreement dated 7/7/2016		
CP Kelco	Letter Agreement dated 12/7/2016		

4 Execution of the above Letter Agreements potentially conferred a small notional value
5 increase to payments made to CP Kelco. The payments made to CP Kelco were low risk and
6 offered benefits to SDG&E ratepayers, eventually fulfilling SDG&E's CHP requirements.

7 2. TERMINATED QF PPAs

8 During the record period, Grossmont Hospital ("Grossmont")

10 3. PAYMENTS TO QFS/CHP

11 During the record period, there were no unusual payments or claims by the QF. The QF
12 Contracts tab in Attachment 1 provides the monthly energy, capacity and bonus payments made
13 to QFs. The Electric Contracts tab also provides the contract price details and total annual
14 payments made to both CHP and QFs.

15 4. EFFICIENCY MONITORING

16 SDG&E solicited and reviewed the operating and efficiency data for calendar year 2016
17 in early 2017.

1 **5. INSURANCE MONITORING**

2 During the record period, the S&A staff tracked the insurance certificates for compliance
3 and ensured current insurance is maintained by TrackCertsNow, an Ebix Inc. system on
4 SDG&E’s behalf.

5 **6. QF/CHP PERFORMANCE**

6 During the record period, SDG&E had three (3) SO4 firm capacity QFs: Naval Station,
7 North Island and Naval Training Center/Marine Corps Recruit Depot (“NTC/MCRD”). The firm
8 capacity QFs are required to meet minimum performance provisions during the summer on-peak
9 period, unless the QF is unable to perform due to an uncontrollable force outage. In those
10 instances, SDG&E would continue to make firm capacity payments pursuant to the relevant QF
11 PPA provisions. The firm capacity QFs are required to maintain a minimum 80% capacity factor
12 during the summer on-peak period. QFs that fail to meet this minimum provision may be placed
13 on probation for a period not to exceed fifteen months. Those that can operate above an 85%
14 capacity factor during the same period can earn a firm capacity bonus adjustment.

15 The NTC/MCRD plant also provides steam to a steam turbine that operates under a
16 separate SO1 PPA. Details are described below.

17 The following describes the QF PPA with SDG&E and describes any issues that may
18 have occurred during the record period:

- 19 ○ Applied Energy LLC (“AEI”): SDG&E has four PPAs with AEI that sold power to
20 SDG&E during the record period:

Plant	PPA Type	Nameplate MW	Firm Capacity MW	Capacity Price
Naval Station	Standard Offer 4	49.9	46.5	\$152.5/kW-Year
North Island	Standard Offer 4	34.5	33.5	\$152.5/kW-Year
NTC/MCRD	Standard Offer 4	23.0	21.6	\$152.5/kW-Year
NTC/MCRD	Standard Offer 1	2.6	0	As-Available
Total		109.5	101.6	

1 On May 1, 2012, SDG&E and AEI executed three Amendments to the SO4 Agreements
2 for the Naval Station, North Island and NTC/MCRD. These Amendments were executed in
3 compliance with the CHP Settlement and D.07-09-040. AEI selected Option A for its energy
4 price which is the published SRAC energy and as-available capacity prices.

5 Below is a brief description of each of the above plants:

- 6 • *Naval Station:* This QF is located at the Naval Station, San Diego, California.
7 The agreement terminates on November 30, 2019. The SO4 PPA nameplate
8 is 49.9 MW and provides 46.5 MW of firm capacity and energy. SRAC was
9 the energy price during the record period.
- 10 • *North Island:* This QF is located at the Navy Base, Coronado, California.
11 The SO4 terminates on November 30, 2019. The SO4 nameplate is a 34.5
12 MW with 33.5 MW of firm capacity, but the plant can deliver up to 42 MW
13 per their interconnection agreement with CAISO at SRAC. The plant also
14 provides steam to a 4.1 MW steam turbine under SO1 that provides power to
15 the Navy. The steam plant has an SO1 PPA with an evergreen term, but did
16 not export energy to SDG&E during the record period.

- *NTC/MCRD*: The SO4 terminates November 30, 2019. The SO4 nameplate is 23.0 MW and provides 21.6 MW of firm capacity and energy. The energy price during the record period was at the SRAC price.
- *NTC/MCRD Steam Turbine*: The *NTC/MCRD* SO4 plant provides steam to a 2.6 MW steam turbine that SDG&E pays as-available energy and capacity payments under a separate SO1 PPA.

SDG&E also purchased energy from the following QFs:

- *C.P. Kelco ("Kelco")*: Under its Power Purchase and Sale Agreement dated November 19, 2015 (“PPA”), approved in 2017, SDG&E may purchase excess power from three gas turbines for a total of 26.6 MW at as-available energy and capacity prices.

In December 2012, the parties entered into a Transition Agreement (“Transition Agreement”) in accordance with the requirements of the QF/CHP Settlement. The Transition Agreement included an expiration date of July 1, 2015. [REDACTED]

[REDACTED] In November 2015, the Parties executed the new PPA to become effective upon final Commission approval. On April 6, 2017, the ED issued a final Resolution, E-4799, approving the replacement PPA with Kelco, which starts delivery effective June 1, 2017. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

- *Badger Filtration Plant:* This thirty-year QF SO4 PPA was executed on January 28, 1985. The conduit hydro facility began delivering power to SDG&E in 1987. The plant size is 1.5 MW and is in Rancho Santa Fe, CA. The PPA price is SRAC with as-delivered capacity payments.
- *San Francisco Peak Hydro Plant:* This evergreen PPA was executed on August 29, 1985. The conduit hydro facility began delivering power under the current PPA in 1985. The plant size is 0.4 MW an is in Oceanside, CA. The PPA price is SRAC with as-available capacity payments.

During the record period, SDG&E also had two (2) operational CHP plants totaling 104.8 MW. Both plants were converted from SO2 QFs. Below is a brief description of each plant:

- *Yuma Cogeneration Associates:* YCA is a 55 MW dispatchable CHP project located in Yuma, Arizona and sells all its energy to SDG&E. Beginning in December 2015, YCA began operating under a CHP “Amended and Restated Power Purchase Agreement” (“Restated PPA”). The PPA price was [REDACTED]

[REDACTED]

[REDACTED] The Restated PPA will terminate on May 28, 2024, which is the original SO2 termination date.

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

- o Goal Line LLP: GL is a [REDACTED] dispatchable CHP project located in Escondido, California. [REDACTED] to SDG&E. Beginning in February 2015, GL began operating under a CHP “Amendment and Restatement of Agreement for Power Purchase with a Firm Capacity Qualifying Facility (Oceanside Refrigeration, Inc.)” (“Restatement PPA”). The Restatement PPA expires on February 14, 2025 which is the original SO2 termination date. The plant is in Escondido, California. During the record period, the firm capacity price was at [REDACTED]

C. Bilateral PPA’s

During the record period, SDG&E also had one (1) Use Limited Dispatch PPA and a Pumped-Storage Hydro PPA totaling 65 MW.

- o EnerNOC, Inc.: This is a ten-year Use-Limited Dispatch PPA that was executed on February 21, 2005 and became effective on December 31, 2006. The PPA expired on December 31, 2016. This agreement allows SDG&E to dispatch 25 MW of customer-owned back up generation. Under the PPA, these generators can be operated at up to eight hours per day for a maximum of 200 hours per year. This

1 contracted product is dispatchable with a capacity price of \$77.00/kW-year. The cost
2 of energy is based on the index fuel price for the period in which the generators run.

- 3 ○ Olivenhain-Hodges Pump Storage Facility (“Hodges”): This Hydroelectric Pumped
4 Storage Facility is owned by the San Diego County Water Authority (“SDCWA”) and
5 consists of two 20 MW hydroelectric turbines for a total of 40 MW. The PPA was
6 executed on January 29, 2004 and was approved by D.04-08-028. The project began
7 delivering energy to SDG&E of August 27, 2012 and will terminate on August 26,
8 2037. The capacity price is a combination of a fixed portion of \$65/kW-year and a
9 variable portion at \$5/kW-year escalated at Consumer Price Index (“CPI”). The
10 O&M is \$2.01/MWh escalated at the CPI.

11 The project pumps water from Lake Hodges to the Olivenhain Reservoir typically
12 during off-peak hours consuming power, and then generates power typically during
13 on-peak hours by flowing water from Olivehain back to Lake Hodges. SDG&E takes
14 advantage of the market price spreads between on-peak and off-peak time periods.

15 SDG&E manages the economics through dispatching the generation and pump load.

16 **D. Tolling Agreements**

17 During the record period, SDG&E also had four (4) operational tolling plants totaling
18 790.7 MW:

- 19 ○ OMEC: On May 1, 2007, SDG&E and OMEC (a subsidiary of Calpine Corporation)
20 executed an Amended and Restated PPA. The Agreement has a ten-year term after
21 which there is a put/call option affecting future ownership of the plant. OMEC is a
22 combined cycle plant located in Otay Mesa in San Diego County near the United
23 States/Mexico International Border and started operating in October, 2009. The 589

1 MW plant is comprised of two combustion turbine-generators and one steam turbine.
2 SDG&E is responsible for supply of the fuel. The capacity price is \$117.00/kW-year,
3 and the current O&M cost was \$2.69/MWh during the record period, escalated by
4 2.5% each calendar year.

5 ○ ECEC: On May 24, 2010, SDG&E and ECEC (a subsidiary of Wellhead Services,
6 Inc.) executed a Power Purchase Tolling Agreement (“PPTA”). The contract has a
7 term of twenty-five years, and the plant started operating in June 16, 2010. ECEC is
8 a 47 MW quick-start peaking plant. The 2016 capacity price was \$149.4/kW-year
9 and the O&M price was \$7.8/MWh. Part of the capacity and all the O&M prices are
10 adjusted by the CPI each calendar year.

11 ○ EEC: On February 25, 2011, SDG&E and EEC (a subsidiary of Wellhead Services,
12 Inc.) executed a PPTA. The contract has a term of twenty-five years, and the plant
13 started operating in January 25, 2014. EEC is a 48 MW quick-start peaking plant.
14 The 2016 capacity price was \$154.66/kW-year and the O&M price was \$7.75/MWh.
15 Part of the capacity and all the O&M prices are adjusted by the CPI each calendar
16 year.

17 ○ OGE: On July 14, 2009, SDG&E and OGE (a subsidiary of J-Power USA
18 Development Co., Ltd) executed a PPTA. The contract has a term of twenty-five
19 years. Pursuant to D.07-09-010, SDG&E leases its land to J-Power, who constructed
20 the peaking generator on the leased land and provides its output to SDG&E for a
21 period of twenty-five years, after which the lease shall expire and the title to the plant
22 will be transferred to SDG&E at no additional cost. The plant started operating on
23 June 17, 2010. OGE is comprised of two gas turbines located in Pala, California.

1 OGE is a 98 MW quick-start peaking plant. The capacity price was \$173.64/kW-year
2 for the term of the agreement, and the O&M price, which was adjusted by the CPI for
3 the calendar year, was \$5.01/MWh during the record period.

4 **E. Market Purchases**

5 During the record period, SDG&E also had two (2) firm market or WSPP PPA's totaling
6 243 MW.

- 7 ○ BP Energy: On July 1, 2015 SDG&E executed an agreement with BP Energy to
8 purchase 68 MW of [REDACTED]

9 [REDACTED]
10 [REDACTED] This PPA was
11 approved by the Commission in Advice Letter 2725-E on May 5, 2015, effective
12 April 1, 2015.

- 13 ○ Morgan Stanley Capital Group (NOB): On May 1, 2013 SDG&E executed an
14 agreement with Morgan Stanley Capital Group to purchase 24x7 firm energy. During
15 the record period, the contract prices were \$51.50/MWh from May-Aug and
16 \$71/MWh from Sep-Oct. During the contract term, SDG&E takes energy at fixed
17 prices during certain periods of the years. The PPA is associated with the Naturener
18 Rim Rock facility and is in effect from 2013 through 2022.

19 **F. Miscellaneous Contract Issues**

20 During the record period, SDG&E managed five (5) pre-operational PPA's totaling 856.6
21 MW.

- 1 ○ *Grossmont Hospital:* On May 1, 2016, Grossmont executed a ten-year CHP less than
2 5 MW PPA. The cogeneration plant has an as-available capacity of 4.6 MW in La
3 Mesa, CA. The PPA became effective on January 1, 2017.
- 4 ○ *HL Power Company, LP (HLPC):* On November 14, 2016, SDG&E and HLPC
5 executed a five-year PPA with five one-year extensions. The bio-mass plant is a
6 former QF and has an as-available capacity of 24 MW. The plant began delivering
7 power in February 2017.
- 8 ○ *Pio Pico Energy Center (PPEC):* On February 2, 2011, SDG&E and PPEC executed
9 a twenty-five year PPTA. PPEC is comprised of three (3) GE LMS100 gas turbine
10 quick start units with a net facility deliverable capacity of [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]. Effective June 1, 2017,
15 PPEC will become part of SDG&E's resource portfolio.
- 16 ○ *Midway (97W18ME) LLC (Midway):* On December 11, 2015, SDG&E and Midway
17 executed a twenty-year PPA. The proposed solar plant has an as-available capacity of
18 20 MW. The estimated COD is February 1, 2018.
- 19 ○ *Carlsbad Energy Center (Carlsbad):* On June 1, 2015, SDG&E and Carlsbad
20 executed a twenty-year PPTA. The proposed Carlsbad plant is comprised of five (5)
21 GE LMS100 gas turbine quick start units with a net facility deliverable capacity of
22 500 MW. The estimated COD is October 2018.

1 **VI. CONCLUSION**

2 Based on the foregoing, SDG&E's recorded contract expenses to the ERRRA are in
3 conformance with the Public Utilities Code, Commission decisions, and the contract terms for
4 the 2016 record period. SDG&E respectfully requests that the Commission find that SDG&E's
5 contract administration and power procurement-related activities and costs for calendar year
6 2016 were reasonable and therefore should be approved.

7 This concludes my prepared direct testimony.

8 **VII. QUALIFICATIONS**

9 My name is Daniel L. Sullivan. My business address is 8315 Century Park Court, San
10 Diego, CA 92123. I am employed by SDG&E as the Sr. Energy Administrator in the Electric
11 and Fuel Procurement Department. My present duties include the administration of renewable
12 agreements, Tolling and QF agreements and bilateral agreements. I have been employed by
13 SDG&E since 1978. I have been in my current position since February 2009.

14 I received a MBA, with an emphasis in Financial Management from National University
15 in 1993.

16 I have previously testified before the Commission.
17

ATTACHMENTS & EXHIBITS

- 1) *EXHIBIT A*: E&FP Organizational Chart
- 2) *EXHIBIT B*: [REDACTED]
- 3) *EXHIBIT C*: RPS RAM Pro-Forma Agreement
- 4) *EXHIBIT D*: SDG&E witness Sue Garcia's 2016 GRC proceeding (A.14-11-003) Testimony
- 5) *ATTACHMENT 1*:
 - 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*: [REDACTED]
[REDACTED]
[REDACTED]
 3. *Payment Terms*: [REDACTED]
 4. *New Contracts*: [REDACTED]
[REDACTED]
 5. *Summary of Contract Modifications, Letter Agreements and Amendments filed in an Advice Letter or Application*: [REDACTED]
[REDACTED]
[REDACTED]

6. *Amendments & Modifications for Review in the ERRR Application:* [REDACTED]

[REDACTED]

[REDACTED]

7. *Terminated Contracts:* [REDACTED]

[REDACTED]

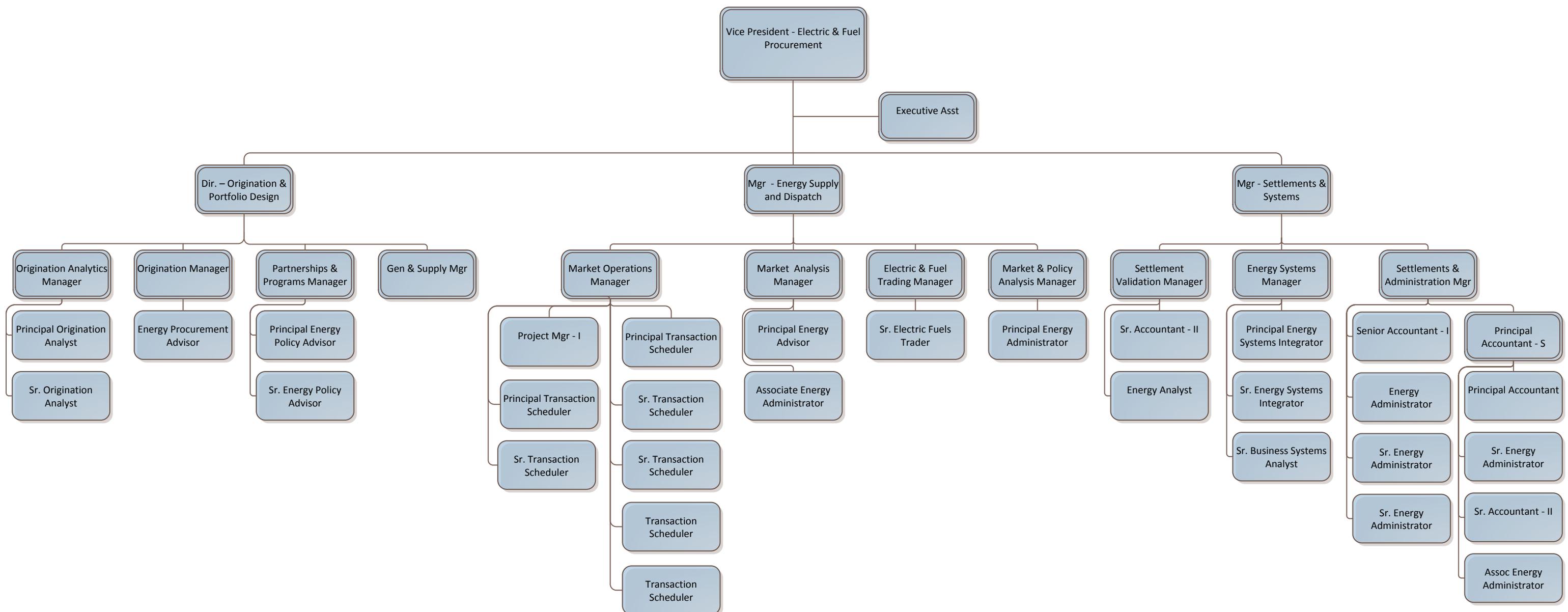
c) Tab GAS CONTRACTS - Contracts for the procurement of fuel services in effect or under negotiation, initiation, revision, amendment, or termination.

d) Tab QF CONTRACTS – [REDACTED]

[REDACTED]

EXHIBIT A

E&FP ORGANIZATIONAL CHART



Organizational Chart – E&FP, as of 12/31/2016

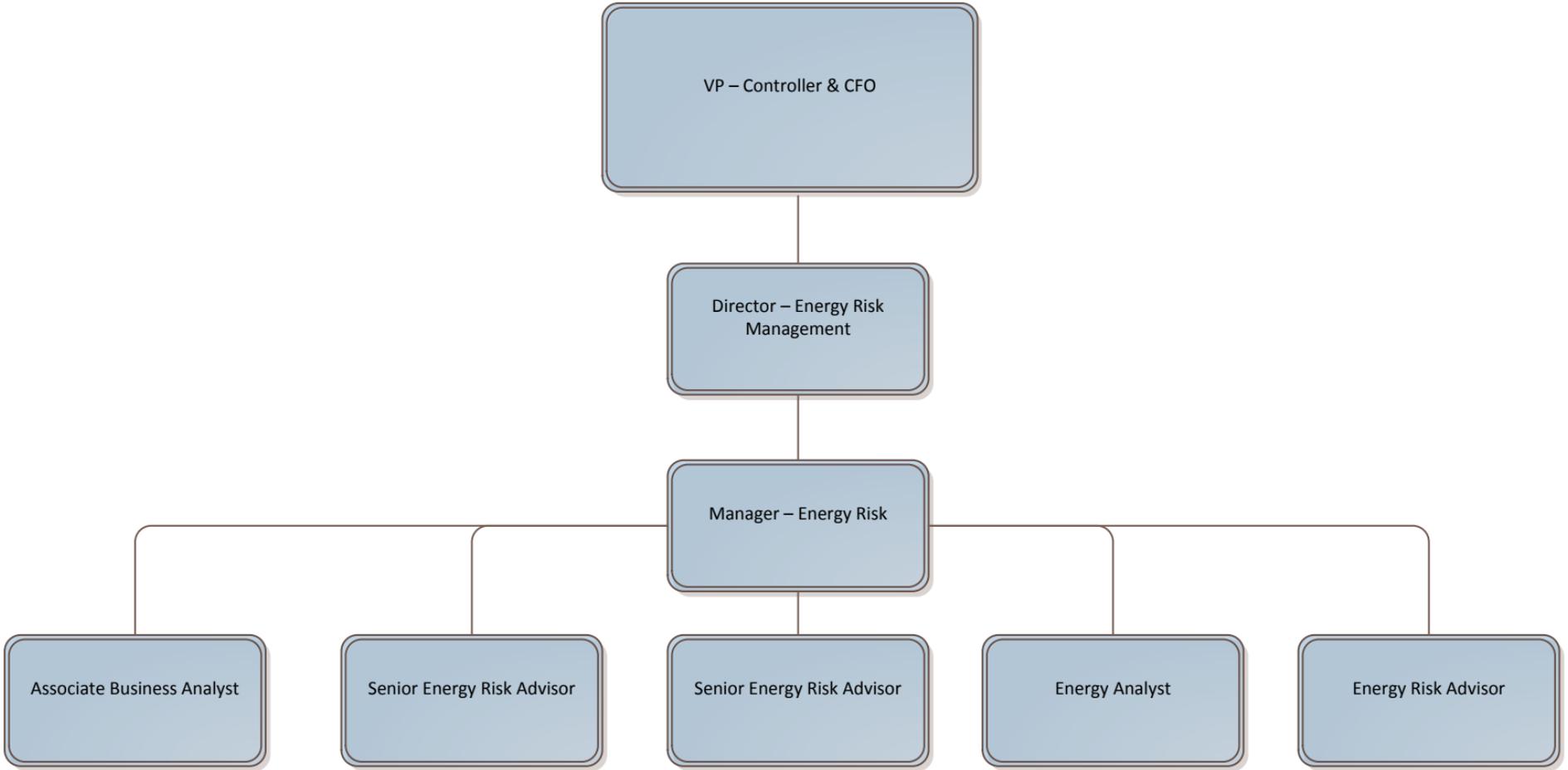


EXHIBIT B
COPIES OF 2016 TERMINATION LETTERS

EXHIBIT B

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EXHIBIT C

RPS RAM PRO-FORMA AGREEMENT

**RESOURCE ADEQUACY PURCHASE
AGREEMENT**

(BUYER DISPATCH OPTION)

between

SAN DIEGO GAS & ELECTRIC COMPANY

and

[SELLER]

[Date]

**Resource Adequacy Purchase Agreement
(BUYER DISPATCH Option)**

Table of Contents

Section	Page
RECITALS	1
AGREEMENT.....	2
ARTICLE ONE. PURCHASE AND SALE OF PRODUCT	2
1.01. Purchase and Sale of Product.....	2
1.02. The Project.....	3
1.03. Delivery Points.....	3
ARTICLE TWO. TERM; CONDITIONS PRECEDENT AND DELIVERY PERIOD	3
2.01. Term.....	3
2.02. Approval Date; Termination Related to Failure to Timely Obtain Regulatory Approval.	3
2.03. Expected Initial Delivery Date.....	4
2.04. Delivery Period.....	4
2.05. Delayed Initial Delivery Date.....	6
2.06. No Liability of SDG&E.....	7
2.07. Seller’s Queue Position.....	7
ARTICLE THREE. EVENTS OF DEFAULT; REMEDIES; TERMINATION	8
3.01. Events of Default.....	8
3.02. Seller Events of Default.....	8
3.03. Early Termination Date.....	10
3.04. Calculation of Termination Payment.....	11
3.05. Notice of Termination Payment.....	12

**Resource Adequacy Purchase Agreement
(BUYER DISPATCH Option)
Table of Contents**

Section	Page
3.06. Reserved.....	12
3.07. Effect of Termination.....	12
ARTICLE FOUR. INTERCONNECTION.....	13
4.01. Interconnection Studies. [NOTE TO BIDDERS: TO BE MODIFIED BASED ON BID and technology.].....	13
4.02. Reserved.....	13
4.03. Establishment of Charging Energy Service. [NOTE TO BIDDERS: NOT APPLICABLE UNLESS A STORAGE RESOURCE.].....	13
4.04. Acknowledgment.	13
ARTICLE FIVE. DESIGN AND CONSTRUCTION	14
5.01. Seller’s Obligations. [NOTE TO BIDDERS: provisions to be modified depending on resource type.].....	14
5.02. Changes in Operational Characteristics.....	15
5.03. EPC Contractor. [NOTE TO BIDDERS: may be modified depending on resource type]	15
ARTICLE SIX. CONSTRUCTION PERIOD AND MILESTONES [NOTE TO BIDDERS: MAY BE MODIFIED DEPENDING ON PROJECT TYPE]	15
6.01. Milestone Schedule.....	15
6.02. Provision of Information.....	16
6.03. Inspection Rights.	16
ARTICLE SEVEN. COMMISSIONING AND TESTING.....	17
7.01. Initial Commercial Operation Test.	17
7.02. Periodic Testing.	17

**Resource Adequacy Purchase Agreement
(BUYER DISPATCH Option)
Table of Contents**

Section		Page
16.03. Charging Energy Costs, Charges, and Payments.....		33
ARTICLE SEVENTEEN.	STORAGE OF ELECTRIC ENERGY.....	34
17.01. Title, Possession, and Risk of Loss.....		34
ARTICLE EIGHTEEN.	CAISO AND NON-SDG&E DISPATCHES	34
18.01. CAISO Dispatch.		34
18.02. Non-SDG&E Dispatch.....		34
ARTICLE NINETEEN.	SCHEDULING COORDINATOR.....	34
ARTICLE TWENTY.	DISPATCH NOTICES AND OPERATING RESTRICTIONS	35
20.01. Availability Notice.....		35
20.02. Dispatch Notice.....		35
20.03. Start-Up Notices.....		36
20.04. Operating Restrictions.		36
20.05. Communication Protocols.....		36
20.06. Writing Requirements.		37
ARTICLE TWENTY-ONE.	METERING, COMMUNICATIONS AND TELEMETRY	37
21.01. SDG&E Access.....		37
21.02. Control Logic [NOTE TO BIDDERS: To be modified based on technology type]		37
21.03. Delivery of Data.....		37
21.04. Satellite Communication System.....		37
21.05. SDG&E Access.....		38

**Resource Adequacy Purchase Agreement
(BUYER DISPATCH Option)
Table of Contents**

Section	Page
ARTICLE TWENTY-TWO. OUTAGES	38
22.01. Planned Outages.....	38
22.02. Limitations on Planned Outages.	38
22.03. Notice of Forced Outages.	39
22.04. Reports of Forced Outages.....	39
22.05. Inspection During Showing Month.....	39
ARTICLE TWENTY-THREE. FORCE MAJEURE	39
23.01. No Default for Force Majeure.....	39
23.02. Termination.....	40
ARTICLE TWENTY-FOUR. REPRESENTATIONS, WARRANTIES AND COVENANTS	40
24.01. Representations and Warranties of Both Parties.....	40
24.02. Representations and Warranties of Seller.	41
24.03. Seller’s Affirmative Covenants.....	41
24.04. Seller’s Negative Covenants.	43
ARTICLE TWENTY-FIVE. LIMITATIONS.....	44
25.01. Limitation of Remedies, Liability and Damages.	44
25.02. No Representation by SDG&E.	45
ARTICLE TWENTY-SIX. RECORDS	45
26.01. Performance Under this Agreement.....	45
26.02. Other Regulatory and Governmental Requirements.....	46
26.03. Audit Rights.....	46

**Resource Adequacy Purchase Agreement
(BUYER DISPATCH Option)
Table of Contents**

Section	Page
ARTICLE TWENTY-SEVEN. DISPUTE RESOLUTION	46
27.01 Intent of the Parties.	46
27.02 Management Negotiations.	46
27.03 Arbitration.....	47
ARTICLE TWENTY-EIGHT. INDEMNIFICATION.....	49
28.01. SDG&E’s Indemnification Obligations.....	49
28.02. Seller’s Indemnification Obligations.....	49
28.03. Indemnification Claims.....	50
28.04. Resource Adequacy.	51
28.05. Survival.....	51
ARTICLE TWENTY-NINE. CONFIDENTIALITY/REGULATORY DISCLOSURE	51
29.01. Confidentiality Obligation.	51
29.02. Permitted Disclosures.	52
29.03. Duty to Seek Protection.	53
29.04. Ownership and Return of Information.....	53
ARTICLE THIRTY. MISCELLANEOUS	54
30.01. General.....	54
30.02. Notices.	54
30.03. Governing Law; Venue.....	55
30.04. Amendment.....	55
30.05. Assignment.	55

**Resource Adequacy Purchase Agreement
(BUYER DISPATCH Option)
Table of Contents**

Section	Page
30.06. Waiver.....	55
30.07. Obligations Surviving Termination.	55
30.08. Further Assurances.....	56
30.09. No Agency.	56
30.10. No Third Party Beneficiaries.	56
30.11. Independent Contractors.	56
30.12. Severability.	56
30.13. Forward Contract.	56
30.14. Mobile Sierra.	56
30.15. Insurance Requirements.....	57
30.16. Multiple Originals.....	62
30.17. Entire Agreement.....	62

**Resource Adequacy Purchase Agreement
(Energy Storage Option)
Appendices**

APPENDIX A DEFINITIONS

APPENDIX 1.01	CAPACITY AND ANCILLARY SERVICES OPERATING RESTRICTIONS
APPENDIX 1.02	DESCRIPTION OF THE PROJECT
APPENDIX 1.03	PROJECT AND SITE DESCRIPTION
APPENDIX 1.03(A)	ELECTRICAL SINGLE LINE DIAGRAM
APPENDIX 6.01(A)	MILESTONE SCHEDULE
APPENDIX 6.01(B)	CONSTRUCTION REPORT
APPENDIX 7	TESTING PROTOCOLS
APPENDIX 13.03(B)	LETTER OF CREDIT FORM
APPENDIX 20.01	AVAILABILITY NOTICE
APPENDIX 20.02	DISPATCH NOTICE
APPENDIX 20.03	START-UP NOTICE
APPENDIX 20.05	COMMUNICATIONS PROTOCOLS
APPENDIX 21.03	DELIVERY OF DATA
APPENDIX 22.01	PLANNED OUTAGE REPORT

RESOURCE ADEQUACY PURCHASE AGREEMENT

(BUYER DISPATCH OPTION)

Between

SAN DIEGO GAS & ELECTRIC COMPANY

And

[SELLER]

This Resource Adequacy Purchase Agreement (Buyer Dispatch Option), together with the Appendices (collectively, the “Agreement”) is made and entered into as of this [_____] day of [Month], [Year] (“Effective Date”) by **SAN DIEGO GAS & ELECTRIC COMPANY**, a California corporation (“SDG&E” or “Buyer”), and **[SELLER]**, a [Seller’s business registration] (“[Seller’s Shortname]” or “Seller”). SDG&E 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. SDG&E is an investor-owned electric utility serving customers in southern California.
- B. Seller wishes to sell and deliver exclusively to SDG&E, and SDG&E wishes to purchase, the Product under the conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of these recitals and the agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows.

ARTICLE ONE.PURCHASE AND SALE OF PRODUCT

1.01. Purchase and Sale of Product.

During the Delivery Period, Seller shall deliver and sell, and SDG&E shall receive and purchase, the Resource Adequacy Benefits associated with the Project, subject to the terms and conditions of this Agreement, including the Operating Restrictions set forth in Appendix 1.01. During the Delivery Period, Seller shall not substitute or purchase any Resource Adequacy Benefits from any other generating resource or from the market for delivery hereunder. In addition, Buyer shall, for any Contract Year, have the option of dispatching the Project (the “Demand Reduction”).

- (a) Resource Adequacy Benefits. During the Delivery Period, Seller grants, pledges, assigns and otherwise commits to SDG&E the full Capacity of the Project in order for SDG&E to meet its RA Compliance Obligations under any Resource Adequacy Rulings. Seller represents, warrants and covenants to SDG&E that Seller (i) has not used, granted, pledged, assigned or otherwise committed, and (ii) will not use, grant, pledge, assign or otherwise commit any Capacity of the Project to meet the RA Compliance Obligations of, or confer Resource Adequacy Benefits upon, any entity other than SDG&E during the Delivery Period, except to the extent such benefits are conferred on another entity pursuant to an order of the CPUC or at the direction of SDG&E. Notwithstanding anything to the contrary in this Agreement, the Parties shall take all actions that may be necessary to effect the use of the Resource Adequacy Benefits of the Project in accordance with the preceding sentence throughout the Delivery Period; *provided, however*, that no such action shall require Seller to modify the Project or to operate the Project in a manner that is inconsistent with the Operating Restrictions. Such actions may include: (i) amending this Agreement and complying with all current and future Tariff provisions and decisions of the CPUC and/or any other Governmental Authority that address Resource Adequacy performance obligations and penalties; and (ii) executing all documents or instruments; but excluding, in each case, any action which is inconsistent with any Applicable Law or any permit applicable to the Project.
- (b) Capacity. During the Delivery Period, SDG&E shall have the exclusive right to the Capacity from the Project.
- (c) Demand Reduction. [NOTE TO BIDDERS: to be tailored for dispatchable units.]
- (d) Ancillary Services. [NOTE TO BIDDERS: to be tailored for each bid.]

- (e) Ownership. Seller shall maintain ownership of and demonstrable exclusive rights to the Project throughout the Term.
- (f) Exclusive Rights. [NOTE TO BIDDERS: to be tailored for each bid.]

1.02. The Project.

- (a) CAISO Test Results. Seller shall provide all CAISO certification test results, including [insert], for the Project within three (3) Business Days of Seller's receipt for any initial or subsequent test throughout the Term. [NOTE TO BIDDERS: applicable CAISO tests to be discussed. SDG&E also requires certification by an SDG&E approved third party to establish NQC as provided in the Tariff.]
- (b) Reserved.
- (c) *[SDG&E note: insert description of Station Use]*
- (d) Location of Site. *[Project Address]*, as further described in Appendix 1.02.

1.03. Delivery Points.

- (a) [Reserved.]
- (b) Point of Interconnection. The Point of Interconnection is *[insert substation name and location]*, as specified in Appendix 1.03(A).
- (c) Interconnection Queue Position. *[Number(s) to be inserted]*

ARTICLE TWO.TERM; CONDITIONS PRECEDENT AND DELIVERY PERIOD

2.01. Term.

The "Term" of this Agreement shall commence upon the Effective Date, and shall continue until the expiration of the Delivery Period.

2.02. Approval Date; Termination Related to Failure to Timely Obtain Regulatory Approval.

The "Approval Date" is the date that all the following conditions are satisfied:

- (a) Final CPUC Approval. Final CPUC Approval shall have been obtained. SDG&E shall seek Final CPUC Approval expeditiously and in good faith. As requested by SDG&E, Seller shall use commercially reasonable efforts to support SDG&E in obtaining Final CPUC Approval. SDG&E has no

obligation to seek rehearing or to appeal a CPUC decision which fails to approve this Agreement or which contains findings required for Final CPUC Approval with conditions or modifications unacceptable to SDG&E.

- (b) Delivery of Documents. Seller shall have delivered to SDG&E all documents and information required under this Agreement to be delivered prior to the Approval Date.
- (c) [NOTE TO BIDDERS; Discuss rate design Condition Precedent and deadline for that to occur.]

Either Party has the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given, if Final CPUC Approval has not been obtained or waived by SDG&E in its sole discretion within five hundred thirty (530) days after SDG&E files its request for Final CPUC Approval and a Notice of termination is given on or before the five hundred sixtieth (560th) day after SDG&E files the request for Final CPUC Approval. If SDG&E does not provide such Notice in such time, the Agreement shall be deemed terminated.

If either Party exercises its termination right pursuant to this Section 2.02, no Termination Payment will be due or owing by either Party and Seller will be entitled to a return of any Development Period Security provided to SDG&E.

2.03. Expected Initial Delivery Date.

Subject to adjustment made under Section 2.05(c), the Expected Initial Delivery Date for the Project is [Date].

2.04. Delivery Period.

The “Delivery Period” shall commence at 12:01 a.m. on the date that the Project achieves its Initial Delivery Date, and shall continue until the earlier of: (i) midnight on the date that is [INSERT DELIVERY PERIOD] years after the Expected Initial Delivery Date, (ii) an Early Termination Date designated in accordance with Section 3.03, or (iii) the date this Agreement is otherwise terminated in accordance with its terms.

The “Initial Delivery Date” shall be the first day of the first full month after all of the following conditions have been satisfied for the Project:

- (a) Seller has completed, to SDG&E’s satisfaction, Seller’s obligations set forth in Sections 5.01(a) through 5.01(h), inclusive, in order to bring the Project into full operation as contemplated by this Agreement;
- (b) The Project has achieved Commercial Operation;

- (c) [NOTE TO BIDDERS: insert required CAISO agreements (i.e., Participating Load Agreement, instead final LIP study and all registrations submitted in a timely manner.]
- (d) Seller has taken all actions and executed all documents and instruments, required for it, or its agent, to act as its own Scheduling Coordinator under this Agreement;
- (e) Seller has entered into and complied in all material respects with all obligations under all interconnection agreements required to enable parallel operation of the Project with the PTO' electric system and CAISO Grid [NOTE TO BIDDERS: INTERCONNECTION REQUIREMENTS TO BE DETERMINED BASED ON RESOURCE]
- (f) Seller has deposited with SDG&E the applicable Performance Assurance amounts as set forth in Section 13.02(c);
- (g) Seller has executed and delivered to SDG&E all documents or instruments required under or requested pursuant to Article Thirteen;
- (h) Seller has provided SDG&E with certification from an independent, non-Affiliate California registered professional mechanical engineer, that (i) Seller has designed and built the Project to have a *[SDG&E Comment: number of years based on technology]* year design life in accordance with Prudent Electrical Practices, and (ii) the design and construction of the Project was carried out by the original equipment manufacturer or other competent organization;
- (i) Seller has delivered to SDG&E all insurance documents required under Section 30.15;
- (j) Seller must comply with the requirements as set forth in Rule 32 and the CAISO Tariff for RA Compliance Obligations in an amount equal to the Contract Capacity, as determined by the CAISO, and Seller has delivered to SDG&E a certification or other documentation from the CAISO that evidences that the Project meets SDG&E's RA Compliance Obligations;
- (k) Seller has taken all actions and executed all agreements, documents and instruments required for the delivery of Charging Energy Requirements to the Project, *[including the ability to charge the Project with electric energy without restrictions or limitations at any time and at a rate equal to at least the Charging Capacity,]* and is in compliance in all material respects with all obligations under such agreements, documents and instruments;[NOTE TO BIDDER: delete if not a storage resource.]
- (l) SDG&E shall have obtained or waived Final CPUC Approval; and

- (m) Seller has obtained Market Based Rate Authority from FERC to sell Product to Buyer under the terms of this Agreement.
- (n) Seller has obtained a unit NQC and unit EFC for the Project.

The Parties agree that, in order for Seller to obtain an Initial Delivery Date, the Parties may have to perform certain of their Delivery Period obligations in advance of that Initial Delivery Date, including without limitation providing Supply Plans in advance of the Initial Delivery Date and Seller delivering an Availability Notice for the Initial Delivery Date, and SDG&E delivering a Dispatch Notice for the Initial Delivery Date. The Parties shall cooperate with each other in order for SDG&E to be able to utilize the Project beginning on the Initial Delivery Date and Seller agrees to cause the Project's SC to cooperate in order to achieve the same.

- (o) Notwithstanding any other provision in this Agreement, the Initial Delivery Date may not occur prior to the Expected Initial Delivery Date, and the Initial Delivery Date may not occur later than *[Insert date that is three hundred sixty-five (365) days after the Expected Initial Delivery Date]* (the "Initial Delivery Deadline").

The Parties agree that, in order for Seller to obtain an Initial Delivery Date, the Parties may have to perform certain of their Delivery Period obligations in advance of that Initial Delivery Date, including without limitation participation in NQC certification in advance of the Initial Delivery Date and Seller delivering an Availability Notice for the Initial Delivery Date, and SDG&E delivering a Dispatch Notice for the Initial Delivery Date. The Parties shall cooperate with each other in order for SDG&E to be able to utilize the Project beginning on the Initial Delivery Date and Seller agrees to cause the Project's SC to cooperate in order to achieve the same.

Notwithstanding any other provision in this Agreement, the Initial Delivery Date may not occur prior to the Expected Initial Delivery Date, and the Initial Delivery Date may not occur later than the earlier of (a) one calendar year beyond the Expected Initial Delivery Date or [INSERT], whichever is earlier (the "Initial Delivery Deadline").

2.05. Delayed Initial Delivery Date.

- (a) Daily Delay Damages. If Seller has not satisfied the conditions set forth in Section 2.04 for the Initial Delivery Date of the Project by the Expected Initial Delivery Date, Seller shall owe and pay to SDG&E the Daily Delay Damages for each day of delay beyond the Expected Initial Delivery Date up to the number of remaining days until the Initial Delivery Deadline as follows: Seller shall, at the earliest possible time, but no later than 6 a.m. on the Business Day ten (10) days prior to the Expected Initial Delivery

Date, provide SDG&E with Notice of the delay along with Seller's estimate of the date on which it will satisfy all such conditions (the "Revised Initial Delivery Date") and its payment of Daily Delay Damages for the period from and including the Expected Initial Delivery Date to but excluding the Revised Initial Delivery Date. If Seller has not satisfied the conditions set forth in Section 2.04 for the Initial Delivery Date of the Project by the Revised Initial Delivery Date, Seller may provide Notices of further estimated delays and payments of Daily Delay Damages subject to the same terms in the preceding sentence. The Daily Delay Damages payments are nonrefundable. Seller will be entitled to a refund (without interest) of any estimated Daily Delay Damages payments paid by Seller which exceed the amount required to cover the number of days by which the date on which Seller actually satisfied the conditions set forth in Section 2.04 for the Initial Delivery Date exceeded the applicable Revised Initial Delivery Date.

- (b) If Seller fails to pay SDG&E the Daily Delay Damages when due, SDG&E shall be entitled to recover the Daily Delay Damages owed by Seller by drawing on and/or retaining any Construction Period Security.
- (c) Delays Due to Force Majeure. Subject to Section 3.02(g) and Seller's compliance with its obligations as the Claiming Party under Section 23.01, if Seller has not satisfied the conditions set forth in Section 2.04 for the Initial Delivery Date of the Project by the Expected Initial Delivery Date due to Force Majeure, then the Expected Initial Delivery Date will be extended on a day-for-day basis for the duration of the Force Majeure; provided, if an event of Force Majeure remains in effect for more than 365 days, then SDG&E shall have the right to terminate this Agreement with no further obligation between the Parties under this Agreement.

2.06. No Liability of SDG&E.

SDG&E shall have no liability to Seller, regardless of cause (including SDG&E's actions under Rule 32, any act or omission of SDG&E, including as Buyer under this Agreement, retail provider of electric energy, or as a PTO) for (a) any delay or failure by Seller to achieve the Initial Delivery Date by the Expected Initial Delivery Date, (b) any costs or damages incurred by Seller as a result thereof or any reduction in Seller's Monthly Capacity Payments resulting from any delay in achieving the Initial Delivery Date by the Expected Initial Delivery Date, or (c) a reduction in the Term or the Delivery Period.

2.07. Seller's Queue Position.

Seller must not withdraw the Interconnection Queue Position identified in Section 1.03(c) or assign or transfer that Interconnection Queue Position to any entity or for the benefit of any other agreement other than this Agreement without

SDG&E's prior written consent. [NOTE TO BIDDERS: to be deleted for resources that do not require an interconnection agreement.]

ARTICLE THREE. EVENTS OF DEFAULT; REMEDIES; TERMINATION

3.01. 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 required to be made to the other Party pursuant to this Agreement, if such failure is not remedied within three (3) Business Days after written Notice of such failure is given by the Non-Defaulting Party;
- (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 if the representation or warranty is continuing in nature;
- (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 and except for any failure to obtain all Required Permits on or before the Required Permit Date), if such failure is not remedied within five (5) Business Days of receipt of Notice; or
- (d) Such Party becomes Bankrupt.

3.02. 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 affirmative covenants under Section 24.03 or its negative covenants under Section 24.04, unless such failure to comply is cured within a period specifically provided elsewhere in this Agreement applicable to such failure to comply;
- (b) Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity without SDG&E's written consent, which consent may be granted or withheld in SDG&E's sole discretion;
- (c) Seller fails to comply with its obligations under Article Thirteen, including failing to post or maintain the Development Period Security, the Construction Period Security, or the Delivery Period Security or

applicable Performance Assurance, within three (3) Business Days after SDG&E provides Notice of the failure;

- (d) Seller makes any material misrepresentation or omission in any report, including status and metering report, or the Milestone Schedule (including the log, records and reports required under Sections 8.01(b), 8.01(c), 8.01(d), 22.01 and 24.03, Appendix 6.01(A) or Appendix 6.01(B)) required to be made or furnished by Seller pursuant to this Agreement and such misrepresentation or omission is not remedied within thirty (30) days after receipt of Notice.
- (e) Subject to Section 20.01, Seller makes any material misrepresentation or omission in any Availability Notice (including the log, records and reports required under Section 20.01 or Appendix 20.01).
- (f) Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, to any party other than SDG&E or the CAISO during the applicable portion of the Delivery Period;
- (g) Seller fails to achieve the Initial Delivery Date for the Project by the Initial Delivery Deadline, whether due to Force Majeure or otherwise.
- (h) Seller starts-up, operates, charges, or discharges or permits or causes any third party to start-up, operate, discharge the Project] other than as specifically permitted under Article Seven, Article Sixteen, or Article Eighteen; [NOTE TO BIDDERS: Delete for non-battery resources.]
- (i) A termination of, or cessation of service under, any agreement necessary for Seller to (i) [interconnect the Project to SDG&E's electric system] [NOTE TO BIDDERS: to be deleted for non-interconnection resources], (ii) comply with the CAISO Tariff; *provided*, if termination of, or cessation of service under, any such agreement is not due to the fault of Seller, Seller shall have ten (10) days from such termination or cessation to cure such default;[NOTE TO BIDDERS: MAY BE MODIFIED DEPENDING ON RESOURCE TYPE]
- (j) The stock, equity ownership interest in Seller or assets of Seller is directly or indirectly pledged or assigned, or caused or permitted to be pledged or assigned, as collateral to any party other than to Lender without SDG&E's prior written consent, which consent may be granted or withheld in SDG&E's reasonable discretion;[INSERT Demand Response Provider SDG&E, CAISO, and CPUC Agreement]

- (k) By the Required Permit Date, Seller fails to obtain all of the Required Permits, or all applicable appeal periods for such approvals or permits have not expired;
- (l) Except as permitted under Article Fourteen, Seller does not own or otherwise have control of the Project;
- (m) Seller fails to comply with any of its obligations under Sections 8.02(b);
- (n) Seller fails to comply with its obligations under Section 16.02;
- (o) Subject to the terms of a Collateral Assignment Agreement, the occurrence and continuation of a default, event of default or other similar condition or event under one or more agreements or instruments relating to indebtedness for borrowed money, which results in the indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable;
- (p) Seller intentionally or knowingly delivers, or attempts to deliver, Product for sale under this Agreement that was not associated with or stored by the Project;
- (q) Seller fails to take any actions necessary to dedicate, convey or effectuate the use of any and all Resource Adequacy Benefits for SDG&E's sole benefit as specified under Section 1.01(a);
- (r) Seller removes from the Site equipment upon which the Contract Capacity or Capacity of the Project has been based, except for the purposes of replacement, refurbishment, repair or maintenance, and the equipment is not returned within five (5) Business Days after Notice from SDG&E.
- (s) The Project does not provide at least an average of eight five percent (85%) of the Expected Contract Capacity in any twelve (12) consecutive RA Showing Months, except as may be excused for reasons of Force Majeure.

3.03. Early Termination Date.

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, by delivery of Notice to the Defaulting Party, to (a) designate a day, no earlier than the day such Notice is effective and no later than twenty (20) days after such Notice is effective, as an "Early Termination Date," and to terminate this Agreement in whole or in part, as provided herein, as of such Early Termination Date, (b) accelerate all amounts owing between the Parties under this Agreement which shall be due and payable as of such Early Termination Date, (c) withhold or set-off any payments due to the Defaulting Party under this Agreement, and (d)

suspend performance pending termination of this Agreement. The Non-Defaulting Party shall also have the right to pursue any other remedies available at law or in equity, including, where appropriate, specific performance or injunctive relief to the extent permitted under Article Twenty-Seven.

3.04. Calculation of Termination Payment.

If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the “Termination Payment” in accordance with this Section 3.04.

- (a) Termination Payment Prior to Initial Delivery Date. If the Early Termination Date occurs before the Initial Delivery Date, then the Termination Payment shall be calculated in accordance with this Section 3.04(a).
 - (i) If Seller is the Defaulting Party, then the Termination Payment shall be owed to SDG&E and shall be equal to the entire Development Period Security. SDG&E shall be entitled to immediately retain for its own benefit those funds held as Development Period Security. There will be no amounts owed to Seller. The Parties agree that SDG&E’s damages in the event of an Early Termination Date prior to the Initial Delivery Date caused by Seller’s default would be difficult or impossible to determine and that the damages set forth in this Section 3.04(a)(i) are a reasonable approximation of SDG&E’s harm or loss. If SDG&E is the Defaulting Party, then the Termination Payment shall be owed to Seller and shall equal the Development Period Security. There will be no amount owed to SDG&E. The Parties agree that Seller’s damages in the event of an Early Termination Date prior to the Initial Delivery Date caused by SDG&E’s default would be difficult or impossible to determine and that the damages set forth in this Section 3.04(a)(ii) are a reasonable approximation of Seller’s harm or loss.
- (b) Termination Payment After the Initial Delivery Date Occurs. If the Early Termination Date occurs after the Initial Delivery Date, then the Termination Payment shall be calculated in accordance with this Section 3.04(b).

The Termination Payment shall equal the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement, including a Forward Settlement Amount (if any), less any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date.

In addition, if SDG&E is the Non-Defaulting Party and SDG&E reasonably expects to incur monetary penalties or fines from the CPUC or the CAISO (or any other Governmental Authority having jurisdiction) because SDG&E will not be able to include the Contract Capacity in its then applicable Compliance Showing as a result of Seller's Event of Default, then SDG&E may, in good faith, estimate the amount of those penalties or fines and include this estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties or fines are finally ascertained. SDG&E shall use commercially reasonable efforts to minimize such fines and penalties; *provided*, in no event will SDG&E be required to use or change the utilization of its owned or controlled assets or market positions to minimize the fines and penalties. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, shall survive the termination of this Agreement and shall continue until after those penalties or fines are finally ascertained.

3.05. Notice of Termination Payment.

As soon as practicable after an Early Termination Date is declared, the Non-Defaulting Party shall provide Notice to the Defaulting Party of the Termination Payment. The Notice must include a written statement setting forth, in reasonable detail, the calculation of such Termination Payment, together with appropriate supporting documentation.

If the Termination Payment is owed to the Non-Defaulting Party, then the Defaulting Party shall pay such amount to the Non-Defaulting Party within five (5) Business Days after the Notice is provided. In no event shall a Termination Payment be owed to the Defaulting Party, and any Termination Payment to the Defaulting Party shall be deemed to be zero (\$0).

The Parties shall negotiate in good faith to resolve any disputes regarding the calculation of the Termination Payment. Any Disputes which the Parties are unable to resolve through negotiation may be submitted for resolution through mediation and arbitration as provided in Article Twenty-Seven.

3.06. Reserved.

3.07. 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 FOUR.INTERCONNECTION

4.01. Interconnection Studies. [NOTE TO BIDDERS: TO BE MODIFIED BASED ON BID and technology.]

Seller represents and warrants that, as of the Effective Date, Seller has provided SDG&E with true and correct, up-to-date copies of all available Interconnection Studies to enable delivery of the Project's output to the Point of Interconnection pursuant to Applicable Law. Seller shall be responsible for all fees and costs associated with the following:

- (a) Obtaining all Interconnection Studies;
- (b) Maintaining, complying with and performing Seller's obligations under the interconnection agreement and related documents throughout the Delivery Period;
- (c) Reserved.
- (d) Any Interconnection Facilities that are installed for the purpose of interconnecting the Project with existing transmission or distribution systems; and
- (e) All costs (including interconnection costs and transmission losses) arising from, relating to or associated with any [NOTE: INSERT NAME OF interconnection agreement] between Seller and SDG&E.[NOTE TO BIDDER: MAY BE MODIFIED BASED ON RESOURCE TYPE]

4.02. Reserved.

4.03. Establishment of Charging Energy Service. [NOTE TO BIDDERS: NOT APPLICABLE UNLESS A STORAGE RESOURCE.]

Seller shall take all action necessary, including, if required, requesting and obtaining retail electrical service, to enable the delivery of Charging Energy Requirements to the Project, [*including the ability to charge the Project with electric energy without restrictions or limitations at any time and at a rate equal to at least the Charging Capacity*]. Seller shall be responsible for all fees and costs associated with and arising from the establishment of the ability to deliver Charging Energy Requirements to the Project

4.04. Acknowledgment.

Seller acknowledges and agrees that nothing in this Article Four is intended to abrogate, amend or modify the terms of any other agreement between it and SDG&E, including without limitation, the interconnection agreement, and that no breach under such other agreement shall excuse a Party's nonperformance under

this Agreement, unless the breach of such other agreement is also an Event of Default under this Agreement.

ARTICLE FIVE. DESIGN AND CONSTRUCTION

5.01. Seller's Obligations. [NOTE TO BIDDERS: provisions to be modified depending on resource type.]

At no cost to SDG&E, Seller shall:

- (a) Design and construct, or refurbish the Project as required for Seller to perform its obligations under this Agreement;
- (b) Within *[number]* *[#]* [NOTE to seller: SDG&E is discussing.] days prior to the Expected Initial Delivery Date, Seller shall file all applications or other appropriate requests to acquire and maintain all permits, licenses, certifications and approvals necessary for the construction or refurbishment, operation and maintenance of the Project (the "Required Permits"), [including permits to construct from the applicable Air Pollution Control District, or a Facility and Site Certification from the California Energy Commission (pursuant to California Public Resources Code Sections 25500-25543), as applicable, and obtain all Required Permits on or before *[Date]*][NOTE to seller: to be updated.](the "Required Permit Date");
- (c) To the extent required pursuant to Applicable Laws, complete all environmental impact assessments or studies conducted by or for Governmental Authorities pursuant to regulatory programs approved and certified under the California Environmental Quality Act, or environmental impact statements or studies conducted pursuant to the National Environmental Policy Act including obtaining public review and certification of any final documents relating to any environmental impact assessment or studies;
- (d) As required to achieve Commercial Operation for the Project, furnish and install all Protective Apparatus as SDG&E reasonably determines to be necessary for proper and safe operation of the Project in parallel with SDG&E's electric system or CAISO Grid;[NOTE: MAY BE MODIFIED BASED ON RESOURCE TYPE.]
- (e) Furnish and install all equipment necessary to prevent, suppress and contain any fire, flooding, explosion, leak of hazardous material or other injury or damage at the Site ("Prevention Equipment");

- (f) Throughout the Delivery Period, maintain all permits, licenses, certifications and approvals necessary for the operation and maintenance of the Project;
- (g) Provide to SDG&E, prior to commencement of any construction activities on the Site, a report from an independent engineer (acceptable to both SDG&E and Seller) certifying that Seller has a written plan for the safe construction and operation of the Project in accordance with Prudent Electrical Practices; and
- (h) At least thirty (30) days prior to the start of the Delivery Period or as requested by SDG&E, Seller shall provide a completed Master File for the Project to SDG&E (which may be redacted by Seller to eliminate any portions reasonably believed by Seller to contain confidential information).[NOTE: DRP AGREEMENTS TO BE ADDED.]

5.02. Changes in Operational Characteristics.

Seller shall provide to SDG&E Notice of any changes in the operational characteristics of the Project, for SDG&E's review as far in advance as practicable, but in no event less than thirty (30) days before the changes are to be made. Seller acknowledges that provision of Notice under this Section 5.02 is for SDG&E's information only and that by receiving such Notice, SDG&E makes no representation as to the economic or technical feasibility, operational capacity or reliability of any changes in the operational characteristics of the Project.

5.03. EPC Contractor. [NOTE TO BIDDERS: may be modified depending on resource type]

Seller shall provide SDG&E with Notice of the name and address of Seller's EPC Contractor on the later of the Effective Date or the first (1st) Business Day after Seller enters into a contract with an EPC Contractor. If Seller does not have an EPC Contractor selected by the Approval Date, Seller shall provide SDG&E with a shortlist of candidates by the Approval Date.

ARTICLE SIX.CONSTRUCTION PERIOD AND MILESTONES [NOTE TO BIDDERS: MAY BE MODIFIED DEPENDING ON PROJECT TYPE]

6.01. Milestone Schedule.

In order to meet the Expected Initial Delivery Date, Seller shall use reasonable efforts during the construction period to meet the various Project related milestones set forth in Appendix 6.01(A) ("Milestone Schedule") and 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, or within five (5) days of SDG&E's request, Seller shall deliver to SDG&E a monthly progress report, substantially in the form set forth in Appendix 6.01(B) ("Construction Report"), describing its progress in relation to the Milestone Schedule, including projected time to completion of any milestones, for the Project and the Project. Seller shall include in any Construction Report a list of all letters, notices, applications, approvals, authorizations and filings referring or relating to Required Permits, and shall provide any such documents as may be reasonably requested by SDG&E. In addition, Seller shall advise SDG&E, as soon as reasonably practicable, of any problems or issues of which Seller is aware which could materially impact its ability to meet the Milestone Schedule.

6.02. Provision of Information.

During the Term, Seller shall promptly provide SDG&E copies of:

- (a) Reserved.
- (b) All agreements with providers of engineering, procurement, or construction services for the Project and all amendments thereto, including any EPC Contract (which may be redacted by Seller to eliminate any portions reasonably believed by Seller to contain confidential information);
- (c) Any reports, studies, or assessments done for Seller by an independent engineer; and
- (d) No later than twenty (20) days after each semi-annual period ending on June 30th and December 31st, a report listing all WMDVBEs that supplied goods or services to Seller during such period, including any certifications or other documentation of such WMDVBEs' status as such and the aggregate amount paid to WMDVBEs during such period.
 - (i) SDG&E has the right to disclose to the CPUC all such information provided by Seller pursuant to this Section 6.02(d).
 - (ii) Seller shall make reasonable efforts to accommodate requests by the CPUC (or by SDG&E in response to a request by the CPUC) to audit Seller in order to verify data provided by Seller pursuant to this Section 6.02(d).

6.03. Inspection Rights.

SDG&E shall have the right at any time during the Term to enter onto the Site during normal business hours on any Business Day to 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 other obligations under this Agreement. Seller shall, or shall cause its EPC Contractors

to, provide SDG&E with access to the Site and all applicable documents and records in order to permit SDG&E to determine whether:

- (a) Seller has obtained and maintained all Required Permits, and that such Required Permits do not contain Permit Requirements that might restrict SDG&E's ability to charge or discharge, or store energy in, the Project as provided for in this Agreement;
- (b) All contracts described in Section 6.02(b) have been entered into and become effective on a timely basis and Seller is not in default thereunder;
- (c) All contracts or other arrangements necessary to interconnect the Project (including transmission arrangements as contemplated in Article Four, electrical, water supply and waste disposal) have been entered into and become effective on a timely basis pursuant to the Milestone Schedule and Seller is not in default thereunder; and
- (d) All contracts or other arrangements necessary to deliver electric energy to the Project for purposes of charging the Project have been entered into and become effective on a timely basis and Seller is not in default thereunder.

ARTICLE SEVEN.COMMISSIONING AND TESTING

7.01. Initial Commercial Operation Test.

At Seller's cost and at least ninety (90) days prior to the Initial Delivery Date, Seller shall provide to SDG&E certification of the Project's NQC and EFC (as applicable) from an SDG&E approved third party consultant. The certification shall be deemed the Initial Commercial Operation Test and shall establish the Contract Capacity for purposes of calculating the Monthly Capacity Payment, and [Appendix 1.01][NOTE to bidders: only if applicable] and Section 9.02 shall be deemed to be amended to reflect the Contract Capacity certified during such test by SDG&E test personnel This test shall be deemed a Seller Initiated Test.

7.02. Periodic Testing.

- (a) SDG&E Contract Capacity and Ancillary Services Testing. Once per each Contract Year (after the initial Contract Year), Seller shall, upon SDG&E's request, schedule and complete a Contract Capacity & Ancillary Services Test in accordance with Appendix 7. This test shall be deemed a Buyer Dispatched Test. [NOTE TO BIDDERS: delete if not offered as part of bid.]

- (b) No Adjustment to Contract Capacity. Notwithstanding any other provision in this Agreement, the Contract Capacity shall not be adjusted to conform to the results of any RA Capacity Qualification Test or [Contract Capacity & Ancillary Services Test] [NOTE TO BIDDERS: to be deleted if not applicable to bid.]
- (c) RA Capacity Qualification Tests. Seller is responsible for all costs associated with all RA Capacity Qualification Tests conducted pursuant to this Article Seven and all costs associated with providing any information related to all RA Capacity Qualification Tests.

7.03. Updated NQC or EFC.

Seller shall notify SDG&E within three (3) Business Days after Seller, or the Project's SC, receives notice from the CAISO or CPUC, or Seller or the Project's SC becomes aware, that the NQC or EFC of the Project has changed, regardless of whether there is an increase or decrease in any such NQC or EFC.

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

8.01. Seller's Operation Obligations.

- (a) Seller shall at all times operate the Project safely, including in accordance with Prudent Electrical Practices, Applicable Laws, Permit Requirements and applicable California utility industry standards, including the standards established by the California Electricity Generation Facilities Standards Committee pursuant to Public Utilities Code Section 761.3, if applicable, and enforced by the CPUC, and CAISO mandated standards, as amended from time to time (collectively, "Industry Standards").
- (b) Seller shall maintain all records applicable to the Project, including the electrical characteristics of the Project and settings or adjustments of the Project control equipment (including the power conversion system) and protective devices, and a daily log of maintenance performed, outages, changes in operating status, inspections and any other significant events related to the operation of the Project. In addition, Seller shall maintain a daily operations log for the Project which shall include information on charging and discharging (including charging and discharging efficiency), electric energy consumption and efficiency, Stored Energy Level, and availability (including availability to charge and discharge and its ability to store energy). Information maintained pursuant to this Section 8.01(b) shall be provided to SDG&E, within fifteen (15) days of SDG&E's request.

- (c) Seller shall maintain and provide to SDG&E, within fifteen (15) days of SDG&E's request, accurate records with respect to the Project's' Initial Commercial Operation Test, RA Capacity Qualification Tests, and Contract Capacity & Ancillary Services Tests, including the outcomes of such tests.
- (d) Seller shall maintain and make available to SDG&E and the CPUC, or any division thereof, records including logbooks, demonstrating that the Project is operated and maintained in accordance with Prudent Electrical Practices, Applicable Laws, Permit Requirements and Industry Standards, including CPUC General Order 167, if applicable. Seller shall comply with all reporting requirements and permit on-site audits, investigations, tests and inspections permitted or required under any Applicable Laws, Permit Requirements, or Industry Standards.
- (e) SDG&E or the CAISO may require Seller, at Seller's expense, to demonstrate to SDG&E's reasonable satisfaction the correct calibration and operation of Seller's Protective Apparatus any time SDG&E or the CAISO has reason to believe that said Protective Apparatus may impair the integrity of the PTO's electric system or CAISO Grid.

8.02. Seller's Maintenance and Repair Obligations/Aggregated Resources

- (a) Seller shall inspect, maintain, and repair the Project in accordance with applicable Industry Standards and Prudent Electrical Practices, including safety practices and standards. Seller shall maintain, and deliver to SDG&E upon request, maintenance and repair records of the Project.
- (b) Seller shall promptly make all necessary repairs to the Project and take all actions necessary in order to provide the Product to SDG&E in accordance with the terms of this Agreement.

ARTICLE NINE. MONTHLY RA CAPACITY PAYMENTS AND OTHER COMPENSATION

9.01. Compensation.

- (a) Delivery Period. Compensation to Seller for the Product shall consist of a Monthly RA Capacity Payment calculated in accordance with Section 9.02(a). Payments will be paid monthly, in arrears, in accordance with Article Eleven, for each month of the RA Delivery Period. Other payments and costs will be allocated during the RA Delivery Period in accordance with Section 9.03.

9.02. Monthly RA Capacity Payment.

- (a) Delivery Period. SDG&E shall make a Monthly RA Capacity Payment, payable monthly after the applicable Showing Month, in arrears, to Seller for each Showing Month of the RA Delivery Period, provided that such Monthly RA Capacity Payment is subject to reduction in accordance with this Agreement. The Monthly RA Capacity Payment for each Showing Month of the RA Delivery Period is calculated as set forth below,

$$\text{“Monthly RA Capacity Payment”} = A \times B$$

where:

A = applicable Monthly RA Capacity Price for that Showing Month (in \$/kW-mo)

$$B = \sum_i^n [(C_i - D_i) \times (\frac{1}{n})]$$

C = Expected Contract Quantity (in kW) provided by Seller to SDG&E pursuant to and consistent with Section 12.03 for the applicable day of the Showing Month, provided that, solely for purposes of calculating this item “C”, the amount of Product (in kW) provided on any particular day of any Showing Month may not exceed the Contract Capacity during such day

D = Aggregate kilowatts of Shortfall Capacity associated with the applicable day of the Showing Month; *provided*, Shortfall Capacity may not exceed Contract Capacity

i = Each day of Showing Month

n = number of days in the Showing Month

The Monthly RA Capacity Payment calculation shall be rounded to two decimal places.

9.03. Allocation of Other Payments and Costs During RA Delivery Periods.

- (a) Seller shall retain any revenues it may receive from and pay all costs, charges, fees or penalties charged by the CAISO or any other third party with respect to the Project.
- (b) If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product for each day of each Showing Month provided to Buyer pursuant to this Agreement for re-sale in such market, and retain and receive any and all related revenues.

- (c) Seller bears sole responsibility for establishing and compensating its SC. Seller shall be responsible for (i) managing, purchasing, scheduling, and transporting all Charging Energy Requirements, (ii) all costs for the Project's Charging Energy Requirements, and (iii) any Governmental Charges associated with the Charging Energy Requirements.

ARTICLE TEN.ALLOCATION OF STANDARD CAPACITY PRODUCT PAYMENTS AND CHARGES; ADJUSTMENTS TO MONTHLY ENERGY CAPACITY PAYMENT

10.01. Availability

- (a) Allocation of Standard Capacity Product Payments and Charges. During the Delivery Period, if the Project is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under the Tariff, or any similar standards, charges or payments that may be implemented for resources providing flexible capacity resource adequacy attributes or other types of Resource Adequacy Benefits, any Availability Incentive Payments and other resulting payments will be for the benefit of Seller and for Seller's account and any Non-Availability Charges and other resulting charges will be the responsibility of Seller and for Seller's account.
- (b) RA Capacity Reduction. If, at any time during the Delivery Period the Project's Net Qualifying Capacity does not equal its Contract Capacity, then a RA Adjustment shall be calculated in the following manner:
- (c) "RA Adjustment" = Net Qualifying Capacity of the Project / the applicable Contract Capacity;

provided, if the RA Adjustment is greater than one (1), then the RA Adjustment for the Project shall equal one (1). For the Project, the RA Adjustment shall be applied to the calculation of the Monthly Capacity Payment for the Project under Section 9.02.

10.02. Ancillary Service No Pay Charges.[NOTE TO BIDDERS: if applicable to your bid.]

Seller shall be responsible for paying to SDG&E all CAISO-calculated charges that are determined by SDG&E in good faith to be caused by the Seller's failure to provide ancillary services when awarded.

ARTICLE ELEVEN. PAYMENT AND BILLING

11.01. Billing Period.

The calendar month shall be the standard period for all payments under this Agreement (excluding Termination Payments). As soon as practicable 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, *provided* that the Monthly Capacity Payment related to a Showing Month will not be deemed to be incurred until such Showing Month has concluded (the “Obligation Month”), together with all supporting documentation and calculations reasonably necessary to evidence all amounts charged thereunder. The Parties acknowledge that data necessary to calculate certain payments obligations under this Agreement may not be available in the month immediately following the applicable Obligation Month. Any such payments obligations will be included in an invoice issued during the calendar month following the month during which such data becomes available. An invoice can only be adjusted or amended after it was originally rendered within the time frames set forth in Section 11.03, below. If an invoice is not rendered within twenty-four (24) months after the close of the Showing Month, the right to any payment for that Showing Month under this Agreement is waived.

11.02. Timeliness of Payment.

All invoices under this Agreement shall be due and payable in accordance with each Party’s invoice instructions on or before the later of the twentieth (20th) day of the month in which the owing Party receives the invoice, or the tenth (10th) day after the owing Party’s 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, including amounts in dispute pursuant to Section 11.03, will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

11.03. Disputes and Adjustments of Invoices.

A Party may adjust any invoice rendered by it for an Obligation Month to correct any arithmetic or computational error, include additional charges or claims, or make an adjustment pursuant to Article 9 within twelve (12) months after the close of such Obligation Month. A receiving Party may, in good faith, dispute the correctness of any invoice or of any adjustment to any invoice previously rendered to it by providing Notice to the other Party within the later of (i) twelve (12) months of the date of receipt of such invoice or adjusted invoice, or (ii) twelve (12) months after the close of the Obligation Month. Failure to provide

such Notice within the time frames set forth in the preceding sentence waives the dispute with respect to such invoice. A Party disputing all or any part of an invoice or an adjustment to an invoice previously rendered to it shall pay the undisputed portion of the invoice when due, but shall have the option, in its sole discretion, to withhold payment of the disputed amount; *provided*, such Party must provide Notice to the other Party of the basis for and amount of the disputed portion of the invoice that has not been paid. The disputed portion of the invoice must be paid within two (2) Business Days of resolution of the dispute, along with interest accrued at the Interest Rate from and including the original due date of the invoice to but excluding the date the disputed portion of the invoice is paid in full. 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 but excluding the date repaid or deducted by the Party receiving such overpayment.

11.04. Netting Rights.

SDG&E reserves the right to net amounts that would otherwise be due to Seller under this Agreement against payment of any amounts owed to SDG&E by Seller arising out of, or related to, this Agreement and any other SDG&E agreement, tariff, obligation or liability. Nothing in this Section 11.04 limits SDG&E's rights under applicable tariffs, other agreements or Applicable Law.

ARTICLE TWELVE.PRODUCT DELIVERY OBLIGATIONS (RA DELIVERY PERIODS)

12.01 Product.

Seller shall provide Buyer with the Product each day of each Showing Month in accordance with this Article Twelve. Buyer may list the Resource Adequacy capacity associated with the Project as Non-Specified RA Replacement Capacity or Specified RA Replacement Capacity.

12.02. Adjustments to Product Provided.

- (a) Planned Outages: Seller shall not schedule any Planned Outages of the Project during the applicable Must Offer Obligation hours in the then current CAISO Tariff requirements.
- (b) Reductions in Net Qualifying Capacity: Subject to Section 8.02, Seller's obligation to deliver the Product may be reduced in the event the Project experiences a reduction in its Net Qualifying Capacity after the Initial Delivery Date as determined by the CAISO.

12.03. Delivery of Product.

Seller shall provide Buyer with the Contract Capacity for each day of each Showing Month consistent with the following:

- (a) Seller shall, on a timely basis, submit, or cause the Project's SC to submit Supply Plans in accordance with the Tariff and any other decisions or orders of the CPUC associated with providing the Product under this Agreement, to identify and confirm the Contract Capacity provided to Buyer for each Month so that the total amount of Contract Capacity identified and confirmed for Month equals the Contract Capacity for such Month.
- (b) Seller shall or shall cause the Project's SC to (i) submit written notification to Buyer in a form substantially similar to Exhibit D, or in a form as communicated in writing by Buyer to Seller, no later than fifteen (15) Business Days before the applicable Compliance Showing deadlines for each Month, that Buyer will be credited with the Contract Capacity for such Month in the Project's SC Supply Plan.

12.04. Indemnities for Failure to Deliver Contract Capacity.

Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

- (a) Seller's failure to provide any portion of the Contract Capacity for any portion of the Month;
- (b) Seller's failure to provide notice of the non-availability of any portion of the Contract Capacity for any portion of the month as required under Section 12.03;
- (c) 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 SDG&E be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse SDG&E for those penalties, fines or costs, then SDG&E may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Agreement.

12.05. Buyer's Re-Sale of Product.

Buyer may re-sell all or a portion of the Product and any associated rights, in each case, acquired under this Agreement. In the event Buyer re-sells all or a portion of the Product and any associated rights acquired under this Agreement ("Resold Product"), Seller agrees, and agrees to cause the Project's SC, to follow Buyer's instructions and the Tariff with respect to providing such Resold Product to subsequent purchasers of such Resold Product. Seller further agrees, and agrees to cause the Project's SC, to take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product. Seller acknowledges and agrees that with respect to any Resold Product, if Buyer incurs any liability to any purchaser of such Resold Product due to the failure of Seller or the Project's SC to comply with the terms of this Agreement, and Seller would have had liability to Buyer under this Agreement for such failure had Buyer not sold the Resold Product to a subsequent purchaser, then Seller shall be liable to Buyer under this Agreement, including without limitation, pursuant to Section 12.04, for the amounts it would have been liable to Buyer for had such Resold Product not been sold to a subsequent purchaser.

12.06. Post-Showing Replacement Capacity.

For any Showing Month, if CAISO determines, in accordance with the Tariff, that any portion of the Contract Quantity for any portion of a Showing Month which was shown by Buyer in its Compliance Showings requires outage replacement in accordance with Section 40.7 of the Tariff ("Shortfall Capacity"), Seller's Monthly RA Capacity Payment will be reduced by such quantity of such Shortfall Capacity. Neither Seller, nor the Project's SC shall have the right to provide Buyer with RA Replacement Capacity with respect to such Shortfall Capacity.

12.07. Resource ID and Bundled Customer Information.

On or before the later of (1) the first day of the first month that begins after the date that is sixty (60) days following CPUC Approval, and (2) the date that is sixty (60) days prior to the first Showing Month, and on a monthly basis thereafter no less than sixty (60) days prior to the applicable Showing Month if any of the information below changes, Seller shall:

- (a) Provide to Buyer the Resource ID(s) for the PDR or RDRR providing Product pursuant to this Agreement.
- (b) Confirm in writing to Buyer that the PDR or RDRR identified by Seller is comprised solely of bundled service customers or unbundled service customers.

ARTICLE THIRTEEN. CREDIT AND COLLATERAL

13.01. Financial Information.

If requested by one Party, the other Party shall deliver the following financial statements, which in all cases must be for the most recent accounting period and prepared in accordance with GAAP, the International Financial Reporting Standards (“IFRS”), or any successor to either of the foregoing (“Successor”):

- (a) Within one hundred twenty (120) days following the end of each fiscal year, a copy of its annual report containing audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year, setting forth in each case in comparative form the figures for the previous year; and
- (b) Within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its quarterly report containing consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year.

In all cases the statements shall be for the most recent accounting period and prepared in accordance with GAAP, IFRS, or Successor. In each case, the financial statements specified above must be certified in accordance with all Applicable Laws and regulations, including all applicable SEC rules and regulations, if such Party is a SEC reporting company, or certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year-end audit adjustments) if such Party is not a SEC reporting company.

If a Party’s financial statements are publicly available electronically on the website of that Party or the SEC, then the Party shall be deemed to have met the requirements of this Section 13.01. 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.

13.02 Seller’s Credit Requirements.

- (a) Credit Requirement During Pre-Construction Period. From the Effective Date to the CP Satisfaction Date, Seller shall provide Performance Assurance in an amount equal to \$[] [NOTE to Bidders: Please see RFO document for collateral requirements.] (the “Development Period Security”) in order to secure Seller’s obligations hereunder. Except to the

extent Seller elects to apply the Development Period Security to the Construction Period Security, 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 by either Party under Section 2.02(c).

- (b) Credit Requirement During Construction Period. From the CP Satisfaction Date to the Initial Delivery Date, Seller shall provide 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.
- (c) Credit Requirements During Delivery Period. Throughout the Delivery Period, Seller shall provide 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).

13.03 Administration of Performance Assurance.

- (a) Interest Payments on Cash. Performance Assurance posted in cash shall earn Simple Interest in accordance with SDG&E’s Rule 7, section C; Interest on Deposit. SDG&E shall retain any such interest amount as additional Performance Assurance hereunder for so long as this Agreement is in effect.
- (b) Letters of Credit. Performance Assurance provided in the form of a Letter of Credit shall be substantially in the form set forth in Appendix 13.02(b),

issued by a Qualified Institution acceptable to SDG&E, and subject to the following provisions:

- (i) Each Letter of Credit shall be maintained for the benefit of SDG&E. Seller shall:
 - (A) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit;
 - (B) if the Qualified Institution that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide a substitute Letter of Credit or alternative Performance Assurance acceptable to SDG&E at least twenty (20) Business Days prior to the expiration of the outstanding Letter of Credit; and
 - (C) if the Qualified Institution issuing a Letter of Credit fails to honor SDG&E's properly documented request to draw on an outstanding Letter of Credit, provide a substitute Letter of Credit or alternative Performance Assurance acceptable to SDG&E, in its sole discretion, within one (1) Business Day after such refusal;

provided, if Seller fails to perform in accordance with (A), (B), or (C) above, Seller shall be deemed to have failed to meet its obligation to provide Performance Assurance..

- (ii) Upon the occurrence of a Letter of Credit Default, Seller shall provide to SDG&E either a substitute Letter of Credit or alternative Performance Assurance acceptable to SDG&E, in each case on or before the first (1st) Business Day after the occurrence thereof (or the fifth (5th) Business Day after the occurrence thereof if only clause (a) under the definition of Letter of Credit Default applies);
- (iii) Upon, or at any time after SDG&E has determined that Seller (A) has forfeited all or part of its Development Period Security, or (B) owes Daily Delay Damages pursuant to Section 2.05(a), then SDG&E may draw on any undrawn portion of any outstanding Letter of Credit. Cash proceeds received by SDG&E from drawing upon the Letter of Credit shall be for the account of SDG&E.
- (iv) Upon, or at any time after, the occurrence and continuation of an Event of Default by Seller, then SDG&E may draw on the entire

undrawn portion of any outstanding Letter of Credit upon submission to the Qualified Institution 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 SDG&E from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for Seller's obligations to SDG&E under this Agreement and SDG&E shall have the rights and remedies set forth in Section 13.03 with respect to such cash proceeds. Notwithstanding SDG&E's receipt of cash proceeds of a drawing under the Letter of Credit, Seller shall remain liable (A) for any failure to provide sufficient Performance Assurance and (B) for any amounts owing to SDG&E and remaining unpaid after the application of the amounts so drawn by SDG&E.

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

13.02. 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 SDG&E a present and continuing first-priority security interest ("Security Interest") in, and lien on (and right of setoff against), and assignment 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 SDG&E, and Seller agrees to take such action as SDG&E reasonably requires in order to perfect SDG&E's 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 or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, SDG&E may do any one or more of the following:

- (a) Exercise any of its rights and remedies with respect to all Performance Assurance, including any such rights and remedies under law then in effect;
- (b) Exercise any of its rights of setoff against any and all property of Seller in SDG&E's possession;
- (c) Draw on any outstanding Letter of Credit issued for its benefit; and
- (d) Liquidate all Performance Assurance then held by or for the benefit of SDG&E free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

SDG&E 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 SDG&E after such application), subject to SDG&E's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

13.03. Uniform Commercial Code Waiver.

This Agreement sets forth the entirety of the agreement of the Parties regarding credit, collateral, financial assurances and adequate assurances. Except as expressly set forth in this Agreement, including, but not limited to, those provisions set forth in Article Thirteen and Article Three, neither Party:

- (a) has or will have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, or
- (b) will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of Article Thirteen and Article Three of this Agreement; and all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived.

13.04. 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 13.05(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.

ARTICLE FOURTEEN. COLLATERAL ASSIGNMENT

14.01. Consent to Collateral Assignment.

Subject to the provisions of this Article Fourteen, Seller shall have the right to assign this Agreement to Lender as collateral for any financing or refinancing of the Project. SDG&E shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("Collateral Assignment Agreement"). The Collateral Assignment Agreement shall be in form and substance agreed to by SDG&E, Seller and Lender, and shall be consistent with industry practice.

ARTICLE FIFTEEN. GOVERNMENTAL AND ENVIRONMENTAL CHARGES

15.01. Governmental Charges.

Seller shall pay or cause to be paid all taxes, charges or fees imposed by a Governmental Authority ("Governmental Charges") on or with respect to the Product at or before the Energy Delivery Point, and SDG&E shall pay or cause to be paid all Governmental Charges on or with respect to Product after the Energy Delivery Point. In the event Seller is required by Applicable Laws to remit or pay

Governmental Charges which are SDG&E's responsibility hereunder, SDG&E shall promptly reimburse Seller for such Governmental Charges. If SDG&E is required by Applicable Laws to remit or pay Governmental Charges which are Seller's responsibility hereunder, SDG&E may deduct the amount of any such Governmental Charge from any amounts due to Seller under Article Eleven of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under Applicable Laws.

15.02. Compliance with Laws and Indemnification.

Seller shall be responsible for obtaining and maintaining all Required Permits, and shall construct and operate the Project in compliance with all Applicable Laws and Permit Requirements for the Term, including any new or revised Required Permits or Applicable Laws that become effective during the Term. Seller shall be solely responsible for any fines, penalties or other charges which result from Seller's failure to obtain or maintain such Required Permits and/or operate the Project in accordance with Applicable Laws and Permit Requirements. No such fines, penalties or charges shall be passed through to SDG&E and Seller shall indemnify, defend and hold SDG&E harmless from and against all liabilities, damages, claims, losses, costs and expenses (including attorneys' fees) incurred by or brought against SDG&E in connection with all Required Permits and compliance with Applicable Laws and Permit Requirements.

ARTICLE SIXTEEN.CHARGING ENERGY MANAGEMENT

16.01. Seller's Charging Energy Management Responsibilities.

Except as set forth in Section 16.03 or as expressly set forth in this Agreement, during the Delivery Period, Seller shall be responsible for managing, purchasing, scheduling, and transporting all of the Charging Energy Requirements of the Project to the Energy Delivery Point

16.02. Seller Charging Energy Responsibilities.

Seller shall take any and all action necessary to deliver the Charging Energy Requirements to the Project in order to deliver the Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy Requirements to the Project.

16.03. Charging Energy Costs, Charges, and Payments.

Seller shall be responsible for the electric energy costs associated with providing the Charging Energy Requirements to the Energy Delivery Point ("Charging Energy Costs").

If SDG&E pays any electric energy costs which are Seller's responsibility under this Agreement, SDG&E may deduct the amount of such electric energy costs from any amounts due to Seller pursuant to the terms of this Agreement.

ARTICLE SEVENTEEN. STORAGE OF ELECTRIC ENERGY

17.01. Title, Possession, and Risk of Loss.

During the Delivery Period, Seller shall hold title to, possession of, and risk of loss of the Charging Energy Requirements 17.02. Indemnification. Each Party shall indemnify, defend, and hold harmless the other Party from and against any claims arising from or out of any event, circumstance, act, or incident first occurring or existing during the period when control and title to the Charging Energy Requirements is vested in such Party in accordance with Section 17.01.

ARTICLE EIGHTEEN. CAISO AND NON-SDG&E DISPATCHES

18.01. CAISO Dispatch.

Any award, instruction to charge, or dispatch of any Project by the CAISO during the Delivery Period for any reason shall be deemed to be a dispatch or request to charge by SDG&E for purposes of this Agreement. The Energy dispatched shall be for the CAISO's benefit hereunder, and Seller shall be paid from the CAISO such CAISO awards, instruction to charge, and dispatches in accordance with the terms of this Agreement as if such dispatches or instruction to charge were directed by SDG&E. Seller shall be entitled to receive and retain for its own account any and all CAISO revenues for such awards and dispatches, except as otherwise stated in this Agreement, which shall be remitted to SDG&E.

18.02. Non-SDG&E Dispatch.

Seller shall not start-up or discharge the Project other than pursuant to a Dispatch Notice. Seller shall indemnify, defend, and hold SDG&E harmless against the costs or losses of SDG&E resulting from a Non-SDG&E Dispatch, including all (i) charges, sanctions, and penalties imposed by CAISO, and (ii) the Charging Energy Requirements.

ARTICLE NINETEEN. SCHEDULING COORDINATOR

19.01 Seller or Third Party as Scheduling Coordinator

Throughout the Delivery Term, Seller shall act, or cause a Third Party to act, as the CAISO Scheduling Coordinator for the Project. The Scheduling Coordinator, shall perform its duties and functions in accordance with the CAISO Tariff, and shall dispatch the Project in accordance with any Dispatch Notice from SDG&E as set forth in Article 20.

ARTICLE TWENTY.DISPATCH NOTICES AND OPERATING RESTRICTIONS

20.01. Availability Notice.

For each Operating Day Seller shall provide to SDG&E using the SDG&E-provided web-based system (“Outage Management System” an hourly schedule of the Available Capacity that the Project is expected to have for each hour of such Operating Day, no later than two (2) Business Days before the Trading Day applicable to such Operating Day (the “Availability Notice”). Seller must update SDG&E immediately using the Outage Management System if the Available Capacity of any Project changes or is likely to change after the Availability Notice is submitted. Seller must follow up all such updates through the Outage Management System with telephonic updates to SDG&E’s personnel designated in Appendix 20.05 to receive such communications. Seller shall accommodate SDG&E’s reasonable requests for changes in the time or form of delivery of the Availability Notices. If an electronic submittal via the Outage Management System is not available, or is not possible for reasons beyond a Party’s control, Seller may provide Availability Notices using the form attached in Appendix 20.01 by (in order of preference unless the Parties agree to a different order) electronic mail, facsimile transmission or, as a last resort, telephonically to SDG&E’s personnel designated in Appendix 20.05 to receive such communications.

20.02. Dispatch Notice.

SDG&E will have the right to dispatch the Project by providing a Dispatch Notice to Seller electronically (in the form attached in Appendix 20.02 or other available form agreeable to SDG&E), and subject to the requirements and limitations set forth in this Agreement. SDG&E will provide such Dispatch Notice to Seller in accordance with the Tariff market notice timelines for submitting day-ahead and real-time schedules to CAISO. Subject to Section 20.04, each Dispatch Notice will be effective unless and until SDG&E modifies such Dispatch Notice by providing Seller with an updated a Dispatch Notice. SDG&E will have the right to provide an updated Dispatch Notice at any time up until 30 minutes prior to the beginning of each operating hour. If an electronic submittal is not possible for reasons beyond SDG&E’s control, SDG&E may provide Dispatch Notice by (in order or preference, unless the Parties agree to a different order) electronic mail, facsimile transmission or telephonically to Seller’s personnel designated in Appendix 20.05 to receive such communications. Seller shall be entitled to receive and retain for its own account any and all CAISO revenues for such awards and dispatches, except as otherwise stated in this Agreement, which shall be remitted to SDG&E.

20.03. Start-Up Notices.

If a Dispatch Notice includes a Start-Up, Seller shall notify SDG&E electronically when the Project has initiated a start, and is synchronized and at Minimum Load ready to be dispatched to the required output. Seller shall provide an electronic or facsimile copy of a completed Start-Up Notice, in the form attached to this Agreement in Appendix 20.03, to SDG&E within twenty-four (24) hours of the Start-Up. When a Dispatch Notice requires a Start-Up or shutdown, Seller will be responsible for coordinating all required switchyard switching with the Grid Control Center.

20.04. Operating Restrictions.

- (a) Subject to Section 7.03, all Operating Restrictions associated with the Product are specified in Appendix 1.01. In providing a Dispatch Notice, SDG&E shall comply with the applicable Operating Restrictions. If SDG&E submits a Dispatch Notice that does not conform with the Operating Restrictions, then Seller shall immediately notify SDG&E of the non-conformity and SDG&E will modify its Dispatch Notice to conform to the applicable Operating Restrictions. Until such time as SDG&E submits a modified Dispatch Notice, Seller shall, as applicable, deliver the Product in accordance with the Operating Restrictions or charge the Project in accordance with the Operating Restrictions, and the Project will not be deemed to be unavailable, but only to the extent the Project was otherwise available but could not be dispatched or charged because of its inability to operate outside of the Operating Restrictions.
- (b) Notwithstanding anything to the contrary in this Agreement, Section 20.04(a), or the Operating Restrictions, if the Project is able to meet its Contract Capacity, SDG&E is permitted to issue a Dispatch Notice that dispatches the Project to its Contract Capacity and SDG&E is not required to modify any non-conforming Dispatch Notice that dispatches the Project to its Contract Capacity; *provided*, in instances where the Contract Capacity is greater than the maximum capability set forth in the Operating Restrictions, Seller shall deliver the Product in accordance with the Operating Restrictions, and the Project will not be deemed to be unavailable, but only to the extent the Project was otherwise available but could not be dispatched because of its inability to operate outside of the Operating Restrictions.

20.05. Communication Protocols.

The Parties shall agree to the communication protocols outlined in Appendix 20.05 to facilitate the exchange of information between the Parties.

20.06. 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 Laws.

ARTICLE TWENTY-ONE.METERING, COMMUNICATIONS AND TELEMETRY

21.01. SDG&E Access.

All communication, metering, telemetry, and associated operation equipment will be centralized into the Project's Distributed Control System ("DCS"). Seller shall configure the Project's DCS so that SDG&E may access it. Seller shall ensure that the access link will provide a monitoring and control interface to enable automatic control for charging and discharging of the Project and provide real-time information regarding the to SDG&E. Seller shall link the systems via an approved SDG&E communication network, utilizing existing industry standard network protocol, as approved by SDG&E. The connection will be bidirectional in nature and used by the Parties to exchange all data points to and from the SDG&E monitoring system.

21.02. Control Logic [NOTE TO BIDDERS: To be modified based on technology type]

Seller will ensure that the Project's DCS control logic will be configured to control the Project in multiple configurations. The Project's control logic will incorporate control signals from multiple locations to perform dispatch, charging and Ancillary Services functions. Control logic will perform all coordinated megawatt control and Automatic Generation Control ("AGC") independently for the Project.

21.03. Delivery of Data.

At least thirty (30) days prior to the Expected Initial Delivery Date, Seller shall provide SDG&E with all facility and metering information necessary to communicate with SDG&E as may be requested by SDG&E, including, but not limited to, the information set forth in Appendix 21.03.

21.04. Satellite Communication System.

Seller is responsible for installing, testing, commissioning and maintaining the Satellite Communications System ("SCS") at the Project in accordance with instructions provided by SDG&E and the SCS vendor. Seller shall grant SDG&E reasonable access to the Site for routine calibration and maintenance of the SCS during the Delivery Period.

21.05. SDG&E Access.

Seller shall take all actions and execute all documents reasonably necessary to grant SDG&E access to the metering, communications, and telemetry systems specified in this Article Twenty-One during the Delivery Period.

ARTICLE TWENTY-TWO.OUTAGES

22.01. Planned Outages

No later than January 15, April 15, July 15 and October 15 of each Contract Year during the Delivery Period, and at least sixty (60) days prior to the Guaranteed Initial Delivery Date, Seller shall submit to Buyer Seller's schedule of proposed Scheduled Outages ("Outage Schedule") for the following twelve (12)-month period in a the form reasonably agreed to by Buyer. Within twenty (20) Business Days after its receipt of an Outage Schedule, Buyer shall notify Seller in writing of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Industry Standards, accommodate Buyer's requests regarding the timing of any Scheduled Outage. Seller may propose changes to any previously scheduled outage 15 days prior to such scheduled outage. Buyer shall review each such change and shall advise Seller within three (3) days of Buyer's receipt thereof, in Buyer's sole discretion but consistent with Industry Standards and Accepted Electrical Practices, whether such change is acceptable or Buyer may propose alternate dates for the requested scheduled maintenance. Seller shall cooperate with Buyer to arrange and coordinate all Scheduled Outages with the CAISO. Seller will communicate to Buyer all changes to a Scheduled Outage and estimated time of return of the Project as soon as practicable after the condition causing the change becomes known to Seller. The total amount of Scheduled Outages pursuant to this Section 22.01 for each Contract Year shall not exceed (i) for any Contract Years in which routine maintenance is scheduled in accordance with Accepted Electrical Practices, [] (or a prorated amount in the case of the first Contract Year), and (ii) for any Contract Years in which non-routine or major maintenance is scheduled in accordance with Accepted Electrical Practices, an additional [] hours (or a prorated amount in the case of the first Contract Year) per Contract Year for a maximum aggregate amount under clauses (i) and (ii) of [] hours for a Contract Year in which routine maintenance is scheduled in accordance with Accepted Electrical Practices and non-routine or major maintenance is scheduled in accordance with Accepted Electrical Practices.

22.02. Limitations on Planned Outages.

(a) No outages shall be scheduled or planned from May 1 through October 31 during the Delivery Period.

22.03. Notice of Forced Outages.

Seller shall communicate the occurrence of any Forced Outage utilizing SDG&E's Outage Management System to enter outage information as required by the Tariff, within ten (10) minutes of the commencement of the Forced Outage. Seller shall telephone SDG&E within twenty (20) minutes of the Forced Outage, at the telephone number(s) listed in Appendix 20.05. If the CAISO imposes a sanction or penalty as a result of Seller's failure to timely provide SDG&E with a report of a Forced Outage or Planned Outage, Seller shall be responsible for such sanction or penalty.

22.04. Reports of Forced Outages.

Seller shall promptly prepare and provide to SDG&E, using SDG&E-provided software or forms, all reports of Forced Outages or Planned Outages that SDG&E may reasonably require for the purpose of enabling SDG&E to comply with CAISO requirements or any Applicable Laws.

22.05. Inspection During Showing Month.

In the event of a Forced Outage, SDG&E shall have the right to inspect the Project and all records relating thereto on any Business Day and at a reasonable time and Seller shall reasonably cooperate with SDG&E during any such inspection.

ARTICLE TWENTY-THREE.FORCE MAJEURE

23.01. No Default for Force Majeure.

Subject to Section 8.02(b), neither Party will be considered to be in default in the performance of any of its obligations set forth in this Agreement (except for obligations to pay money) when and to the extent failure of performance is caused by Force Majeure; provided, a failure to make payments when due that accrued prior to the Force Majeure event shall not be excused. Force Majeure Claim.

Subject to Section 8.02(b), 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; *provided*:

- (a) the Claiming Party, no more than five (5) Business Days after the initial occurrence of the claimed Force Majeure, gives the other Party Notice describing the particulars of the occurrence;
- (b) the Claiming Party, within five (5) Business Days, of providing Notice of occurrence of the Force Majeure, provides evidence reasonably sufficient

to establish that the occurrence constitutes a Force Majeure as defined in this Agreement;

- (c) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure; and
- (d) as soon as Claiming Party is able to resume performance of its obligations under this Agreement, it shall do so and shall promptly give the other Party Notice of this resumption.

23.02. Termination.

The non-Claiming Party may terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is provided, if an event of Force Majeure extends for more than three hundred sixty-five (365) consecutive days and materially and adversely affects the performance of the Claiming Party.

ARTICLE TWENTY-FOUR. REPRESENTATIONS, WARRANTIES AND COVENANTS

24.01. Representations and Warranties of Both Parties.

As of the Effective Date and the Approval Date, each Party represents and warrants to the other Party that:

- (a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) Except as provided in Section 2.02 and Article Five, it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;
- (c) The execution, delivery and performance of this Agreement are within its power, have been duly authorized by all necessary action (other than regulatory approval as set forth in Section 2.02) 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 applicable to it;
- (d) This Agreement constitutes its 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 could result in it becoming Bankrupt;

- (f) There is not pending or, to its knowledge, threatened against it any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
- (g) No Event of Default with respect to it has occurred and is continuing and no such Event of Default 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;
- (i) It is a “forward contract merchant” within the meaning of the United States Bankruptcy Code; and
- (j) 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, as applicable, under this Agreement.

24.02. Representations and Warranties of Seller.

Seller represents and warrants to SDG&E that:

- (a) As of [Insert date], Seller has Site Control. [NOTE to bidders: will be modified based on resource type]
- (b) [NOTE: to be inserted: applicable representation to maintain PDR/RDRR status.]
- (c) As of the Effective Date and the Approval Date, to the best of Seller’s knowledge, each specification and description of the Project and the Project and the Product in Article One (and related Appendices) is true and correct.

24.03. Seller’s Affirmative Covenants.

- (a) Seller shall maintain and preserve its existence as a *[insert applicable corporate incorporation information]* formed under the laws of the State of *[XX]* and all material rights, privileges and franchises necessary or desirable to enable it to perform its obligations under this Agreement.
- (b) Seller shall, from time to time as requested by SDG&E, 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 SDG&E with respect to its Security Interest furnished pursuant to this Agreement.

- (c) Seller shall ensure that no less than twenty percent (20%) of Seller's aggregate costs to complete the initial development, engineering, procurement and construction of the Project are funded by equity contributions to Seller. The amount funded by equity contributions shall not be less than *[TBD]*. The foregoing shall not impose any obligations that survive the Initial Delivery Date, *provided* that if SDG&E determines after the Initial Delivery Date that Seller breached this obligation with respect to any time prior to the Initial Delivery Date, SDG&E retains all rights under this Agreement, including, without limitation under Article Three, with respect to such occurrence.
- (d) Seller shall provide and execute all documents and instruments reasonably necessary (including documents amending this Agreement in ways not materially adverse to Seller and documents reflecting compliance with all applicable Tariff provisions and applicable decisions of the CPUC and/or any other Governmental Authority that address Resource Adequacy performance obligations and penalties hereunder) to effect the use of the Resource Adequacy Benefits of the Project for SDG&E's sole benefit through the Delivery Period.
- (e) Seller shall obtain, maintain and remain in compliance with all permits, agreements (including interconnection agreements) and rights (including transmission rights) necessary to operate the Project and provide the Product to SDG&E in accordance with this Agreement.
- (f) Seller shall throughout the Delivery Term maintain Market Based Rate Authority from FERC to sell Product to Buyer under the terms of this Agreement.
- (g) Seller shall deliver to SDG&E the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person.
- (h) Seller shall maintain Site Control throughout the period beginning on the [INSERT] and ending on the last day of the Term.
- (i) Seller shall, throughout the Term, promptly provide SDG&E with Notice of any change in any of the specifications or descriptions set forth in Article One (and related Appendices).
- (j) Throughout the Delivery Period (i) Seller shall, and shall cause the Project's SC to promptly (and in any event within one (1) Business Day of

the time Seller or such SC receives notification from the CAISO) notify Buyer in the event the CAISO designates any portion of the Project as CPM Capacity, and (ii) in the event the CAISO makes such a designation Seller shall, and shall cause the Project's SC to not accept any such designation by the CAISO unless and until Buyer has agreed to accept such designation, provided that Buyer shall have the exclusive right to offer the Product and Project, or any portion thereof, to the CAISO as CPM Capacity during any Showing Month.

- (k) With respect to the Delivery Period, Seller shall notify the SC of the Project that (i) Seller has transferred the Product to Buyer with respect to each day of each Showing Month, and that such SC is obligated to deliver the Supply Plans in accordance with the Tariff and this Agreement, (ii) Seller is obligated to cause the Project's SC to provide to Buyer, at least fifteen (15) Business Days before the relevant deadlines for each Compliance Showing, the applicable Contract Capacity of the Project for each day of such Showing Month, including the amount of Flexible Capacity and Inflexible Capacity, that is to be submitted in the Supply Plan associated with this Agreement for the applicable period, and (iii) Buyer is entitled to the revenues set forth in Section 9.03, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.
- (l) With respect to the Delivery Period, Seller shall (i) provide all information needed for the Product to be shown on Supply Plans and Compliance Showings and to be used to satisfy RA Compliance Obligations, including, without limitation providing information with respect to the amount of Flexible Capacity and Inflexible Capacity available to be included in any applicable Supply Plan and Compliance Showing and (ii) provide any information requested by SDG&E related to the Project that is required to be provided to the CAISO or CPUC in order for SDG&E to comply with the Tariff or other Applicable Laws.

24.04. Seller's Negative Covenants.

- (a) Seller shall not issue any Disqualified Stock, other than Disqualified Stock issued in connection with the funding of the development, construction, operation, reconstruction, restoration or refinancing of the Project.
- (b) Except for (i) liens for the benefit of Lender, and (ii) liens cured or removed within thirty (30) days after their incurrence, 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 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 SDG&E of any attachment or imposition of any lien against Seller's interest in the Site, the Project, or any part thereof or interest therein.

- (c) 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 and operation of the Project.
- (d) Seller shall not own, form or acquire, or otherwise conduct any of its activities through, any direct or indirect subsidiary.
- (e) During any period during which a Seller is a Defaulting Party, Seller shall (i) not declare or pay any dividend, or make any other distribution or payment, on account of any equity interest in Seller, or (ii) otherwise make any distribution or equivalent payment to any Affiliate of Seller.
- (f) Seller shall not directly or indirectly pledge or assign, or cause or permit the pledge or assignment of, the Required Permits as collateral to any party other than to Lender or Lender's agent without SDG&E's prior written consent, which consent may be granted or withheld in SDG&E's sole discretion.
- (g) Seller shall not directly or indirectly pledge or assign, or cause or permit the pledge or assignment of, any ownership interest in Seller if such pledge or assignment would have a material adverse effect on the Project or on Seller's ability to perform its obligations under this Agreement. Seller shall provide SDG&E with written Notice of any direct or indirect pledge or assignment of any ownership interest in Seller at least ten (10) Business Days prior to such pledge or assignment.

ARTICLE TWENTY-FIVE. LIMITATIONS

25.01. Limitation of Remedies, Liability and Damages.

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

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

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

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.

25.02. No Representation by SDG&E.

Any review by SDG&E of the Project, including the design, construction or refurbishment, operation or maintenance of the Project, or otherwise, is solely for SDG&E's information. By making such review, SDG&E 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 SDG&E of the Project, including, but not limited to, any review of the design, construction or renovation, operation, or maintenance of the Project by SDG&E, constitutes any such representation by SDG&E. Seller is solely responsible for the economic and technical feasibility, operational capability, and reliability of the Project.

ARTICLE TWENTY-SIX.RECORDS

26.01. 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 four (4) years after final payment is made under this Agreement.

26.02. Other Regulatory and Governmental Requirements.

At SDG&E's request, Seller shall maintain and deliver to SDG&E copies of records and supporting documentation with respect to the Project that Seller is not already required to maintain or deliver under this Agreement, in order to comply with all Applicable Laws.

26.03. Audit Rights.

SDG&E shall have the right, at its sole expense and during normal working hours, to audit the documents, records or data of Seller to the extent reasonably necessary to verify the accuracy of any statement, claim, charge or calculation made pursuant to this Agreement. Seller shall have the right, at its sole expense, to hire an independent third party reasonably acceptable to SDG&E to audit the documents, records or data of SDG&E related to this Agreement during normal working hours to the extent reasonably necessary to verify the accuracy of any statement, claim, charge or calculation made pursuant to this Agreement. Such independent third party must sign a confidentiality agreement in substance reasonably acceptable to SDG&E before examining SDG&E's documents, records or data. Each Party shall promptly comply with any reasonable request by the other Party under this Section 26.03 and provide copies of documents, records or data to the requesting Party. The rights and obligations under this Section 26.03 shall survive the termination of this Agreement for a period of two (2) years.

ARTICLE TWENTY-SEVEN.DISPUTE RESOLUTION

27.01 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 27. 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 27.

27.02 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 27.02(a) above, refuses or does not meet within the ten (10) Business Day period specified in Section 27.02(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.

27.03

Arbitration.

- (a) Any dispute that cannot be resolved by management negotiations as set forth in Section 27.02 above shall be resolved through binding arbitration by a retired judge or justice from the [AAA][JAMS] panel (the "Arbitrator") conducted in San Diego, California, administered by and in accordance with [AAA's Commercial Arbitration Rules] [JAMS [Comprehensive][Streamlined] Arbitration Rules and Procedures] ("Arbitration").
- (b) 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].

- (c) 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.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) Judgment on the award may be entered in any court having jurisdiction.
- (h) 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.
- (i) 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.
- (j) The existence, content, and results of any Arbitration hereunder is confidential information that is subject to the provisions of Section 29.01.

ARTICLE TWENTY-EIGHT. INDEMNIFICATION

28.01. SDG&E's Indemnification Obligations.

In addition to any other indemnification obligations SDG&E may have elsewhere in this Agreement, which are hereby incorporated in this Section 28.01, SDG&E releases, and shall indemnify, defend and hold harmless Seller, and Seller's directors, officers, employees, agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, fine, penalty or expense of any kind or nature (including any direct, damage, claim, cost, charge, demand, or expense, and attorneys' fees (including cost of in-house counsel) and other costs of litigation, arbitration and mediation, and in the case of third-party claims only, indirect and consequential loss or damage of such third-party), arising out of or in connection with any breach made by SDG&E of its representations and warranties in Section 24.01.

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

28.02. Seller's Indemnification Obligations.

In addition to any other indemnification obligations Seller may have elsewhere in this Agreement, which are hereby incorporated in this Section 28.02, Seller releases, and shall indemnify, defend and hold harmless SDG&E, and SDG&E's directors, officers, employees, agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, penalty, fine or expense of any kind or nature (including any direct, damage, claim, cost, charge, demand, or expense, and attorneys' fees (including cost of in-house counsel) and other costs of litigation, arbitration or mediation, and in the case of third-party claims only, indirect or consequential loss or damage of such third-party), arising out of or in connection with:

- (a) any breach made by Seller of its representations and warranties in Sections 24.01 and 24.02;
- (b) Seller's failure to fulfill its obligations regarding Resource Adequacy Benefits as set forth in Sections 1.01(a) and Article Twelve;
- (c) Penalties assessed by FERC, NERC (through WECC or otherwise) or other Governmental Authority for violations of the NERC Reliability Standards by the Project or Seller, as Generator Operator or other applicable category against SDG&E;
- (d) injury or death to persons, including SDG&E employees, and physical damage to property, including SDG&E property, where the damage arises

out of, is related to, or is in connection with, Seller's construction, ownership or operation of the Project, or obligations or performance under this Agreement;

- (e) injury or death to any person or damage to any property, including the personnel or property of SDG&E, to the extent that SDG&E would have been protected had Seller complied with all of the provisions of Section 30.15; *provided*, the inclusion of this subsection (e) is not intended to create any express or implied right in Seller to elect not to provide the insurance required under Section 30.15;
- (f) any breach by Seller of the covenants set forth in Sections 24.03 and 24.04;
- (g) the Project, or any equipment, software, applications or programs (or any portion of same) used in connection with the Project or the Project result in an infringement upon or violation of any trade secret, trademark, trade name, copyright, patent, or other intellectual property rights of any third party;
- (h) any material violation of any Applicable Law by Seller or its subcontractors; or
- (i) any (i) release of a Hazardous Material by Seller its EPC Contractor or any of Seller's or its EPC Contractor's subcontractors, (ii) enforcement or compliance proceeding relating to or in connection with any alleged, threatened or actual violation of any environmental law by Seller or its EPC Contractor or any of Seller's or its EPC Contractor's subcontractors, or (iii) action reasonably necessary to abate, investigate, remediate or prevent a violation or threatened violation of any environmental law by Seller or its EPC Contractor or any of Seller's or its EPC Contractor's subcontractors.

This indemnity applies notwithstanding SDG&E's active or passive negligence. However, SDG&E will not be indemnified under Section 28.02(a) - (d) for its loss, liability, damage, claim, cost, charge, demand or expense to the extent caused by its gross negligence or willful misconduct.

28.03. Indemnification Claims.

All claims for indemnification by a Party entitled to be indemnified under this Agreement (an "Indemnified Party") by the other Party (the "Indemnitor") will be asserted and resolved as follows:

- (a) If a claim or demand for which an Indemnified Party may claim indemnity is asserted against or sought to be collected from an Indemnified Party by a third party, the Indemnified Party shall as promptly as practicable give

Notice to the Indemnitor; *provided*, failure to provide this Notice will relieve Indemnitor only to the extent that the failure actually prejudices Indemnitor.

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

28.04. Resource Adequacy.

Seller agrees to indemnify SDG&E for any monetary penalties or fines assessed against SDG&E by the CPUC or the CAISO or any other entity having jurisdiction, resulting from Seller's willful or negligent failure to provide SDG&E with the full Contract Capacity for the Project for purposes of meeting SDG&E's RA Compliance Obligations. The Parties shall use commercially reasonable efforts to minimize such fines and penalties; *provided*, in no event will SDG&E be required to use or change its utilization of its owned or controlled assets or market positions to minimize the fines and penalties.

28.05. Survival.

All indemnity rights shall survive the termination of this Agreement.

ARTICLE TWENTY-NINE. CONFIDENTIALITY/REGULATORY DISCLOSURE

29.01. Confidentiality Obligation.

Except as otherwise expressly agreed in writing by the other Party, and except as otherwise agreed in Sections 29.02 and 29.03, each receiving Party shall, and shall cause its Representatives to, (a) keep strictly confidential and take reasonable precautions to protect against the disclosure of all Confidential Information, and (b) use all Confidential Information solely for the purposes of performing its obligations under this Agreement and not for any other purpose; *provided*, a Party may disclose Confidential Information to those of its Representatives who need to know such information for the purposes of performing the receiving Party's obligations under this Agreement if, but only if, prior to being given access to Confidential Information, such Representatives are informed of the confidentiality thereof and the requirements of this Agreement are obligated to comply with the requirements of this Agreement and, in the case of

Representatives of Seller engaged wholly or in part in the purchase and sale of electrical power or natural gas, only if such Representatives are *directly* engaged in performing Seller's obligations under this Agreement. Each Party will be responsible for any breach of this Agreement by its Representatives.

29.02. Permitted Disclosures.

- (a) SDG&E may disclose Confidential Information to the Independent Evaluator. SDG&E and the Independent Evaluator may disclose Confidential Information to duly authorized regulatory and governmental agencies or entities, including the FERC, CPUC and all divisions thereof, and the CAISO, SDG&E's Procurement Review Group (the "PRG"), a group of non-market participants including members of the CPUC, and SDG&E's Cost Allocation Mechanism Group ("CAM"), and other governmental agencies and consumer groups established by the CPUC in Decision 02-08-071. Neither SDG&E nor the Independent Evaluator shall have any liability whatsoever to Seller in the event of any unauthorized use or disclosure by a regulatory or governmental agency or entity including without limitation the FERC, the CPUC and all divisions thereof, the PRG, CAM or the CAISO of any Confidential Information or other information disclosed to any of them by SDG&E or the Independent Evaluator.
- (b) SDG&E and the Independent Evaluator may also disclose Confidential Information to any Governmental Authority or to any third party to the extent necessary to comply with any Applicable Laws, and any applicable regulation, decision, rule, subpoena or order of the CPUC, CEC, FERC, any administrative agency, legislative body or other tribunal (other than those entities set forth in Section 29.02(c)), any exchange, Control Area or CAISO rule, or any discovery or data request of a party to any proceeding pending before any of the foregoing.
- (c) The Parties may disclose Confidential Information to the extent necessary to comply with any subpoena or order of court or judicial entity having jurisdiction over the disclosing Party (other than those entities set forth in Section 29.02(b)), or in connection with a discovery or data request of a party to any proceeding before any of the foregoing.
- (d) Buyer may disclose the Product or any applicable portion of the Product including any amounts of Flexible Capacity and Inflexible Capacity, under this Agreement to any Governmental Authority, the CPUC, the CAISO in order to support its Compliance Showings, if applicable, and Seller may disclose the transfer of the Product and the applicable Contract Capacity and any amounts of Flexible Capacity and Inflexible Capacity for each day of each Showing Month to the SC of the Project 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 Authority, CAISO, or SC to further disclose such information. In addition, in the event Buyer resells all or any portion of the Product to another party or the Product is to be provided to another party in accordance with Section 1.01(f), Buyer shall be permitted to disclose to the other party to such transaction all such information necessary to effect such transaction.

29.03. Duty to Seek Protection.

- (a) In connection with requests or orders to produce Confidential Information protected by this Agreement in the circumstances provided in Section 29.02(c) (by deposition, interrogatories, requests for information or documents, subpoena, order or similar legal process) each Party (i) will promptly notify the other Party of the existence, terms, and circumstances of such requirement(s) so that such other Party may seek an appropriate protective order or waive compliance with the provisions of this Agreement, and (ii) will, and will cause its Representatives to, cooperate fully with such other Party in seeking to limit or prevent such disclosure of such Confidential Information.
- (b) If a Party or its Representatives are, in the written opinion of its legal counsel, and notwithstanding compliance with Section 29.03(a) compelled to make disclosure in response to a requirement described in Section 29.03(a) or stand liable for contempt or suffer other penalty, the compelled person may disclose only that portion of the Confidential Information protected by this Agreement which it is legally required to disclose and will exercise its best efforts to obtain reliable assurance that confidential treatment will be accorded to the disclosed Confidential Information protected by this Agreement.

29.04. Ownership and Return 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. Notwithstanding the foregoing, the Parties shall have the right to retain copies of Confidential Information, subject to the confidentiality obligations in this Article Twenty-Nine.

ARTICLE THIRTY.MISCELLANEOUS

30.01. General.

This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. All references to time shall be in PPT unless stated otherwise. The headings used herein are for convenience and reference purposes only. This Agreement shall be binding on each Party’s successors and permitted assigns. Each Party agrees if one Party seeks to amend any applicable wholesale power sales tariff during the term of this Agreement without the prior written consent of the other Party, such amendment will not in any way affect either Party’s obligations under the Agreement. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.

30.02. Notices.

Unless otherwise provided in this Agreement, any notice or request (“Notice”) shall be in writing to the address provided below and delivered by hand delivery, United States mail, electronic mail, overnight courier service, or facsimile. Notice by electronic mail, facsimile 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 or personally delivered. Notice by overnight courier service shall be effective on the next Business Day after the postmarked date. Notice by United States mail shall be effective on the third (3rd) Business Day after it was sent. A Party may change its address by providing Notice of same to the other Party in accordance with this Section 30.02.

If to SDG&E:

If to Seller: *[Seller]*

Address

Address Line 2

City, State Zip

Attn:

Facsimile No.:

Copy: *[Seller]*

Address Line 1

Address Line 2

City, State Zip

Attn:
Facsimile No.:

30.03. 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 COUNTY OF SAN DIEGO, CALIFORNIA.

30.04. Amendment.

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

30.05. Assignment.

Neither Party shall assign, transfer, delegate, mortgage, hypothecate, pledge or encumber its rights, title or interest in this Agreement without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; *provided*, Seller may collaterally assign this Agreement in accordance with Article Fourteen.

30.06. 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 relinquishment 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.

30.07. Obligations Surviving Termination.

Except as may be provided or limited by this Agreement, the obligations which by their nature are intended to survive termination of this Agreement, including representations, warranties, covenants and rights and obligations with respect to audits, indemnification, payment and settlement, confidentiality, remedies, limitation of liabilities, posting of Performance Assurance, dispute resolution, and limitations on third party sales, shall so survive.

30.08. Further Assurances.

If either Party determines in its reasonable discretion that any further instruments, assurances or other things are necessary 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 to carry out the terms of this Agreement.

30.09. No Agency.

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

30.10. No Third Party Beneficiaries.

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

30.11. 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 or to impose any partnership obligation or liability on either Party in anyway.

30.12. Severability.

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

30.13. Forward Contract.

The Parties acknowledge and agree that this Agreement constitutes a "forward contract" and that they are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.

30.14. Mobile Sierra.

Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver below is

unenforceable or ineffective as to such 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 *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish* 554 U.S. 527 (2008).

Notwithstanding any provision of Agreement, and absent the prior written agreement of the Parties, each Party, to the fullest extent permitted by Applicable Laws, for itself and its respective successors and assigns, hereby also expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205, 206, or 306 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation, supporting a third party seeking to obtain or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any Section of this Agreement specifying any rate or other material economic terms and conditions agreed to by the Parties.

30.15. Insurance Requirements

Throughout the Term and for such additional periods as may be specified below, Seller shall, at its own expense, provide and maintain in effect the insurance policies and minimum limits of coverage specified below, and such additional coverage as may be required by Applicable Law, with insurance companies which are authorized to do business in the state in which the services are to be performed and which have an A.M. Best’s Insurance Rating of not less than A-:VII or better or equivalent. The minimum insurance requirements specified herein do not in any way limit or relieve Seller of any obligation assumed elsewhere in this Agreement, including, but not limited to, Seller’s defense and indemnity obligations. Seller shall cooperate with the third party vendor hired by SDG&E to obtain certificates of insurance and to monitor compliance with these insurance requirements on SDG&E’s behalf.

- (a) Workers’ Compensation Insurance with the statutory limits required by the state having jurisdiction over Seller’s employees;
- (b) Employer’s Liability Insurance with limits of not less than:
 - (i) Bodily injury by accident – One Million dollars (\$1,000,000) each accident
 - (ii) Bodily injury by disease – One Million dollars (\$1,000,000) policy limit
 - (iii) Bodily injury by disease – One Million dollars (\$1,000,000) each employee

- (c) Commercial General Liability Insurance (which, except with the prior written consent of SDG&E and subject to Sections 30.15(c)(i) and (ii) below, shall be written on an “occurrence,” not a “claims-made” basis), covering all operations by or on behalf of Seller arising out of or connected with this Agreement, including coverage for bodily injury, property damage, personal and advertising injury, products/completed operations, and contractual liability. Such insurance shall be not less than Ten Million Dollars (\$10,000,000), per occurrence and Twenty Million Dollars (\$20,000,000) annual aggregate, exclusive of defense costs, for all coverages. Such insurance shall contain standard cross-liability and severability of interest provisions and no explosion, wildfire, collapse, or underground exclusions.

If Seller elects, with SDG&E’s written concurrence, to use a “claims made” form of Commercial General Liability Insurance, then the following additional requirements apply:

- (i) The retroactive date of the policy must be prior to the Effective Date; and
- (ii) Either the coverage must be maintained for a period of not less than three (3) years after the Agreement terminates, or the policy must provide for a supplemental extended reporting period of not less than three (3) years after this Agreement terminates.

- (d) Commercial Automobile Liability Insurance covering bodily injury, death, and property damage (including loss of use thereof) with a combined single limit of not less than One Million dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller’s use of all owned (if any), non-owned and hired automobiles in the performance of the Agreement. Seller’s Automobile Liability 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.

- (e) Pollution Liability Insurance, (which, except with the prior written consent of SDG&E and subject to Sections 30.15(e)(i) and (ii) below, shall be written on an “occurrence,” not a “claims-made” basis) with limits of not less than Ten Million Dollars (\$10,000,000), per claim and in the annual aggregate, covering losses involving hazardous material(s) and caused by pollution incidents or conditions that arise from the Project, including but not limited to, coverage for bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death, property

damage including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically damaged or destroyed, and defense costs.

If Seller elects, with SDG&E's written concurrence, to use a "claims made" form of Pollution Liability Insurance, then the following additional requirements apply:

- (i) The retroactive date of the policy must be prior to the Effective Date; and
 - (ii) Either the coverage must be maintained for a period of not less than Five (5) years after this Agreement terminates, or the policy must provide for a supplemental extended reporting period of not less than Five (5) years after this Agreement terminates.
- (f) Umbrella/Excess Liability Insurance, written on an "occurrence," not a "claims-made" basis, providing coverage excess of the underlying Employer's Liability, Commercial General Liability, Pollution Liability Insurance, and Commercial Automobile Liability insurance, on terms at least as broad as the underlying coverage, with limits of not less than Two Hundred Million Dollars (\$200,000,000), per occurrence and in the annual aggregate, and on a following-form basis. The insurance requirements of this Section 30.15 can be provided by any combination of Seller's primary and excess liability policies.
- (g) Cyber Risk Liability and Technology Errors and Omissions Insurance. If applicable to the scope of work, Seller shall maintain cyber risk liability and technology errors and omissions insurance with a combined single limit of not less than Ten Million Dollars (\$10,000,000) per occurrence. If the policy maintains a policy aggregate, such aggregate shall be twice the per occurrence limit. Such insurance shall cover any and all errors, omissions or negligent acts in the delivery of services under this Agreement. Such cyber risk liability insurance shall include coverage of claims and losses with respect to network risks (such as data breaches, unauthorized access/use, ID theft, invasion of privacy, damage/loss/theft of data, degradation, downtime, etc.) and intellectual property infringement, such as copyrights, trademarks, service marks and trade dress. No exclusions shall be listed within the policy for unencrypted or portable devices. Notwithstanding any other provision of this Agreement, Seller shall purchase and maintain extended reporting period coverage providing that claims first made and reported to the insurance company within two (2) years after termination of the Agreement or cancellation of the insurance policy (and without new policy having the same retroactive date as the effective date of this Agreement) will be deemed to have been

made during the policy period. Policy or policies shall also explicitly include Subcontractors.

- (h) Professional Liability Insurance. Seller shall maintain professional liability policy or policies insuring against liability for errors and omissions covering the professional activities contemplated under this Agreement in an amount of Five Million Dollars (\$5,000,000) per claim. If the policy maintains a policy aggregate, such aggregate shall be twice the per claim limit. Such insurance shall be kept in effect for three years after termination of this Agreement.
- (i) Aviation Insurance. If applicable to the scope of work, Seller shall procure and maintain aircraft liability insurance covering third party bodily injury and property damage exposure, including, but not limited to, passenger liability, property damage liability, and contractual liability insurance (with an express acknowledgement by the underwriters that the indemnification and hold harmless provisions of this Agreement are insured). Such insurance shall be in the amount of not less than Eight Million Dollars (\$8,000,000) per passenger being transported at any one time (with no per passenger sub-limits); provided, however, that such insurance shall at no time be less than Fifteen Million Dollars (\$15,000,000) combined single limit (CSL) per occurrence. There shall be no unmanned aerial vehicle exclusion. The aircraft liability insurance policy shall not exclude fire suppression costs.
- (j) Ocean Marine Cargo and Inland Transit Cargo Insurance. If applicable to the scope of work, Seller shall carry and maintain ocean marine cargo and inland transit cargo policy or policies, insuring against “all risks” of physical loss of or damage to pipe, equipment, materials, machinery, spares, supplies and other property intended to be incorporated to the project occurring during transportation (including loading and off-loading) thereof to the work site or its vicinity, or an ancillary site. Such coverage shall be in an amount equal to 110% of the invoice value plus prepaid or advanced freight plus customs and duty, any one consignment or shipment in transit. Goods in storage shall be valued at replacement cost on the date of loss. Coverage shall be extended to include Warehouse to Warehouse coverage, War Risks, and Strikes, Riots and Civil Commotion. Buyer shall be named as Additional Assured and Loss Payee as respects their interests
- (k) SDG&E as Additional Insured. The insurance required in Section 30.15 shall apply as primary insurance to, without a right of contribution from, any other insurance or self-insurance maintained by or afforded to SDG&E, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, and employees, regardless of any conflicting provision in Seller's policies to the contrary. To the extent

permitted by law, Seller and its insurers shall be required to waive all rights of recovery from or subrogation against SDG&E, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees and insurers. The Commercial General Liability, Pollution Liability, Umbrella/Excess Liability, Cyber Risk Liability and Ocean Marine Cargo and Inland Transit Cargo insurance required above shall name SDG&E, its Parent company, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents and employees, as additional insureds by endorsement for liability arising out of Seller's obligations under this Agreement.

- (l) Certificates of Insurance. On or before the Effective Date and thereafter during the Term, Seller shall furnish to SDG&E certificates of insurance including applicable endorsements, and renewal certificates of insurance and applicable endorsements 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 required under this Article. Seller shall not commence work until Seller has obtained all insurance required by this Article and has provided acceptable certificates of insurance. All deductibles, co-insurance and self-insured retentions applicable to the insurance above shall be paid by Seller. All certificates of insurance shall note that the insurers issuing coverage shall endeavor to provide SDG&E with at least thirty (30) days' prior written notice in the event of cancellation of coverage and ten (10) business days for non-payment of premium. SDG&E's receipt of certificates that do not comply with the requirements stated herein, or Seller's failure to provide certificates, shall not limit or relieve Seller of the duties and responsibility of maintaining insurance in compliance with the requirements in this Section 30.15 and shall not constitute a waiver of any of the requirements in this Section 30.15.
- (m) Failure to Comply. If Seller fails to comply with any of the provisions of this Section 30.15, Seller, among other things and without restricting SDG&E's remedies under the law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required insurance under this Section 30.15 (except for Workers Compensation), Seller shall provide a current, full and complete defense to SDG&E, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above.
- (n) Seller's Subcontractors. Seller shall require all other persons, firms and corporation engaged or employed by Seller in connection with the

performance of the Scope of Work to carry and maintain coverages with limits not less than those required by this Article. Exceptions shall be identified to SDG&E for SDG&E's approval or other direction. Seller shall incorporate insurance requirement by reference within any contract executed by Seller and its subcontractors, sub-subcontractors, suppliers, and agents and shall cause each subcontractor, sub-subcontractors, suppliers, and agent to comply with the terms of this Agreement. Seller shall obtain and verify accuracy in their entirety of certificates of insurance evidencing required coverage prior to permitting any of its subcontractors, sub-subcontractors, suppliers, and agents to perform Work under this Agreement or any Release. Seller shall furnish original certificates of insurance with additional insured endorsements from all of its subcontractors, sub-subcontractors, suppliers, and agents as evidence thereof as Company may reasonably request.

30.16. Multiple Originals.

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission or by other electronic means shall constitute effective execution and delivery of this Agreement as to the Parties may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or by other electronic means shall be deemed to be their original signatures for all purposes. 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.

30.17. Entire Agreement.

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

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

<p><i>[SELLER'S NAME],</i> <i>a [Seller's jurisdiction of organization and type of organization].</i></p>	<p>SAN DIEGO GAS & ELECTRIC COMPANY, a California corporation.</p>
<p>By: _____ <i>[Name]</i> <i>[Title]</i></p>	<p>By: _____ <i>[Name]</i> <i>[Title]</i></p>
<p>Date: _____</p>	<p>Date: _____</p>

APPENDIX A DEFINITIONS

“ADS” has the meaning set forth in the Tariff.

“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” has the meaning set forth in the preamble.

“Air Pollution Control District” means a district as defined by Section 39025 of the California Health and Safety Code, Division 26, Air Resources.

“Ancillary Services” or “A/S” means any ancillary service as defined in the Tariff as it may be updated from time to time..

“Applicable Laws” means all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority that apply to either or both of the Parties, the Project or the terms of this Agreement including, without limitation, the Tariff.

“Approval Date” has the meaning set forth in Section 2.02.

“Arbitrator” has the meaning set forth in Section 27.03(a).

“Availability Incentive Payments” has the meaning set forth in the Tariff.

“Availability Notice” has the meaning set forth in Section 20.01.

“Availability Standards” has the meaning set forth in the Tariff.

“Available Capacity” means, collectively, Available Charging Capacity, Available Discharging Capacity, and Available Storage Capacity.

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

“Bid” has the meaning set forth in the Tariff.

“Business Day” means any day except a Saturday, Sunday, the Friday immediately following the U.S. Thanksgiving holiday, or a Federal Reserve Bank holiday.

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

“Buyer Dispatched Test” has the meaning set forth in Section 7.02(a).

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

“California Energy Commission” or “CEC” means the State Energy Resources Conservation and Development Commission as defined and used in Section 25104 in the California Public Resources Code, Division 15, Energy Conservation and Development (Sections 25000, *et seq*).

“Capacity” means, collectively, Charging Capacity, Discharging Capacity, and Storage Capacity.

“Capacity Availability” means, for each Settlement Interval during the Delivery Period, the lesser of the following for the Project:

- (a) the Available Storage Capacity; or
- (b) the Available Charging Capacity; or

In no event shall the Capacity Availability be less than zero (0) MW or greater than SU Contract Capacity.

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

“Charging Capacity” means the maximum dependable operating capability of any storage resource to charge electric energy into a storage device, and shall include, without limitation, Ancillary Services Capacity, and any other products that may be developed or evolve from time to time during the Term that relate to the capability of a storage resource to store and charge energy.

“Charging Energy Costs” has the meaning set forth in Section 16.03.

“Charging Energy Requirements” means the electric energy requirements of the Project that is withdrawn from the SDG&E’s electrical system to be stored by the Project and discharged at a later time. Under no circumstances does Charging Energy Requirements include Station Use.

“Claiming Party” means the Party claiming a Force Majeure under Article Twenty-Three.

“Collateral Assignment Agreement” has the meaning set forth in Section 14.01.

“Commercial Operation” means [INSERT FOR NON-STORAGE, including achieving at least 90% of Expected Contract Capacity] that the Project has (i) successfully completed the demonstration set forth in Appendix 7, (ii) has met the requirements of Appendix 7 and (iii) SDG&E has accepted the test results.

“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, a load-serving entity is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, to the CAISO pursuant to the Tariff, or to any Governmental Authority having jurisdiction.

“Confidential Information” means any and all written or recorded or oral 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, including Dispatch Data, 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, and the terms and conditions and other facts with respect to this Agreement. Confidential Information 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, 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*, 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 that the information has been independently developed without a violation of this Agreement.

“Construction Period Security” has the meaning set forth in Section 13.02(b).

“Construction Report” has the meaning set forth in Section 6.01.

“Contract Capacity” means the aggregate Capacity of the Project. As of the Effective Date, the Contract Capacity shall equal the aggregate of the Contract Capacity for the Project as set forth in Appendix 1.01. Contract Capacity shall be adjusted to reflect the updated Contract Capacity achieved by the Project’s performance; *provided*, that in no event may the Contract Capacity exceed the aggregate Contract Capacity of the Project.

“Contract Capacity & Ancillary Services Tests” means the testing procedures, requirements, and protocols set forth in Appendix 7

“Contract Year” means the months within each calendar year during the Delivery Period. The initial Contract Year would be from the Initial Delivery Date until December 31st of such year. The second (2nd) Contract Year would be from January 1st through December 31st of the year

immediately following the initial Contract Year. The final Contract Year will be January 1st of the last year during which the Delivery Period occurs, through the last day of the Delivery Period.

“Control Area” means the electric power system (or combination of electric power systems) under the operational control of the CAISO or any other electric power system under the operational control of another organization vested with authority comparable to that of the CAISO.

“Cost Allocation Mechanism Group” or “CAM” means the advisory group established by the CPUC in Decision 07-12-052.

“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. With respect to SDG&E, Costs shall be based on replacing the Product with product from new energy storage capacity with similar attributes, including with respect to credit towards SDG&E’s procurement requirements under the CPUC Decision 13-10-040.

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

“CPUC” means the California Public Utilities Commission or any successor thereto.

“CPUC Filing Guide” is the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for load-serving entities to demonstrate compliance with the CPUC’s resource adequacy program.

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

“Daily Delay Damages” means liquidated damages in the amount of the product of \$[]/MW and the Contract Capacity of all of the Project 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.

“Defaulting Party” has the meaning set forth in Sections 3.01 and 3.02.

“Demand Reduction” means the amount of actual load reduction achieved by the Project in response to a Dispatch Notice.

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

“Delivery Period” has the meaning set forth in Section 2.04.

“Delivery Period Security” has the meaning set forth in Section 13.02(c).

“Development Period Security” has the meaning set forth in Section 13.02(a).

“Discharging Capacity” means the maximum dependable operating capability of the Project to discharge energy, and shall include, without limitation, Ancillary Services Capacity, and any other products that may be developed or evolve from time to time during the Term that relate to the capability of a storage resource to store and discharge energy.

“Dispatch Data” means data, information or other material in any way related to any schedule, dispatch, charging, discharges or instruction of the Project, including any schedules, dispatches, Dispatch Notices, discharges, charges, settlement statements, Ancillary Services dispatches or awards, if applicable.

“Dispatch Notice” means the operating instruction, and any subsequent updates, given by SDG&E to Seller, directing the Project to discharge at a specified megawatt output or a dispatch given by the CAISO. Dispatch Notices may be communicated electronically (i.e. through ADS or e-mail), via facsimile, telephonically or other verbal means. Telephonic or other verbal communications shall be documented (either recorded by tape, electronically or in writing) and such recordings shall be made available to both SDG&E and Seller upon request for settlement purposes. For the avoidance of doubt, any Schedule, including self-schedules, submitted by SDG&E or awarded by the CAISO in order to effectuate a Seller Initiated Test shall not be considered a Dispatch Notice for the period that is the greater of (i) the number of hours required to complete the test, or (ii) the Project’s Minimum Run Time.

“Dispatch Notice Penalty” means \$500 for each failure to comply in any respect with a Dispatch Notice from SDG&E.

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

“Disqualified Stock” means any capital stock that, by its terms (or by the term of any security instrument into which it is convertible, or for which it is exchangeable, in each case at the option of the holder of the capital stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the capital stock, in whole or in part, on or prior to the date that is ninety-one (91) days after the last day of the Term.

“Distributed Control System” or “DCS” means the integrated automation system for monitoring and controlling the critical operation functions of a facility that perform tasks essential to the charge, discharge and storage of electricity.

“Early Termination Date” has the meaning set forth in Section 3.03.

“EFC” means the effective flexible capacity (in MWs) of the Project pursuant to the counting conventions set forth in the Resource Adequacy Rulings and Tariff, which such flexible capacity may be used to satisfy Flexible RAR.

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

“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 a 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.

“EPC Contract” means Seller’s engineering, procurement and construction contract with the EPC Contractor.

“EPC Contractor” means the entity chosen by Seller to perform the engineering, procurement and construction activities for the Project.

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

“Event of Default” has the meaning set forth in Sections 3.01 and 3.02.

“Executive(s)” has the meaning set forth in Section 27.02(a).

“Existing Zone” has the meaning set forth in the Tariff.

“Existing Zone Generation Trading Hub” has the meaning set forth in the Tariff.

“Expected Contract Capacity” means the expected capability of the Project to deliver the Product as measured in kW for daily planning and operation purposes as set forth in Appendix 1.01.

“Expected Contract Quantity” means, with respect to any particular day of any Showing Month, the Product (in kW) for such day of such Showing Month, less any reductions to the amount of Product (in kW) that must be provided for such day as specified in Section 12.03.

“Expected Initial Delivery Date” is the date set forth in Section 2.03.

“Federal Funds Effective Rate” means the rate for that day opposite the caption “Federal Funds (effective)” as set forth in the weekly statistical release as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.

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

“Final CPUC Approval” means a decision of the CPUC that (i) is final and no longer subject to appeal, which approves the Agreement in full and in the form presented on terms and conditions

acceptable to SDG&E in its sole discretion, including without limitation terms and conditions related to cost recovery and cost allocation of amounts paid to Seller under the Agreement; (ii) does not contain conditions or modifications unacceptable to SDG&E, in SDG&E's sole discretion; and (iii) finds that any procurement pursuant to this Agreement satisfies the requirement to procure energy storage resources under CPUC Decision 13-10-040.

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

“Flexible Capacity” means, with respect to any particular Showing Month, the number of MWs of Product which are eligible to satisfy Flexible RAR.

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

“Force Majeure” means any event or circumstance to the extent beyond the control of, and not the result of the negligence of, or caused by, the Party seeking to have its performance obligation excused thereby, which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome including but not limited to (but only to the extent that the following examples satisfy such definition): (a) acts of God such as droughts, floods, earthquakes, (b) adverse geological or underground conditions that could not have been discovered through a reasonably prudent geophysical site survey, (c) war (declared or undeclared), riots, insurrection, rebellion, acts of the public enemy, acts of terrorism and sabotage, blockades, and embargoes, and (d) industry-wide or general (i.e. not directed specifically at or by the party claiming Force Majeure) strikes, lockouts or other labor disputes. Force Majeure shall not include (i) a failure of performance of any other entity, including any entity providing electric transmission service to the Project, except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure event, (ii) failure to timely apply for or obtain permits, or (iii) breakage or malfunction of equipment (except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure).

“Forced Outage” has the meaning set forth in the Tariff.

“Forward Settlement Amount” means the Non-Defaulting Party's Costs and Losses, on the one hand, netted against its Gains, on the other.

If the Non-Defaulting Party's Costs and Losses exceed its Gains, then the Forward Settlement Amount shall be an amount owing to the Non-Defaulting Party.

If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Forward Settlement Amount shall be Zero dollars (\$0).

The Forward Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

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

“GADS” means the Generating Availability Data System, or its successor.

“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 of the Agreement, determined in a commercially reasonable manner, as described below. SDG&E, Gains shall be based on replacing the Product with product from new energy storage capacity with similar attributes, including with respect to credit towards SDG&E’s procurement requirements under the CPUC Decision 13-10-040.

Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Term of this Agreement.

Only if the Non-Defaulting Party is unable, after using commercially reasonable efforts, to obtain third party information to determine the gain of economic benefits, *then* the Non-Defaulting Party may use information available to it internally suitable for this purpose in accordance with prudent industry practices.

“Generator Operator” means the entity that operates any generating unit(s) and performs the functions of supplying energy and interconnected operations services and the other functions of a generator operator as described in NERC’s Statement of Compliance Registry Criteria located on the NERC website.

“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, exchange or grid control operator having or asserting jurisdiction over a Party, the Project or this Agreement.

“Governmental Charges” has the meaning set forth in Section 15.01.

“Grid Control Center” means the location of the personnel responsible for operating the applicable transmission grid and/or coordinating same with the CAISO.

“Hazardous Material” means any substance, waste, or material which has been designated as hazardous or toxic by the United States Environmental Protection Agency, the federal Occupational Safety and Health Administration (“OSHA”), California OSHA, the California Environmental Protection Agency, the California Office of Environmental Health Hazard Assessment, the California Department of Toxic Substances Control, the California State Water Resources Control Board, or any other environmental agency now or subsequently authorized to regulate materials in the environment or workplace.

“IFRS” has the meaning set forth in Section 13.01.

“Indemnified Party” has the meaning set forth in Section 28.03.

“Indemnitor” has the meaning set forth in Section 28.03.

“Independent Evaluator” has the meaning set forth in CPUC Decision 04-12-048 “Industry Standards” has the meaning set forth in Section 8.01(a).

“Inflexible Capacity” means, with respect to any particular month of the Delivery Period, the number of MWs of Product which are not eligible to satisfy Flexible RAR. Inflexible Capacity is also known as ‘generic capacity’.

“Initial Commercial Operation Test” means, the testing procedures, requirements, and protocols set forth in Appendix 7.

“Initial Delivery Date” has the meaning set forth in Section 2.04.

“Initial Delivery Deadline” has the meaning set forth in Section 2.04(o).

“Initial Negotiation End Date” has the meaning set forth in Section 27.02(a).

“Interconnection Facilities” means all apparatus installed between the Project and the Point of Interconnection on the PTO’s system, other participating transmission owner’s system, or the CAISO Grid, to interconnect the Project to make the Product available to SDG&E and to charge and discharge the Project, including connection, Tie-Line, transformation, switching, metering, communications, control, and safety equipment, such as equipment required to protect (a) the PTO’s electric system (or other participating transmission owner’s system to which the PTO’s electric system is connected, including the CAISO Grid) and SDG&E’s customers from faults occurring at the Project, and (b) the Project from faults occurring on the PTO’s electric system or on other participating transmission owner’s system to which the PTO’s electric system is connected.

“Interconnection Queue Position” is the order of Seller’s valid request for interconnection relative to all other valid interconnection requests, as specified in Section 1.03(c).

“Interconnection Study” or “Interconnection Studies” means (a) any of the studies defined in the Tariff or any PTO’s tariff that reflect methodology and costs to interconnect the Project to the PTO’s electric grid, and (b) any of the studies performed by the PTO, retail electric service provider, or CAISO pursuant to Applicable Law that reflect the costs to interconnect, or establish service for, the Project for purposes of charging the Project with electric energy.

“Interest 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.

“JAMS” means Judicial Arbitration and Mediation Services, Inc.

“kW” means kilowatt or kilowatts.

“kWh” means kilowatt-hour or kilowatt-hours.

“Lender” means any and all financial institutions that provide to Seller any development, bridge, construction, permanent debt, tax equity, Performance Assurance, or other form of financing or refinancing, or other credit support, relating to the Project. “Letter of Credit” means an irrevocable, nontransferable standby letter of credit issued by a Qualified Institution, which letter of credit shall be substantially in the form of Appendix 13.02(b) and reasonably acceptable to SDG&E. All Letter of Credit costs shall be borne by Seller.

“Letter of Credit Default” means with respect to a Letter of Credit, the occurrence of any of the following events: (a) the issuer of such Letter of Credit fails to be a Qualified Institution; (b) the issuer of such Letter of Credit fails to comply with or perform its obligations under such Letter of Credit; (c) the issuer of such Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges 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; or (e) the issuer of such Letter of Credit becomes Bankrupt; *provided*, no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Agreement.

“Local Capacity Area” has the meaning set forth in the Tariff.

“Local RAR” means the local resource adequacy requirements established for load-serving entities by the CPUC pursuant to the Resource Adequacy Rulings, the CAISO pursuant to the Tariff, or by any other Governmental Authority 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.

“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 the termination of the Agreement, determined in a commercially reasonable manner, as described below. SDG&E, Losses shall be based on replacing the Product with product from new energy storage capacity with similar attributes, including with respect to credit towards SDG&E’s procurement requirements under the CPUC Decision 13-10-040.

Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of

the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Term of this Agreement.

Only if the Non-Defaulting Party is unable, after using commercially reasonable efforts, to obtain third party information to determine the loss of economic benefits, then the Non-Defaulting Party may use information available to it internally suitable for these purposes in accordance with prudent industry practices.

“Manager” has the meaning set forth in Section 27.02(a).

“Market Based Rate Authority” means authority granted by FERC to charge market-based rates for electrical power pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d.

“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)).

“Master File” has the meaning set forth in the Tariff.

“Maximum Charge” has the meaning set forth in Appendix 1.01.

“Maximum Discharge” has the meaning set forth in Appendix 1.01.

“Maximum Storage Level” means the MWh amount under “Maximum Storage Level” as set forth in Appendix 1.01.

“Milestone Schedule” means the completed schedule in the form of Appendix 6.01(A), setting forth Seller’s engineering, permitting, procurement, contract, financing, and construction milestones.

“Minimum Load” has the meaning set forth in Appendix 1.01.

“Monthly RA Capacity Payment” has the meaning set forth in Section 9.02(a).

“Monthly RA Capacity Price” means, for any Showing Month, the applicable price for such Showing Month as listed in Appendix 9.02.

“Moody’s” means Moody’s Investor Services, Inc. or its successor.

“Must Offer Obligation” has the meaning set forth in the Tariff for the applicable Resource Adequacy Product.

“MW” means megawatt or megawatts.

“MWh” means megawatt-hour or megawatt-hours.

“NERC” means the North American Electric Reliability Council, or any successor thereto.

“NERC/GADS Protocols” means the NERC Generating Availability Data System protocols, as may be updated from time to time.

“NERC Reliability Standards” means those reliability standards applicable to a generating or storage facility or to the Generator Owner or the Generator Operator with respect to the generating or storage facility, that are adopted by NERC and approved by the applicable regulatory authorities and available on the NERC website.

“Net Qualifying Capacity” or “NQC” means the Net Qualifying Capacity set by the CAISO for Project.

“New Resource” means that the Project (a) has a remaining design life of at least [#] years after the Initial Delivery Date as attested by an engineering assessment performed by a professional mechanical engineer (with experience acceptable to SDG&E in its sole discretion) licensed by the State of California and (b) was installed and first became operational after January 1, 2010 as provided in the CPUC Decision 13-10-040.

“Non-Availability Charges” has the meaning set forth in the Tariff.

“Non-Defaulting Party” has the meaning set forth in Section 3.03.

“Non-SDG&E Dispatch” means a dispatch by Seller either (a) pursuant to a Seller Initiated Test or (b) as required by Applicable Laws.

“Non-Specified RA Replacement Capacity” has the meaning set forth in the Tariff

“Non-Spinning Reserve” has the meaning set forth in the Tariff.

“Notice” has the meaning set forth in Section 30.02.

“Obligation Month” has the meaning set forth in Section 11.01.

“Operating Day” means a day within the Delivery Period on which the Project operates.

“Operating Restrictions” means, subject to Section 20.04(b), limitations on SDG&E’s ability to schedule and use Capacity and Ancillary Services during the Delivery Period that are identified in Appendix 1.01.

“Outage” has the meaning set forth in the Tariff.

“Outage Management System” has the meaning set forth in Section 20.01.

“Outage Schedule” has the meaning set forth in Section 22.01.

“Pacific Prevailing Time” or “PPT” means Pacific Daylight Time when California observes Daylight Savings Time and Pacific Standard Time otherwise.

“Participating Load Agreement” or “PLA” has the meaning set forth in the Tariff.

“Participating Transmission Owner” or “PTO” means any entity or entities responsible for the interconnection of the Project with a Control Area or transmitting the Energy on behalf of Seller from the Project to the Point of Interconnection.

“Party” or “Parties” has the meaning set in the preamble.

“PDR” has the meaning set forth in the Tariff

“Performance Assurance” means collateral, including Development Period Security, Construction Period Security, and Delivery Period Security in the form of cash, or Letter of Credit.

“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 limitations on any pollutant emissions levels, limitations on fuel combustion or heat input throughput, limitations on operational levels or operational time, limitations on any specified operating constraint, requirements for acquisition and provision of any Emission Reduction Credits or Marketable Emission Trading Credits; or any other operational restriction or specification related to compliance with any Applicable Laws.

“Planned Outage” has the meaning set forth in the tariff and Resource Adequacy Rulings as applicable to the Project, namely a planned outage for the routine repair or maintenance of the Project, or for the purposes of new construction work, and does not include any outage designated as forced or unplanned as defined by the CAISO or NERC/GADS Protocols.

“Point of Interconnection” has the meaning set forth in Section 1.03(b).

“Prevention Equipment” has the meaning set forth in Section 5.01(e).

“Procurement Review Group” or “PRG” has the meaning set forth in Section 29.02(a).

“Product” means (a) any and all [NOTE: include if bid: Capacity, Ancillary Services, Ancillary Service Capacity and]Resource Adequacy Benefits, or any other benefits associated therewith, associated with the Project under the terms of this Agreement, and (b) during any other portion of the Delivery Period, all Resource Adequacy Benefits associated with the Project, provided that:

- (i) any change by the CAISO, CPUC or other Governmental Authority that defines new or re-defines existing Local Capacity Areas that results in a decrease or increase in the amount of Resource Adequacy Benefits related to a Local Capacity Area provided hereunder will not result in a change in payments made pursuant to this Agreement;
- (ii) any change by the CAISO, CPUC or other Governmental Authority that defines new or re-defines existing Flexible RAR, Resource Adequacy Benefits related to Flexible RAR, or attributes of the Project related to Flexible RAR, that results in a decrease or

increase in the amount of Resource Adequacy Benefits related to Flexible RAR provided hereunder will not result in a change in payments made pursuant to this Agreement;

(iii) the Parties agree that if the CAISO, CPUC or other Governmental Authority defines new or re-defines existing Local Capacity Areas whereby the Project subsequently qualifies for a Local Capacity Area, the Product shall include all Resource Adequacy Benefits related to such Local Capacity Area; and

(iv) the Parties agree that if the CAISO, CPUC or other Governmental Authority defines new or re-defines existing Flexible RAR, Resource Adequacy Benefits related to Flexible RAR, or attributes of any PDR related to Flexible RAR whereby any PDR which did not previously qualify to satisfy Flexible RAR, subsequently qualifies to satisfy Flexible RAR, the Product shall include all Resource Adequacy Benefits of the PDR related to Flexible RAR.

“Project” [NOTE: discuss with seller] means the PDR or RDRR along with Interconnection Facilities (owned by Seller or Seller’s Affiliate), Prevention Equipment, and Protective Apparatus together with all materials, equipment systems, structures, features and improvements necessary to store, charge and discharge electric energy at the Project location(s), excluding the Site, land rights and interests in land and as more fully described in Appendix 1.03. *[SDG&E Comment: may require additional description in addition to Appendix 1.03]*

“Protective Apparatus” means control devices (such as meters, relays, power circuit breakers and synchronizers) specified in the interconnection agreement or related agreement for the Project.

“Prudent Electrical Practices” means those practices, methods and acts that would be implemented and followed by prudent operators of electric energy storage facilities in the Western United States, similar to the Project, 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 or that should reasonably have been 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.

Prudent Electrical Practices 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 and Applicable Laws.

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

- (a) Equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the needs of the Project;
- (b) Sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to operate the Project properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions at the Project and Transmission Emergencies whether caused by events on or off the Site;

- (c) Preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe operation of the Project, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;
- (d) Appropriate monitoring and testing are performed to ensure equipment is functioning as designed;
- (e) Equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public, or the PTO's electric system or contrary to environmental laws, permits or regulations or without regard to defined limitations such as, flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and
- (f) Equipment and components are designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy storage facilities operating in the Western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.

“Qualified Institution” means either (A) a commercial bank or financial institution (that is not an Affiliate of Seller) organized under the laws of the United States or a political subdivision thereof or (B) a U.S. branch office of a foreign bank, and, with respect to both entities identified in clause (A) and (B), (i) (a) a Credit Ratings of at least “A-” by S&P, “A-” by Fitch and “A3” by Moody’s, if such entity is rated by the Ratings Agencies; (b) if such entity is rated by only two of the three Ratings Agencies, a Credit Rating from two of the three Ratings Agencies of at least “A-” by S&P, if such entity is rated by S&P, “A-” by Fitch, if such entity is rated by Fitch, and “A3” by Moody’s, if such entity is rated by Moody’s; or (c) a Credit Rating of at least “A-” by S&P or “A3” by Moody’s, or “A-” by Fitch if such entity is rated by only one Ratings Agency, and (ii) having shareholder equity (determined in accordance with GAAP, IFRS, or Successor) of at least \$1,000,000,000.00 (ONE BILLION AND 00/100 DOLLARS).

“RA Adjustment” has the meaning set forth in Section 10.01(c).

“RA Capacity Qualification Tests” means any and all tests, certifications or performance evaluations required by CAISO, the CPUC or any other applicable Governmental Authority pursuant to any Applicable Laws, including without limitation the Tariff, in order for the Project to obtain, maintain or update a Unit NQC and Unit EFC, including without limitation, testing for PMAX.

“RA Compliance Obligations” means the RAR, Local RAR and Flexible RAR.

“RA Replacement Capacity” has the meaning set forth in the Tariff.

“RAR” means the resource adequacy requirements established for load-serving entities by the CPUC pursuant to the Resource Adequacy Rulings, the CAISO pursuant to the Tariff, or by any other Governmental Authority having jurisdiction.

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

“RDRR” has the meaning set forth in the Tariff.

“Referral Date” has the meaning set forth in Section 27.02(a).

“Representatives” means the officers, directors, employees, legal counsel, accountants, lenders, advisors, or ratings agencies and other agents of a Party utilized in connection with this Agreement and, in the case of SDG&E, includes the Independent Evaluator.

“Required Permits” has the meaning set forth in Section 5.01(b).

“Required Permit Date” means the date set forth in Section 5.01(b).

“Resold Product” has the meaning set forth in Section 12.05.

“Resource Adequacy” shall have the meaning used in Resource Adequacy Rulings.

“Resource Adequacy Benefits” means, with respect to any Project, any and all of the following, in each case which are attributed to or associated with the Project at any time throughout the Delivery Period:

- (a) resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO, or other Governmental Authority having jurisdiction, that can be counted toward RAR;
- (b) resource adequacy attributes or other locational attributes for the Project related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Authority having jurisdiction, associated with the physical location or point of electrical interconnection of the Project within the CAISO Control Area, that can be counted toward a Local RAR;
- (c) flexible capacity resource adequacy attributes for the Project, including, without limitation, the amount of Unit EFC as may be identified from time to time by the CPUC, CAISO, or other Governmental Authority having jurisdiction, that can be counted toward Flexible RAR; and
- (d) other current or future defined characteristics, certificates, tags, credits, or accounting constructs, howsoever entitled, including any accounting construct counted toward any RA Compliance Obligations.

“Resource Adequacy Resource” shall have the meaning used in Resource Adequacy Rulings.

“Resource Adequacy Rulings” 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, 12-06-025, 13-06-024, and any other existing or subsequent decisions, resolutions, or rulings related to

resource adequacy, including, without limitation, the CPUC Filing Guide, in each case as may be amended from time to time by the CPUC.

“Responsible Officer” means the chief financial officer, treasurer or any assistant treasurer of a Party or any employee of a Party designated by any of the foregoing.

“Retest” has the meaning set forth in Appendix 7.

“Revised Initial Delivery Date” has the meaning set forth in Section 2.05(a).

“Rule 32” means SDG&E’s Electric Tariff Rule 32 or its successor.

“Satellite Communications System” or “SCS” means a system provided to Seller by SDG&E at SDG&E’s cost for emergency voice communications between SDG&E and Seller’s operating staff for the Project.

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

“Schedule” means the action of SDG&E in submitting Bids to the CAISO and receiving all CAISO Markets results from the CAISO.

“Scheduled Energy” means, the Energy from the Project expected to be delivered during each Settlement Interval to the Energy Delivery Point pursuant to (a) the latest Dispatch Notice, or (b) any CAISO instructions.

“Scheduled Outage” has the meaning set forth in the Tariff.

“Scheduling Coordinator” or “SC” means an entity certified by the CAISO for the purposes of undertaking the functions specified in Article Nineteen.

“SDG&E” has the meaning set forth in the preamble.

“SEC” means the United States Securities and Exchange Commission.

“Security Interest” has the meaning set forth in Section 13.03.

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

“Shortfall Capacity” has the meaning set forth in Section 12.06.

“Showing Month” shall be the calendar month of the Delivery Period that is the subject of the Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the Tariff. For illustrative purposes only, pursuant to the Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly Compliance Showing made in June is for the Showing Month of August.

“Simple Interest” means the product of the following three factors: (a) dollar amount on which an interest payment is based; (b) Federal Funds Effective Rate; and (c) the number of days in the calculation period divided by 360.

“Site” means the real property on which the Project is, or will be located, as further described in Section 1.02(d) and Appendix 1.03. *[SDG&E Comment: may require additional description in addition to Appendix 1.03 (e.g., parcel map, legal description)]*

“Site Certification” means the “California Energy Commission Power Facility and Site Certification” set forth in Section 5.01(b).

“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.

“SP15” means the Existing Zone Generation Trading Hub for Existing Zone region SP15 as set forth in the Tariff.

“Spinning Reserve” has the meaning set forth in the Tariff.

“Specified RA Replacement Capacity” has the meaning set forth in the Tariff.

“Start-Up” means the action of bringing the Project from shut down status to synchronization with the grid and the availability of unconditional release of the Project ready for ramping to the applicable Dispatch Notice. During [INSERT MONTHS.] the Delivery Period, a Start-Up can only result from a Dispatch Notice and is complete once all of the conditions in the preceding sentence are met.

“Station Use” means the electrical load of the Project’s auxiliary equipment that are necessary for operation of the Project as set forth in Section 1.02(c). The auxiliary equipment includes, but is not limited, to forced and induced draft fans, air conditioner systems, cooling towers, plant lighting, and control systems.

“Station Use Metering Equipment” means, for the Project, a CAISO-approved revenue quality meter or meters, CAISO-approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all electric energy consumed by the Project for Station Use.

“Storage Capacity” means the maximum amount of energy that is capable of being stored in a storage device, and shall include, without limitation, any other products that may be developed or evolve from time to time during the Term that relate to the capability of a storage resource to store energy.

“Successor” has the meaning set forth in Section 13.01.

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

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

“Term” has the meaning set forth in Section 2.01.

“Termination Payment” has the meaning set forth in Section 3.04.

“Tie-Line” means the transmission or distribution line between the Energy Delivery Point and the Point of Interconnection as more fully described in Appendix 1.03(A).

“Trading Day” means the day in which Day-Ahead trading occurs in accordance with the WECC Prescheduling Calendar.

“Trading Hour” has the meaning set forth in the Tariff.

“Transmission Emergency” means:

- (a) An actual or imminent condition or situation which jeopardizes the integrity of PTO’s electric system or the integrity of any other systems to which the PTO’s electric system is connected, as determined by the PTO in its reasonable discretion, or any condition so defined and declared by the CAISO; or
- (b) An emergency condition as defined under an interconnection agreement and any abnormal interconnection or system condition that requires automatic or immediate manual action to prevent or limit loss of load or generation supply, that could adversely affect the reliability of the PTO’s electric system or generation supply, that could adversely affect the reliability of any interconnected system, or that could otherwise pose a threat to public safety.

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

“NQC” means the Net Qualifying Capacity set by the CAISO for the Project.

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

“WECC Prescheduling Calendar” has the meaning used on the WECC website at <http://www.wecc.biz>.

“Wholesale Distribution Access Tariff” or “WDAT” means the tariff through which open access transmission service and interconnection service are offered by SDG&E, as filed with FERC, and as amended or supplemented from time to time, or any successor tariff.

“WMDVBE” means women, minority, and disabled veteran business enterprise, as more particularly set forth in CPUC General Order 156.

**APPENDIX 1.01
CAPACITY AND ANCILLARY SERVICES OPERATING RESTRICTIONS**

[NOTE TO BIDDERS: include only if bid]

APPENDIX 1.02
DESCRIPTION OF THE PROJECT

Excel Appendices

APPENDIX 1.03

PROJECT AND SITE DESCRIPTION

1. Project Description

*{SDG&E Comment: Seller **may** provide additional written description of the site beyond what is summarized in Appendix 1.02.}*

2. Site Plan Drawing

{SDG&E Comment: Seller must provide a depiction of the Project and where it is located on the Site. Details shall include the Point of Interconnection, points of ingress and egress, adjacent roads, labels of the Project's components and a legend if necessary}

3. Site Legal Description

{SDG&E Comment: Seller must provide a legal description of the site, including APN number.}

4. Site Map

{SDG&E Comment: Seller must provide a map of the area where the project is located. The map should indicate major highways and/or landmarks near the project as well as other roadways important to locate the site. The map should also include a latitude and longitude for the site.}

APPENDIX 6.01(A)
MILESTONE SCHEDULE

– Project Schedule –

[NOTE: SELLER TO PROVIDE ALL COMPLETED CUSTOMER REGISTRATION APPLICATIONS AT LEAST THREE (3) MONTHS PRIOR TO THE INITIAL DELIVERY DATE]

Seller has provided dates for development, construction, commissioning, and testing of the Project, showing all significant elements and milestones, as applicable, such as permitting, procurement, financing, engineering, acceptance testing, Seller's proposed Expected Initial Delivery Date, and proposed Delivery Period.

APPENDIX 6.01(B)
CONSTRUCTION REPORT

Monthly Project Progress Report

From the Effective Date and continuing until the Initial Delivery Date, Seller will provide a monthly Project Progress Report containing, at a minimum, the information listed below.

1. An executive summary;
2. Project bar chart schedule (including current status of all events);
3. Assessment of percent construction complete and percent change from immediately previous report;
4. Description of general work status (including short passages as applicable) on:
 - a. Engineering;
 - b. Procurement;
 - c. Permitting (include status of any required regulatory determinations for approval of Federal New Source Review permitting exemptions, expedited permitting processes, and status of acquisition of required ERCs and other emission credits in terms of impact on the Project's permitting schedule, over-all Project schedule, and ability of Project to meet Expected Initial Delivery Date);
 - d. Major construction activities in the prior month;
 - e. Testing;
 - f. Electrical interconnection status; and
 - g. Any other required interconnections.
5. Forecast activities for next month; and
6. Potential issues affecting the Project.

Seller must notify SDG&E's contract manager for the Agreement in writing of its receipt of any additional documents, which fall into the categories, listed (in a – f) below, and make such documents available to SDG&E within two (2) Business Days of such receipt:

- a. All material written commitments regarding construction work at the Project that could impact completion schedule or Initial Delivery Date;
- b. Executed work orders for construction of the Project;
- c. Construction agreements;
- d. Letters of intent;
- e. Precedent agreements; and
- f. Engineering assessments of the Project.

APPENDIX 7

[NOTE: TO BE DISCUSSED]

APPENDIX 9.02
Monthly RA Capacity Price

[NOTE TO BIDDER: Insert Pricing]

**APPENDIX 13.03(b)
LETTER OF CREDIT FORM**

[DATE]

To: San Diego Gas & Electric Company
555 W. Fifth Street
Mail Code: GT18A3
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 San Diego Gas & Electric Company (“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 Resource Adequacy 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 Performance Assurance Security as set forth and defined in the Resource Adequacy 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 sixty (60) days prior to any such expiry date we have sent you written notice by regular and registered mail or courier service that we elect not to permit this Letter of Credit to be so extended beyond, and will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry date will be honored.

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

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce, Publication No. 600 (“UCP”), except to

the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. Matters not covered by the UCP shall be governed and construed in accordance with the laws of the State of California.

[Name of Bank]

Authorized Signature(s)

**APPENDIX 20.01
AVAILABILITY NOTICE**

Availability Notice

Operating Day: _____

Station: _____ Issued By: _____

Unit: _____ Issued At: _____

Unit 100% Available No Restrictions: _____

Stored Energy Level: _____

Hour Ending	Available Capacity to Discharge	Available Capacity to Charge	Minimum Output	AGC Available	AGC Min Limit	AGC Max Limit	Storage Capacity Available to Charge	Storage Capacity Available to Discharge	Comments
	(MW)	(MW)	(MW) (non AGC)	YES/NO	(MW)	(MW)	(MWh)	(MWh)	
1:00									
2:00									
3:00									
4:00									
5:00									
6:00									
7:00									
8:00									
9:00									
10:00									
11:00									
12:00									
13:00									
14:00									
15:00									
16:00									
17:00									
18:00									
19:00									
20:00									
21:00									
22:00									
23:00									
0:00									

Comments: _____

**APPENDIX 20.02
DISPATCH NOTICES**

Dispatch Notice

Operating Day: _____

Station: _____ Issued By: _____

Unit: _____ Issued At: _____

Hour Ending	Scheduled Energy	AGC Scheduled	Regulation Up	Regulation Down	Spinning Reserve	Non-Spinning Reserves	Comments
	(MW)	YES/NO	(MW)	(MW)	(MW)	(MW)	
1:00							
2:00							
3:00							
4:00							
5:00							
6:00							
7:00							
8:00							
9:00							
10:00							
11:00							
12:00							
13:00							
14:00							
15:00							
16:00							
17:00							
18:00							
19:00							
20:00							
21:00							
22:00							
23:00							
0:00							

Comments: _____

**APPENDIX 20.03
START-UP NOTICE**

Date _____

Station _____

Issued By: _____

Unit _____

Issued At: _____

Date and Time Start-Up Initiated for Project _____

Date and Time Applicable Generating Unit Synchronized _____

Date and Time Project Released for Dispatch _____

APPENDIX 20.05 COMMUNICATIONS PROTOCOLS

Communication Protocols

These Communication Protocols are subject to change and shall be modified as evolving market conditions and rules may require.

1. Contacts and Authorized Representatives

The “Contact Information” tables set forth those contact functions, phone/fax numbers and e-mail information by which each Party elects to be contacted by the other. Notification provided under this Agreement shall be made to the applicable point of contact as set forth in the Contact Information Table. A Party may update its Contact Information by providing Notice to the other Party.

2. Communication Protocols – General

2.1 Intra-day Communication: All communications and notices between the Parties that occur intra-day and intra-hour for the applicable Operating Day including those regarding emergencies Dispatch Notices, Availability Notices, and notices to avoid imbalance penalties, uninstructed deviation charges/credits or any other CAISO charges, and **shall be provided electronically or telephonically as SDG&E directs** to the applicable Party.

If to Seller, such notices and communications shall be provided to the following contact, in order of priority, (1) _____, (2) _____, (3) _____. If to SDG&E, such notices and communications shall be provided to Real Time. **Each Party shall confirm all Intra-day Communication either electronically or via telephone as soon as practicable.**

2.2 Communication Failure: In the event of a failure of the primary communication link between Seller and SDG&E, both Parties will try all available means to communicate, including cell phones or additional communication devices as installed.

2.3 System Emergency: SDG&E and Seller shall communicate as soon as possible all changes to the schedule requested by the CAISO as a result of a system emergency.

2.4 Confidentiality: Confidential communications between the Parties in discharging their rights and obligations under the Agreement and these Communication Protocols will be subject to the applicable restrictions set forth in the Agreement.

2.5 Staffing: The 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 SDG&E

Outlined below is the contact and communication information for the relevant contact groups. This list may be amended by SDG&E with timely Notice to Seller.

Contact	Primary Phone	Secondary Phone	Fax	Email
Day-Ahead Trading				
Day-Ahead Scheduling				
Real Time				
Settlements – Power				
Contract Administration				
Outage Scheduling				

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 SDG&E.

Desk:	Contact:	Direct Phone:	Secondary Phones:	Fax	Email:
Dispatch Desk (Day-Ahead)					
Dispatch Desk (Real Time)					
Outage Desk					
Plant Manager					
Contract Administration					
Settlements					
Operations Manager					
Operations Supervisor					

**APPENDIX 21.03
DELIVERY OF DATA**

The following is a list of generic data points to be electronically exchanged between Seller and SDG&E in real time. SDG&E may add items to or delete items from this list at its reasonable discretion prior to the Initial Delivery Date.

Data Point	Point description
DNP - XXX UnitX Breaker	UNIT BREAKER
DNP - XXX UnitX AGC CTRL AVAILABILITY ON/OFF	UNIT AVAILABLE for AUTOMATED CONTROL
DNP - ISO RIG Lost Communication	RIG COMMUNICATION HEALTH
DNP - XXX UnitX High Operating Limit	UNIT HIGH OPERATING LIMIT
DNP - XXX UnitX Low Operating Limit	UNIT LOW OPERATING LIMIT
DNP - XXX UnitX ISO AGC set point	SET POINT FROM ISO WHEN ON REGULATION
DNP - XXX UnitX Net MW (POD)	POINT OF DELIVERY MW
DNP - XXX UnitX Max Sustained Ramp Rate	MAXIMUM SUSTAINED RAMP RATE
DNP - XXX UnitX AGC model - ISO AGC	CONTROL MODE INSTRUCTION
DNP - XXX UnitX AGC model – SFM	CONTROL MODE INSTRUCTION
DNP - XXX UnitX AGC model – MAN	CONTROL MODE INSTRUCTION
DNP - XXX UnitX AGC model – OFF	CONTROL MODE INSTRUCTION
DNP - XXX UnitX Dispatch Energy Schedule	DISPATCH ENERGY TARGET
DNP - XXX UnitX Reg Up Awarded MW	REGULATION UP AWARD MW
DNP - XXX UnitX RegDownp Awarded MW	REGULATION DOWN AWARD MW
DNP - XXX UnitX Spin Awarded MW	SPIN AWARD MW
DNP - XXX UnitX Non-Spin Awarded MW	NON SPIN AWARD MW
DNP - XXX UnitX Set Point (MW)	SET POINT FROM SDG&E
DNP - XXX UnitX Ramp Rate (MW/M)	CALCULATED RAMP RATE FROM SDG&E
DNP – XXX UNITX Instantaneous Energy Storage Level	ENERGY STORAGE LEVEL
DNP – XXX UNITX Max Charge Energy	MAX CHARGE ENERGY
DNP – XXX UNITX Max Discharge Energy	MAX DISCHARGE ENERGY
DNP – XXX UnitX Energy Charge Ramp Rate MW/min	ENERGY CHARGE RAMP RATE MW/min
DNP – XXX UnitX Energy Discharge Ramp Rate MW/min	ENERGY DISCHARGE RAMP RATE MW/min

**APPENDIX 22.01
PLANNED OUTAGE REPORT**

Actual Planned Outage Reports submitted under this Agreement should be provided in Excel.

DATE OF UPDATE	
RESOURCE NAME	

Planned Outages

Start Date	HE	End Date	HE	MW Available

LONG FORM CONFIRMATION
FOR RESOURCE ADEQUACY CAPACITY PRODUCT
Resource Adequacy Contract Number: _____

This confirmation letter ("Confirmation") confirms the transaction (the "Transaction") between _____ ("Seller") and San Diego Gas & Electric Company ("Buyer"), each individually a "Party" and together the "Parties", dated as of October __, 2016 (the "Confirmation Execution Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Section 3 of this Confirmation. This Transaction shall be deemed to have been entered into pursuant to, and shall supplement, form a part of, and be governed by the terms and conditions of the form of Master Power Purchase and Sale Agreement published by the Edison Electric Institute and the National Energy Marketers Association (version 2.1 dated 4/25/00) (the "EEI Agreement") with a Cover Sheet containing the elections and other changes contained herein as if the Parties have executed the EEI Agreement (with such Cover Sheet the "Master Agreement"). The Parties agree that the only transactions to be concluded pursuant to such Master Agreement shall be the Transaction documented in this Confirmation. The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein). To the extent that this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

Name: Party A / Seller

Name: Party B / Buyer

All Notices:

< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: (____) ____ - ____
Facsimile: (____) ____ - ____
Duns: _____
Federal Tax ID Number: _____

All Notices:

San Diego Gas & Electric Company
8315 Century Park Court CP 21D
San Diego CA 92123-1593
Attn: Contract Administration
Telephone: (858) 650-6176
Facsimile: (858) 650-6190
Duns: 006911457
Federal Tax ID Number: 95-1184800

Invoices:

< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: (____) ____ - ____
Facsimile: (____) ____ - ____

Invoices:

San Diego Gas & Electric Company
8315 Century Park Court
San Diego CA 92123-1593
Attn: Energy Accounting Manager
Telephone: (858) 650-6177
Facsimile: (858) 650-6190

Scheduling:

< company name >
< street address >
< city/state/zip >

Attn: _____
Day Ahead: () -
Real Time: () -
Facsimile: () -

Payments:

< company name >
< street address >
< city/state/zip >

Attn: _____
Telephone: () -
Facsimile: () -

Wire Transfer:

< bank name >
< bank street address >
< bank city/state/zip >

ABA Routing Number: _____
Payee: _____
Account Number: _____

Confirmation: _____
Facsimile: () -

Credit and Collections:

< company name >
< street address >
< city/state/zip >

Attn: _____
Telephone: () -
Facsimile: () -

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

< company name >
< street address >
< city/state/zip >

Attn: _____
Telephone: () -
Facsimile: () -

Scheduling:

San Diego Gas & Electric Company
8315 Century Park Court, CP 21D
San Diego, CA 92123-1593

Attn: Transaction Scheduling Manager
Day Ahead: (858) 650-6168
Real Time: (858) 650-6160
Facsimile: (858) 650-6191

Payments:

San Diego Gas & Electric Company
8315 Century Park Court
San Diego CA 92123-1593

Attn: Energy Accounting Manager
Telephone: (858) 650-6177
Facsimile: (858) 650-6190

Wire Transfer:

Union Bank of California
445 South Figueroa Street
Los Angeles CA 90071

ABA Routing Number: 122000496
Payee: San Diego Gas & Electric Company
Account Number: 4430000352

Confirmation: SDG&E – Major Markets
Facsimile: (213) 244-8316

Credit and Collections:

San Diego Gas & Electric Company
555 West Fifth Street, ML 18A3
Los Angeles, CA 90013-1011

Attn: Major Markets – Credit and
Collections Manager
Telephone: (213) 244-4343
Facsimile: (213) 244-8316

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

San Diego Gas & Electric Company
8330 Century Park Ct.
San Diego, California 92123

Attn: General Counsel
Telephone: (858) 650-6141
Facsimile: (858) 650-6106

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

Article Two

Transaction Terms
and Conditions

- Optional provision in Section 2.4.
If not checked, inapplicable.
-

Article Four

Remedies for Failure
to Deliver or Receive

- Accelerated Payment of Damages.
If not checked, inapplicable.
-

Article Five

Events of Default; Remedies

- Cross Default for Party A:
 Party A: _____ Cross Default Amount: _____
 Other Entity: _____ Cross Default Amount: _____
- Cross Default for Party B:
 Party B: N/A Cross Default Amount: N/A
 Other Entity: N/A Cross Default Amount: N/A

5.6 Closeout Setoff

- Option A (Applicable if no other selection is made.)
 Option B – Affiliates shall have the meaning set forth in
the Agreement unless otherwise specified as follows:

 Option C (No Setoff)
-

Article 8

Credit and
Collateral Requirements

8.1 Party A Credit Protection:

- (a) Financial Information:
 Option A
 Option B Specify: _____
 Option C Specify: _____
- (b) Credit Assurances:
 Not Applicable
 Applicable
- (c) Collateral Threshold:
 Not Applicable
 Applicable
- (d) Downgrade Event:
 Not Applicable
 Applicable
- (e) Guarantor for Party B: None.
Guarantee Amount: N/A

8.2 Party B Credit Protection: [SDG&E CREDIT
DEPARTMENT TO EVALUATE BASED ON
COUNTERPARTY]

- (a) Financial Information:
 - Option A
 - Option B Specify: _____
 - Option C Specify: _____
- (b) Credit Assurances:
 - Not Applicable
 - Applicable
- (c) Collateral Threshold:
 - Not Applicable
 - Applicable
 - If applicable, complete the following:
 - Party A Collateral Threshold: \$ _____;
 - provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.
 - Party A Independent Amount: \$ _____
 - Party A Rounding Amount: \$ _____
- (d) Downgrade Event:
 - Not Applicable
 - Applicable
 - If applicable, complete the following:
 - It shall be a Downgrade Event for Party A if Party A 's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party A is not rated by either S&P or Moody's
 - Other: Specify: _____
- (e) Guarantor for Party A: None
Guarantee Amount: N/A

Article 10

Confidentiality Confidentiality Applicable If not checked, inapplicable.

Schedule M

- Party A is a Governmental Entity or Public Power System
- Party B is a Governmental Entity or Public Power System
- Add Section 3.6. If not checked, inapplicable
- Add Section 8.4. If not checked, inapplicable

Other Changes

1. The modifications to Section 1.12, 1.50 and 5.2 of the Master Agreement specified in that certain Errata published by the Edison Electric Institute (version 1.1, July 18, 2007) are hereby incorporated herein as if set forth in full.
2. Section 10.2(ii) of the Master Agreement shall be modified by

inserting “Except for the conditions precedent described in Section 2.2 of this Confirmation,” at the beginning of the first sentence in such section.

3. Section 10.6 of the Master Agreement shall be deleted in its entirety and replaced with the following:

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

4. Schedule P: Products and Related Definitions shall be deleted in its entirety.

1. **Definitions**

- 1.1 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.2 “Availability Incentive Payments” has the meaning set forth in the Tariff and (if the Product includes any Flexible RA Attributes) includes any similarly defined payments under the Tariff in respect of Flexible RA Attributes.
- 1.3 “Availability Standards” has the meaning set forth in the Tariff and (if the Product includes any Flexible RA Attributes) includes any similarly defined standards under the Tariff in respect of Flexible RA Attributes.
- 1.4 “Buyer” has the meaning specified in the introductory paragraph.
- 1.5 “CAISO” means the California Independent System Operator Corporation, or any successor entity performing the same functions.
- 1.6 “Capacity Attributes” means (a) the Local RA Attributes, (b) the System RA Attributes, (c) the Flexible RA Attributes, and (d) any other current or future defined characteristics (including the ability to generate at a given capacity level, provide ancillary services, ramp up or down at a given rate, and flexibility or dispatch-ability attributes), certificates, tags, credits, howsoever entitled, including any accounting construct applied to any Compliance Obligations.
- 1.7 “Capacity Price” means the price specified in the Capacity Price Table in Section 4.1.
- 1.8 “Capacity Replacement Price” means (a) the actual rate per kW-day paid for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) including any

penalties, fines, transaction costs and expenses reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of Replacement Capacity, any penalties, fines, transaction costs and expenses plus the per kW-day market price for the Product not delivered by Seller under this Confirmation. Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 1.51 of the Master Agreement, "Capacity Replacement Price" shall be deemed the "Replacement Price" for this Transaction.

- 1.9 "Compliance Obligations" means the RAR, Local RAR, Flexible RAR, and other resource adequacy requirements associated with a generating unit's Capacity Attributes established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
- 1.10 "Compliance Showing" means one or more of the following: (a) Local RAR Showing, (b) RAR Showing, (c) Flexible RAR Showing, or (d) other Capacity Attributes compliance or advisory filing (or similar or successor showing or filing), in each case, that an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.11 "Confirmation" has the meaning specified in the introductory paragraph.
- 1.12 "Confirmation Effective Date" has the meaning specified in Section 2.2.
- 1.13 "Confirmation Execution Date" has the meaning specified in the introductory paragraph.
- 1.14 "Contract Price" means, for any day in any Monthly Delivery Period, the Capacity Price for such period.
- 1.15 "Contract Quantity" means the quantity of Product (in MW) as set forth in Section 3.4.
- 1.16 "Contract Term" has the meaning set forth in Section 2.1.
- 1.17 "CPUC" means the California Public Utilities Commission.
- 1.18 "CPUC Decisions" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-25, 13-06-024, 14-06-050, 15-06-063, and any other existing or subsequent decisions, resolutions or rulings related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.19 "CPUC Filing Guide" is the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSEs to demonstrate compliance with the CPUC's resource adequacy program as provided in the CPUC Decisions.
- 1.20 "Credit Rating" means, with respect to any entity, the rating assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) by S&P, Moody's or any other rating agency agreed by the Parties as set forth in the Master Agreement, or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an

issuer rating by S&P, Moody's or any other rating agency agreed by the Parties as set forth in the Master Agreement.

- 1.21 "Delivery Period" has the meaning specified in Section 3.3.
- 1.22 "Emission Reduction Credits" or "ERC(s)" means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby such district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.
- 1.23 "Environmental Costs" means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product's compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits (including any costs related to greenhouse gas emissions) required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the site, and the decontamination or remediation, on or off the site, necessitated by the introduction of such hazardous substances on the site.
- 1.24 "Flexible Capacity Category" has the meaning set forth in the Tariff.
- 1.25 "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 System RA Attributes and Local RA Attributes.
- 1.26 "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.
- 1.27 "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.
- 1.28 "GADS" means the Generating Availability Data System, or its successor.
- 1.29 "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.

- 1.30 “Local Capacity Area” has the meaning set forth in the Tariff.
- 1.31 “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 System RA Attributes and Flexible RA Attributes.
- 1.32 “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.
- 1.33 “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.
- 1.34 “LSE” means load-serving entity.
- 1.35 “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)).
- 1.36 “Master Agreement” has the meaning specified in the introductory paragraph.
- 1.37 “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.38 “Monthly Payment” has the meaning specified in Section 4.1.
- 1.39 “Moody’s” means Moody’s Investors Services, Inc. or its successor.
- 1.40 “NERC” means the North American Electric Reliability Corporation, or its successor.
- 1.41 “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.
- 1.42 “Net Qualifying Capacity” has the meaning set forth in the Tariff.

- 1.43 “Non-Availability Charges” has the meaning set forth in the Tariff and (if the Product includes any Flexible RA Attributes) includes any similarly defined charges under the Tariff in respect of Flexible RA Attributes.
- 1.44 “Non-Specified RA Replacement Capacity” has the meaning set forth in the Tariff and (if the Product includes any Flexible RA Attributes) includes any similarly defined capacity under the Tariff in respect of Flexible RA Attributes.
- 1.45 “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.
- 1.46 “Outage Schedule” has the meaning specified in Section 3.7.
- 1.47 “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.
- 1.48 “Product” has the meaning specified in Section 3.1.
- 1.49 “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.
- 1.50 “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.
- 1.51 “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.
- 1.52 “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.
- 1.53 “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.
- 1.54 “Replacement Rules” has the meaning set forth in Section 3.8(b).
- 1.55 “Replacement Unit” means a generating unit providing Replacement Capacity.
- 1.56 “Resource Category” shall be as described in the CPUC Filing Guide.
- 1.57 “RMR Contract” has the meaning set forth in the Tariff.

- 1.58 "S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc. or its successor).
- 1.59 "Scheduling Coordinator" or "SC" has the meaning set forth in the Tariff.
- 1.60 "Seller" has the meaning specified in the introductory paragraph.
- 1.61 "Seller's Firm Quantity" has the meaning set forth in Section 3.2.
- 1.62 "Showing Month" shall be the calendar month that is the subject of the Compliance Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Execution Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.63 "Specified RA Replacement Capacity" has meaning set forth in the Tariff and (if the Product includes any Flexible RA Attributes) includes any similarly defined capacity under the Tariff in respect of Flexible RA Attributes.
- 1.64 "Substitute/Specified Capacity" has the meaning set forth in Section 3.8(a).
- 1.65 "Substitution Rules" has the meaning set forth in Section 3.8(b).
- 1.66 "Supply Plan" has the meaning set forth in the Tariff and (if the Product includes any Flexible RA Attributes) includes any similarly defined plan under the Tariff in respect of Flexible RA Attributes.
- 1.67 "System 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 "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.
- 1.69 "Transaction" has the meaning specified in the introductory paragraph.
- 1.70 "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.
- 1.71 "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.
- 1.72 "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.
- 1.73 "Unit NQC" means the Net Qualifying Capacity established by the CAISO for the applicable Unit.
- 1.74 "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 Substitute/Specified Capacity under Section 3.8, and in all cases, shall not include (i) any portion of Seller's Firm Quantity for which Buyer is required under the Compliance Obligations or the Tariff to procure Replacement Capacity, and (ii) any portion of Seller's Firm Quantity for which Seller is required hereunder, but fails, to provide Replacement Capacity to Buyer.

2. Term

2.1 Contract Term

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

2.2 Conditions Precedent; Binding Nature

This Agreement shall not be effective or binding on either Party until, and it shall become effective and binding on both Parties as of, the date on which the conditions precedent, if any, described below shall have been achieved (or waived in writing by each of the Parties in their sole discretion) (the "Confirmation Effective Date").

(a) None.

If any of the foregoing conditions precedent are not achieved (or waived in writing by each of the Parties) on or before the deadline dates therefor (without extension for Force Majeure or any other reason), then this Agreement shall automatically terminate. If there are no conditions precedent listed above in this Section 2.2 then the Confirmation Effective Date shall be the Confirmation Execution Date. This Agreement shall be effective and binding as of the Confirmation Effective Date.

3. Transaction

3.1 Product

(a) Seller shall sell and Buyer shall receive and purchase, the Capacity Attributes (including all Local RA Attributes and Flexible RA Attributes) as described in Section 3.4 of the Units identified in Appendix A (collectively, the "Product") and Seller shall deliver the Product as described in Section 3.2 below. Product does not include any right to dispatch or receive the energy or ancillary services from the Unit. Seller retains the right to sell any Product from a Unit in excess of its Unit Contract Quantity.

(b) The Parties agree that (i) the Contract Price for the Product shall not change if the CAISO, CPUC or other Governmental Body (A) defines new or re-defines existing Local Capacity Areas which decreases or increases the amount of Local RA Attributes provided hereunder, or (B) defines new or re-defines existing Local Capacity Areas whereby the Units qualify for a Local Capacity Area and (ii) if the event in Section 3.1(b)(i)(B) occurs then the Product shall include such Local RA Attributes.

- (c) If the Product includes any Flexible RA Attributes, 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 Seller's 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 as otherwise stated in this Section 3.2 and except for reasons of Force Majeure, if the Unit(s) are not available to provide any portion of the Product for any reason including without limitation any Outage or any adjustment of the Capacity Attributes of any Unit(s), Seller shall provide Buyer with Replacement Capacity from one or more Replacement Units pursuant to Section 5.1. If Seller fails to provide Buyer with Replacement Capacity pursuant to Section 5.1, then Seller shall be liable for damages and/or to indemnify Buyer for penalties, fines or costs pursuant to the terms of Section 5 and Section 10. "Seller's Firm Quantity" shall equal the Contract Quantity during all times during the Delivery Period, except during the periods listed in Appendix B, during which time Seller's Firm Quantity shall be reduced by the Outage amount for each Unit specified in Appendix B and Seller shall not be obligated to and shall not provide Buyer with Replacement Capacity pursuant to Section 5.1 for the Outage amount resulting in the reduction in Seller's Firm Quantity as specified in the Outage Schedule in Appendix B.

3.3 Delivery Period

The "Delivery Period" shall be _____ thru _____, inclusive, unless terminated earlier in accordance with the terms of this Agreement.

3.4 Contract Quantity:

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

CONTRACT QUANTITY TABLE

Unit Name	CAISO Resource ID*	Month(s)	Unit Contract Quantity (MW) of Capacity Attributes		
			Local RA Attributes and/or System RA Attributes	Flexible RA Attributes	Flexible Capacity Category

Unit Name	CAISO Resource ID*	Month(s)	Unit Contract Quantity (MW) of Capacity Attributes		
			Local RA Attributes and/or System RA Attributes	Flexible RA Attributes	Flexible Capacity Category
* 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 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 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 associated with each Product type (i.e. System RA Attributes, Local RA Attributes, Flexible RA Attributes and Flexible Capacity Category) 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 Planned Outages

As of the Confirmation Execution Date, Seller and Buyer have agreed to all Planned Outages during the Delivery Period (other than “Short-Notice Opportunity RA Maintenance Outages”, “Off-Peak Opportunity RA Maintenance Outage” and “RA Maintenance Outage With Replacement” as defined or described in the Tariff) as specified in Appendix B (“Outage Schedule”). Seller shall, or cause the Unit’s SC to reconfirm the Outage Schedule or submit a schedule of proposed changes to the Outage Schedule, if any, to Buyer on each of the following dates during the Contract Term: (i) the Confirmation Effective Date, (ii) thirty (30) days before the applicable year-ahead showing, and (iii) no later than January 1, April 1, July 1 and October 1 of each calendar year. Within twenty (20) Business Days after its receipt of a schedule of proposed changes, Buyer shall notify Seller in writing of any reasonable request for modifications to such Seller proposed changes, and Seller shall, to the extent consistent with Good Utility Practices, accommodate Buyer’s requests regarding the timing of any Seller proposed changes to the Outage Schedule. In addition, Seller shall, or cause the Unit’s SC to, submit any subsequent Seller proposed changes to the Outage Schedule to Buyer at least ten (10) Business Days before such change is to occur. Within three (3) Business Days after its receipt of such Seller proposed change to the Outage Schedule, Buyer may notify Seller in writing of any reasonable requests for modifications to such Seller proposed changes. Seller shall, to the extent consistent with Good Utility Practices, accommodate Buyer’s requests regarding the timing of any Seller proposed changes to the Outage Schedule. Any such notification shall not affect Seller’s obligation to provide Replacement Capacity in accordance with Section 3.2, and any such changes to the Outage Schedule shall not alter or otherwise amend Seller’s Firm Quantities specified as of the Execution Date.

3.8 Unit Substitution; RA Replacement Capacity

- (a) Substitute/Specified 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 Specified RA Replacement Capacity or Non-Specified RA Replacement Capacity. The amount of Unit Contract Quantity that is the subject of such a request or notice shall be known as “Substitute/Specified Capacity” and, for purposes of calculating a Monthly Payment pursuant to Section 4.1, to the extent provided, such Substitute/Specified Capacity shall be deemed Unit Delivered Quantity provided consistent with Section 3.5.
- (b) Seller’s Obligations With Respect to Substitute/Specified Capacity: If Buyer requests Substitute/Specified Capacity, Seller shall (i) make such Substitute/Specified Capacity available to Buyer during the applicable Showing Month to allow Buyer to utilize, as applicable, the substitution rules in Section 40.9.4.2.1 of the Tariff including (if the Product includes any Flexible RA Attributes) any similarly defined substitution rules under the Tariff in respect of Flexible RA Attributes (“Substitution Rules”) or, if approved in accordance with the Applicable Laws, the replacement rules in Sections

9.3.1.3.1 and 9.3.1.3.2 of the Tariff including (if the Product includes any Flexible RA Attributes) any similarly defined replacement rules under the Tariff in respect of Flexible RA Attributes (the “Replacement Rules”), and (ii) take, or cause each Unit’s SC to take, all action to allow Buyer to utilize, as applicable, the Substitution Rules and the Replacement Rules, including, but not limited to, ensuring that the Substitute/Specified Capacity will qualify, as applicable, for substitution under the Substitution Rules and for replacement under the Replacement Rules, and providing Buyer with all information needed to utilize the Substitution Rules and Replacement Rules.

- (c) Seller agrees that all Substitute/Specified Capacity utilized by Buyer under the Substitution Rules and Replacement Rules, as applicable, is subject to the requirements identified in Section 3.6.
- (d) Failure to Provide Substitute/Specified Capacity: If Seller fails to provide Substitute/Specified Capacity or Buyer is unable to utilize the Substitute/Specified Capacity under the Substitution Rules and Replacement 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 CASIO would have paid the Buyer but for Seller failure, due to such failure or inability to utilize the Substitution Rules and Replacement Rules; provided, that if Buyer is unable to utilize the Substitution Rules because the Substitute/Specified Capacity does not qualify for substitution under Section 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:

$$\text{Monthly Payment per Unit} = \sum_{n=1}^d (A_n * B_n * 1000kW / MW)$$

where:

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

B = The difference between (i) the Unit Contract Quantity (in MW) for Capacity Attributes excluding Flexible RA Attributes (i.e. Local RA Attributes and/or System RA Attributes) as specified in the Contract Quantity Table in Section 3.5, minus (ii) the greater of (a) the amount (in MW), if any, that such Unit Contract Quantity for Capacity Attributes excluding Flexible RA Attributes exceeds the Unit Delivered Quantity for such Product provided by Seller for such Unit in that calendar day, or (b) the amount (in MW), if any, that the Unit Contract Quantity for Flexible RA Attributes of the specified Flexible Capacity Category as specified in the Contract Quantity Table in Section 3.5 exceeds the Unit Delivered Quantity for such Product provided by Seller for such Unit in that calendar day; provided, however, in no event shall this quantity “**B**” exceed Seller’s Firm Quantity for such Unit (in MW) for Capacity Attributes excluding Flexible RA Attributes as specified in the Contract Quantity Table in Section 3.5 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

2017 Contract Month	Capacity Price (\$/kW-day)
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	

2017 Contract Month	Capacity Price (\$/kW-day)
December	

4.2 Allocation of Other Payments and Costs

- (a) Seller shall retain any revenues it may receive from and pay all costs charged by, the CAISO or any other third party with respect to any Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, and (iv) any revenues for black start or reactive power services. Seller shall indemnify, defend and hold Buyer harmless from and against all liabilities, damages, claims, losses, costs or expenses (including, without limitation, attorneys' fees) incurred by or brought against Buyer in connection with Environmental Costs.
- (b) Buyer shall be entitled to receive and retain all revenues associated with the Contract Quantity during the Delivery Period including any capacity or availability revenues from RMR Contracts for any Unit, Capacity Procurement Mechanism (CPM) or its successor, and Residual Unit Commitment (RUC) Availability Payments, or its successor but excluding payments described in Section 4.2(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 4.2(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.

4.3 Offset Rights

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

5. Seller's Failure to Deliver Contract Quantity

5.1 Seller's Duty to Provide Replacement Capacity

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), no later than fifteen (15) Business Days before the relevant deadline for an LSE's Compliance Showing, and
- (b) Within five (5) Business Days after receiving Seller's notification of Replacement Unit(s) above, Buyer shall notify Seller whether it has elected to purchase such Contract Quantity from such Replacement Unit(s). If Buyer has elected to purchase such Contract Quantity from such Replacement Unit(s), 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 Seller's Firm Quantity.

The designation of any Replacement Unit by Seller shall be subject to Buyer's prior written approval and its election, in its sole discretion, to purchase Contract Quantity from such Replacement Unit. 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 and has elected to purchase Contract Quantity from such 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. To the extent Buyer does not elect to purchase Contract Quantity from any Replacement Units offered by Seller within the notice deadlines specified in this Section 5.1, then Buyer shall not be obligated to pay Seller for such Contract Quantity that is not available from the Unit(s) identified in Appendix A and Seller shall not be liable for any damages payable to Buyer and/or indemnification of Buyer against any penalties, fines or costs under Section 5 and Section 10 with respect to the Contract Capacity associated with such Replacement Units. 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 Seller's Firm 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 Seller's Firm 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 (\$/kW-day) paid by Buyer times any Replacement Capacity (in MW) purchased by Buyer pursuant to Section 5.2(a) for such day times 1,000 kW/MW, plus (B) the Capacity Replacement Price (\$/kW-day) times the portion of Seller's Firm Quantity (in MW) 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 Seller's Firm Quantity (in MW) not provided for the applicable day in the applicable Monthly Delivery Period times the Contract Price (\$/kW-day) for that day times 1,000 kW/MW.

5.3 Indemnities for Failure to Deliver Seller's Firm Quantity

If Buyer is unable to purchase Replacement Capacity after Seller fails to provide Buyer a portion of the Seller's Firm 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 Seller's Firm 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 Seller's Firm 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 Seller's Firm Quantity;
- (c) A Unit's SC's failure to timely submit Supply Plans that identify Buyer's right to the Contract Quantity purchased hereunder, or;
- (d) any other failure by Seller to perform its obligations under this Confirmation.

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

6. Other Buyer and Seller Covenants

6.1 Seller's and Buyer's Duty to Take Action to Allow the Utilization of the Product

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

6.2 Seller's Represents, Warrants and Covenants

- (a) Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:
 - (i) 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;
 - (ii) 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;
 - (iii) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
 - (iv) Seller shall, and each Unit's SC, owner and operator is obligated to, comply with Applicable Laws, including the Tariff, relating to the Product;
 - (v) 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;
 - (vi) Seller has notified the SC of each Unit that Seller has transferred the Unit Contract Quantity applicable to such Unit to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff fully reflecting such transfer;

- (vii) 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;
- (viii) Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.2, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues;
- (ix) 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;
- (x) 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.

(b) Seller represents, warrants and covenants to Buyer that, as of the Confirmation Execution Date, all of the information set forth on Appendix A hereto is true, correct and complete.

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, Seller agrees to deliver a Letter of Credit or cash in the amount of _____ to Buyer and maintain such security in full force and effect until it is required to be returned in accordance with this Section 9. The security posted under this Section 9 shall not be deemed a limitation of Seller's damages. Buyer shall return to Seller any unused portion of this security after the following have occurred: (i) the Delivery Period has expired or terminated early; and (ii) all payment obligations of the Seller arising under this Confirmation, including compensation for penalties, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

10. Declaration of an Early Termination Date and Calculation of Settlement Amounts

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

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

[Signature page follows]

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

a _____

SAN DIEGO GAS & ELECTRIC COMPANY
a California corporation

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

APPROVED as to legal form _____

APPENDIX A

Unit Information

Unit Resource Name	
CAISO Resource ID	
Unit SCID	
2017 Unit NQC (MW)	
Prorated Percentage of Unit Factor	
2017 Unit EFC (MW)	<i>[Comment: If the Product does not include flexible capacity, insert "Not Applicable"]</i>
Prorated Percentage of Unit Flexible Factor	<i>[Comment: If the Product does not include flexible capacity, insert "Not Applicable"]</i>
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 (i.e. System RA Attributes and/or Local RA Attributes)	
Unit Contract Quantity (MW) for Flexible RA Attributes	
Flexible Capacity Category	<i>[Comment: If the Product does not include flexible capacity, insert "Not Applicable"]</i>
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	

Run Hour Restrictions	
-----------------------	--

APPENDIX B

Outage Schedule

Seller's Firm Quantity shall be, for each calendar day, on a Unit basis for each Unit, the Contract Quantity listed in Section 3.4, except as stated below:

Unit Name	CAISO Resource ID*	Outage (MW)	SLIC Outage Start Date	SLIC Outage End Date	Duration	Adjusted Seller's Firm Quantity (MW) of Capacity Attributes	
					Days	Local RA Attributes and/or System RA Attributes	Flexible RA Attributes

* CAISO Resource ID should match a Unit described in Appendix A

RFO Draft for discussion purposes only

SDG&E Draft 4/29/2016

2016 Preferred Resources RFO Model Agreement

ENERGY EFFICIENCY RESOURCE PURCHASE AGREEMENT

between

[NAME OF SELLER]

and

San Diego Gas & Electric Company

**ENERGY EFFICIENCY RESOURCE PURCHASE AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY**

Table Of Contents

Section		Page
PREAMBLE		1
DEFINITIONS.....		1
Article 1. DEFINITIONS		1
Article 2. TRANSACTION.....		12
2.1 Project.....		12
2.2 Initial Delivery Date; Initial Delivery Deadline.....		13
2.3 Delivery Period; Term.....		13
2.4 Monthly Contract Price Payment		13
2.5 Inspections.....		16
2.6 Annual True-Up		19
2.7 Permits and Licenses		21
2.8 Advertising and Marketing.....		21
2.9 Records.....		22
2.10 Subcontractors		22
2.11 Customer Complaint and Dispute Resolution Procedures		23
2.12 Documentation		23
Article 3. CPUC APPROVAL		24
Article 4. PAYMENT AND BILLING		24
4.1 Invoicing and Payment.....		24
4.2 Disputes and Adjustments of Invoices		25
4.3 Netting.....		25
Article 5. PERFORMANCE ASSURANCE.....		25

**ENERGY EFFICIENCY RESOURCE PURCHASE AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY**

Table Of Contents (Continued)

Section		Page
5.1	Performance Assurance Amount.....	25
5.2	Return of Performance Assurance.....	26
5.3	Grant of Security Interest/Remedies	26
5.4	Administration of Performance Assurance	27
5.5	Exercise of Rights Against Performance Assurance.....	29
5.6	Financial Information	29
5.7	Uniform Commercial Code Waiver	30
Article 6.	REPRESENTATIONS, WARRANTIES AND COVENANTS.....	30
6.1	Representations and Warranties of Both Parties	30
6.2	Additional Seller Representations, Warranties and Covenants.....	31
6.3	Taxes	32
Article 7.	NOTICES	33
7.1	Notice	33
7.2	Contact Information	33
Article 8.	EVENTS OF DEFAULT; TERMINATION	35
8.1	Events of Default.....	35
8.2	Remedies	36
8.3	Termination Payment	37
Article 9.	INDEMNIFICATION	37
9.1	Seller’s Indemnification Obligations.....	37
9.2	Indemnification Claims.	39
Article 10.	LIMITATION OF REMEDIES, LIABILITY, AND DAMAGES	39
Article 11.	CONFIDENTIALITY	40

ENERGY EFFICIENCY RESOURCE PURCHASE AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

Table Of Contents (Continued)

Section		Page
Article 12.	FORCE MAJEURE.....	42
Article 13.	INSURANCE	43
13.1	Insurance	43
13.2	SDG&E as Insured	45
13.3	Certificates of Insurance.....	45
13.4	Failure to Comply.....	45
Article 14.	DISPUTE RESOLUTION	46
14.1	Intent of the Parties.....	46
14.2	Management Negotiations.....	46
14.3	Arbitration	47
Article 15.	MISCELLANEOUS.....	48
15.1	Governing Law and Venue.....	48
15.2	Amendment	48
15.3	Assignment.....	48
15.4	Successors and Assigns	49
15.5	Waiver	49
15.6	Obligations Surviving Termination.....	49
15.7	No Agency.....	49
15.8	No Third Party Beneficiaries.....	49
15.9	Entire Agreement	49
15.10	Severability.....	50
15.11	Multiple Originals	50
15.12	Audit Rights	50

**ENERGY EFFICIENCY RESOURCE PURCHASE AGREEMENT
 BETWEEN
 [SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY**

Table Of Contents (Continued)

Section	Page
15.13 Performance Under this Agreement	50
15.14 Independent Contractor	50
EXHIBIT A	Form of Letter of Credit
EXHIBIT B	Project Description & M&V Plan
EXHIBIT B-1	Eligible Measures
EXHIBIT B-2	Measure Installation Notice
EXHIBIT B-3	Measure Installation Certificate
EXHIBIT B-4	List of Installed Measures
EXHIBIT C	Contracted Annual Energy Savings
EXHIBIT D	Contracted Annual Peak Capacity Savings

**ENERGY EFFICIENCY RESOURCE PURCHASE AGREEMENT
BY AND BETWEEN
[SELLER]
AND
SAN DIEGO GAS & ELECTRIC COMPANY**

This Energy Efficiency Resource Purchase Agreement, together with its exhibits (the “Agreement”) is entered into by and between San Diego Gas & Electric Company, a California corporation (“SDG&E”), and *[Seller]*, a *[Seller’s business registration]* (“Seller”), as of *[Date]* (“Execution Date”). SDG&E and Seller are referred to herein individually as a “Party” and collectively as “Parties.”

Whereas, the Seller has agreed to deliver a Project (as defined below) by installing Measures at one or more End-Use Customer Sites over the Term (as defined herein) that will result in improved energy efficiency and energy and capacity reductions at each such Site.

Whereas, SDG&E has agreed to pay Seller for completing, installing, and operating the Project and ensuring that it remains in place.

NOW, THEREFORE, in consideration of these recitals and the agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows.

ARTICLE 1. DEFINITIONS

1.1 General

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

“Acceptable Annual Inspection Report” means an Annual Inspection Report received by SDG&E of which SDG&E has provided Notice to Seller that it has accepted (or of which SDG&E is deemed to have accepted) pursuant to Section 2.5(c)(iii).

“Acceptable Pre-Delivery Period Inspection Report” means a Pre-Delivery Period Inspection Report received by SDG&E of which SDG&E has provided Notice to Seller that it has accepted (or of which SDG&E is deemed to have accepted) pursuant to Section 2.5(b)(iii).

“Accepted Electrical Practice” means those practices, methods, applicable codes and acts engaged in or approved by a significant portion of the electrical 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

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

of the electrical industry in the relevant region, during the relevant time period, as described in the immediately preceding sentence.

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

“Affordable Care Act” has the meaning set forth in Section 6.3(a).

“Annual Inspection” has the meaning set forth in Section 2.5(c)(i).

“Annual Inspection Report” means, in respect of a Contract Year, the report prepared by an Evaluator in accordance with the requirements of Section 2.5(c)(i), setting forth the Evaluator’s findings from the Annual Inspection for such Contract Year.

“Annual Inspection Report Deadline” has the meaning set forth in Section 2.5(c)(ii).

“Annual Energy Savings” means, in respect of a Contract Year, the annual reduction in energy of the Project during such Contract Year, as measured and calculated in accordance with Exhibit B.

“Annual Peak Capacity Savings” means, for each installed Measure, the expected annual reduction in peak electrical load capacity for such measure on the Inspection Date of the applicable Inspection Report, as measured and calculated in accordance with Exhibit B.

“Annual True-Up Payment” has the meaning set forth in Section 2.6.

“Arbitration” has the meaning set forth in Section 14.3.

“Bankrupt” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

“Billing Contract Year” means the subject Contract Year to which a Monthly Contract Price Payment refers.

“Billing Month” has the meaning set forth in Section 2.4(a).

“Business Day” means a day that is not a Saturday, Sunday, a Federal Reserve Bank holiday, or the Friday immediately following the U.S. Thanksgiving holiday. A Business

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

“CAISO” means the California Independent System Operator, or any successor entity.

“Capacity Weighted Factor” has the meaning set forth in Section 2.4(a).

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

“CEC” means the California Energy Commission, or any successor thereto.

“Claiming Party” has the meaning set forth in Article 12.

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

“Contract Year” means each twelve (12)-month period starting with the Initial Delivery Date.

“Contracted Annual Energy Savings” has the meaning set forth in Section 2.1.

“Contracted Annual Peak Capacity Savings” has the meaning set forth in Section 2.1.

“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions, legal expenses and other similar third party transaction costs and expenses reasonably incurred by that Party in entering into any new arrangement which replaces this Agreement.

“CPUC Approval” means a decision of the CPUC that (i) is final and no longer subject to appeal, which approves the Agreement in full and in the form presented on terms and conditions acceptable to SDG&E in its sole discretion, including without limitation terms and conditions related to cost recovery and cost allocation of amounts paid to Seller under the Agreement; (ii) does not contain conditions or modifications unacceptable to either Party, in either Party's sole discretion; and (iii) finds that any procurement pursuant to this Agreement satisfies the requirement to procure preferred resources under Commission Decision 14-13-004.

“CPUC Protocols” has the meaning set forth in Exhibit B.

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

“Customized Guidelines” has the meaning set forth in Exhibit B.

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

“Defaulting Party” has the meaning set forth in Section 8.1(a).

“Default Rate” means for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable Law.

“Deficiency Event” has the meaning set forth in Section 2.6.

“Delivery Period” has the meaning set forth in Section 2.3.

“Documentation” means all books, records, photographs, slides, materials, data, calculations, estimates, documents, communications, notes, proposals, reports, scopes of work or related responses, whether in written, electronic or any other tangible form, related to the Project or any Measure.

“Double Incentive” means Incentives from or paid for by any other energy efficiency program (whether an SDG&E energy efficiency program, an energy efficiency program of another utility, or otherwise) for the same Measure or Project installed at the End-User Customer’s Site, including the attribution of energy and demand savings or reductions for a single Measure or activity at multiple market intervention points (e.g., energy savings or reductions claimed upstream, midstream, and at the End-Use Customer) where such Measure was installed or such activity occurred.

“Early Termination Date” has the meaning set forth in Section 8.2(a).

“Eligible Measures” has the meaning set forth in Exhibit B.

“End-Use Customer” means a person or entity that is an SDG&E service customer and has an SDG&E customer service account number.

“Energy Savings Factor” has the meaning set forth in Section 2.4(a).

“Energy Weighted Factor” has the meaning set forth in Section 2.4(a).

“Evaluator” means an independent third-party who is not an Affiliate of the Party engaging such Evaluator and who has been engaged under this Agreement to perform an Inspection consistent with the M&V Plan, and issue a Pre-Delivery Period Inspection Report and/or Annual Inspection Report, as applicable. The Evaluator must (i) have demonstrated and significant experience performing evaluation, measurement and verification studies of energy efficiency projects of a size and type similar to the Project with demonstrated and significant experience using the guidelines and publications identified in Exhibit B, (ii) have sufficient depth and breadth in the skills required to perform the tasks identified in the M&V Plan, including study design, statistics, sample design, energy engineering, and econometric

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

modeling, and (iii) adhere to ethical evaluation practices established by the American Evaluation Association.

“Event of Default” has the meaning set forth in Section 8.1(a).

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

“Executive(s)” has the meaning set forth in Section 14.2(a).

“Expected Initial Delivery Date” has the meaning set forth in Section 2.1.

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

“Force Majeure” means an event or circumstance (such as (a) acts of God, flooding, landslide, earthquake, fire, drought, explosion, epidemic, quarantine, hurricane, tornado, volcano, or other natural disaster or unusual or extreme adverse weather-related events, (b) war (declared or undeclared), riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockade, insurrection, revolution, expropriation, or confiscation, and (c) except as set forth in clause (vi) below, strikes, work stoppage or other labor disputes) which prevents one Party from performing its obligations under this Agreement, which event or circumstance was not anticipated as of the Execution Date, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided). Force Majeure shall not be based on (i) the loss of SDG&E’s markets; (ii) the loss or failure of Seller’s supply; (iii) a failure of performance of any other entity, except to the extent that such failure was caused by a Force Majeure event specifically described in clauses (a) through (c) above; (iv) breakage or malfunction of equipment, except to the extent that such failure was caused by a Force Majeure event specifically described in clauses (a) through (c) above; (v) strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, End-Use Customer, contractors or subcontractors thereof or any other third party employed by Seller or an End-Use Customer to work on the Project; (vi) Seller’s failure to obtain financing or other funds, including funds authorized by a state or the federal government or agencies thereof; or (vii) Seller’s inability to obtain any Permits or other approvals of any type for the installation of any Measure, completion of the Project or performance under this Agreement.

“Forecasted Annual Energy Savings” has the meaning set forth in Section 2.4(a).

“Forecasted Annual Peak Capacity Savings” has the meaning set forth in Section 2.4(a).

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement, determined in a commercially reasonable manner.

Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., Intercontinental Exchange), all of which are calculated based on realized and future Annual Energy Savings and Annual Peak Capacity Savings. For purposes of determining Gain, SDG&E may also take into consideration that the Agreement satisfies the requirement to procure preferred resources from under Commission Decision 14-13-004 from Projects to meet the Local Capacity Requirements (LCR) within SDG&E's Service Territory.

Only if the Non-Defaulting Party is unable, after using commercially reasonable efforts, to obtain third party information to determine the gain of economic benefits, *then* the Non-Defaulting Party may use information available to it internally suitable for this purpose in accordance with prudent industry practices.

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

“Incentive” means financial support or benefits, including Rebates, discounts and low-interest loans, to install Measures.

“Indemnified Party” has the meaning set forth in Section 6.3(a).

“Initial Delivery Date” has the meaning set forth in Section 2.2.

“Initial Delivery Deadline” has the meaning set forth in Section 2.1.

“Initial Negotiation End Date” has the meaning set forth in Section 14.2(a).

“Inspections” means, collectively, the Pre-Delivery Period Inspection and the Annual Inspections.

“Inspection Report” means the Pre-Delivery Period Inspection Report or an Annual Inspection Report, as applicable.

“Inspection Date” means, with respect to an Inspection Report, the reference date for which the Evaluator certifies that the statements and calculations made within such Inspection Report are true and accurate.

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

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

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

“Interest Rate” means for any date the rate per annum equal to the Commercial Paper (non-financial, 3 months) rate as published the prior month in the Federal Reserve Statistical Release, H.15. Should publication of the interest on Commercial Paper (non-financial, 3 months) be discontinued, then the interest rate on commercial paper, which most closely approximates the discontinued rate, published the prior month in the Federal Reserve Statistical Release, H.15., or its successor publication.

“IPMVP Protocols” has the meaning set forth in Exhibit B.

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

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

“Letter of Credit Default” means with respect to a Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit shall fail to maintain a Credit Rating of at least (a) "A-" by S&P, "A-" by Fitch, and "A3" by Moody's, if such issuer is rated by the Ratings Agencies, (b) "A-" by S&P, "A-" by Fitch or "A3" by Moody's if such issuer is rated by only two of the Ratings Agencies, or (c) "A-" by S&P, "A-" by Fitch, or "A3" by Moody's, if such issuer is rated by only one Ratings Agency; (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject,

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect at any time during the Term of the Agreement, in any such case without replacement; or (v) the issuer of such Letter of Credit shall become Bankrupt; provided, however, that no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Agreement.

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement, determined in a commercially reasonable manner.

Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., Intercontinental Exchange), all of which are calculated based on realized and future Annual Energy Savings and Annual Peak Capacity Savings. For purposes of determining Losses, SDG&E may also take into consideration that the Agreement satisfies the requirement to procure preferred resources from under Commission Decision 14-13-004 from Projects to meet the LCR within SDG&E’s Service Territory.

Only if the Non-Defaulting Party is unable, after using commercially reasonable efforts, to obtain third party information to determine the loss of economic benefits, then the Non-Defaulting Party may use information available to it internally suitable for these purposes in accordance with prudent industry practices.

“Manager” has the meaning set forth in Section 14.2(a).

“M&V Plan” means the detailed plan to measure and verify the Annual Energy Savings and Annual Peak Capacity Savings for the Project, as further described in Exhibit B.

“Measure” a service or product (or aggregated group of services or products) that is an Eligible Measure whose installation and operation at an End-Use Customer’s premises is expected to result in a reduction in the End-Use Customer’s on-site energy and capacity use, compared to what would have happened without the service or product installation and for which Seller has delivered a Measure Installation Certificate.

“Measure Installation Certificate” has the meaning set forth in Exhibit B.

“Measure Installation Notice” has the meaning set forth in Exhibit B.

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

“Minimum Annual Energy Savings” means, for each Contract Year, an amount equal to eighty percent (80%) of the Contracted Energy Savings for such Contract Year.

“Minimum Annual Peak Capacity Savings” means, for each Contract Year, an amount equal to eighty percent (80%) of the Contracted Annual Peak Capacity Savings for such Contract Year.

“Monthly Contract Price” has the meaning set forth in Section 2.1.

“Monthly Contract Price Payment” has the meaning set forth in Section 2.4(a).

“Moody’s” means Moody’s Investor Services, Inc. or its successor.

“Non-Defaulting Party” has the meaning set forth in Section 8.2.

“Notice” means notices, requests, statements or payments provided in accordance with Article 7.

“Peak Capacity Savings Factor” has the meaning set forth in Section 2.4(a).

“Performance Assurance” has the meaning set forth in Section 5.1(a).

“Performance Degradation” has the meaning set forth in Exhibit B.

“Permits” means all applications, approvals, authorizations, consents, filings, licenses, orders, permits or similar requirements imposed by any Governmental Body in order to develop, construct, maintain, improve, and/or refurbish the Project or any Measure.

“Pre-Delivery Period Inspection” has the meaning set forth in Section 2.5(b)(i).

“Pre-Delivery Period Inspection Report” means the report prepared by an Evaluator in accordance with the requirements of Section 2.5(b)(ii), setting forth the Evaluator’s findings from the Pre-Delivery Period Inspection.

“Project” means the aggregate of the Measures installed (or to be installed) at multiple End-Use Customer(s) Sites during the Term, as more fully described in Section 2.1 and Exhibit B.

“Project Requirements” means, on the Inspection Date of the applicable Inspection Report, all of the following: (a) all of the Measures comprising the Project on such date have been installed in accordance with the requirements of this Agreement, including Section 6.2(a) and Exhibit B, and (b) the Seller has installed Measures that has (i) an aggregate Annual Peak Capacity Savings amount for the Project that is no less than the Minimum Annual Peak Capacity Savings amount for the relevant Contract Year, and (ii) a forecasted aggregate Annual Energy Savings amount for the Project for the relevant Contract Year that is no less than the Minimum Annual Energy Savings amount for such Contract Year.

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

“Proprietary Rights” has the meaning set forth in Section 2.12.

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

“Rebate” means an identified and pre-specified amount of money to be paid to an End-Use Customer for the installation of one or more identified Measure at the End-Use Customer’s facility.

“Referral Date” has the meaning set forth in Section 14.2(a).

“Reported Annual Peak Capacity Savings” for a particular Contract Year means the aggregate Annual Peak Capacity Savings for all Measures comprising the Project as set forth in the Acceptable Annual Inspection Report delivered in respect of such Contract Year.

“Reported Annual Savings True-Up” has the meaning set forth in Section 2.4(b).

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

“SDG&E” has the meaning set forth in the preamble.

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

“Settlement Amount” means:

- (a) where Seller is the Defaulting Party and the applicable Early Termination Date is effective before the Initial Delivery Date has occurred, the full amount of the Performance Assurance required to be posted by Seller at such Early Termination Date; or
- (b) in all cases other than as set forth in clause (a) above, the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other, such that if the Non-Defaulting Party’s Costs and Losses exceed its Gains (i.e. a positive Settlement Amount), then the Settlement Amount shall be an amount owing to the Non-Defaulting Party; provided, however, if the Non-Defaulting Party’s Gains exceed its Costs and Losses (i.e. a negative Settlement Amount), then the Settlement Amount shall be Zero dollars (\$0). Under no circumstance under this clause (b) shall the Settlement Amount include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“Site” means the physical location(s) of the Measures comprising the Project and the End-Use Customer(s)’ account as more fully described in Exhibit B.

“Term” has the meaning set forth in Section 2.3.

**MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY**

“Termination Payment” means the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement, less any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date. For clarity, the Settlement Amount is part of and included in the Termination Payment.

“Total Savings Factor” has the meaning set forth in Section 2.4(a).

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

“WMDVBE” means women, minority, and disabled veteran business enterprise, as more particularly set forth in CPUC General Order 156.

1.2 Interpretation

The following rules of interpretation shall apply:

- (a) This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.
- (b) Unless otherwise specified herein, all references herein to any agreement or other document of any description shall be construed to give effect to amendments, supplements, modifications or any superseding agreement or document as then exist at the applicable time to which such construction applies.
- (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

**MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY**

article, section, subsection, paragraph, subparagraph, appendix or attachment in or to this Agreement.

- (g) Any reference in this Agreement to any natural person, Governmental Body, corporation, partnership or other legal entity includes its permitted successors and assigns or to any natural person, Governmental Body, corporation, partnership or other legal entity succeeding to its functions.
- (h) Any reference in this Agreement to any statute shall include all regulations promulgated thereunder, and any reference in this Agreement to statutes or regulations shall be construed as including all statutory and regulatory provisions consolidating, amending or replacing such statutes or regulations.
- (i) All references to dollars are to U.S. dollars.
- (j) The headings used herein are for convenience and reference purposes only.
- (k) Each Party agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.
- (l) Words having well-known technical or industry meanings have these meanings unless otherwise specifically defined in this Agreement.
- (m) Nothing in this Agreement relieves either Party from, or modifies, any obligation or requirement that exists in any Law.

ARTICLE 2. TRANSACTION

2.1 Project

Seller shall design, construct and install the Project, and SDG&E shall pay Seller a Monthly Contract Price Payment for the installation of the Project in accordance with the terms and conditions of this Agreement. Seller shall be responsible for all costs, expenses, taxes, fees, labor, materials, equipment, tools, construction equipment and machinery, transportation and other facilities and services necessary to install and complete the Project.

Monthly Contract Price	<i>[Insert Monthly Payment Amount]</i>
Contracted Annual Energy Savings (MWh)	See <u>Exhibit C</u>
Contracted Annual Peak Capacity Savings (MW)	See <u>Exhibit D</u>
Expected Initial Delivery Date	<i>[Expected first day of the Delivery]</i>

MODEL ENERGY EFFICIENCY AGREEMENT
 BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

	<i>Period to be inserted]</i>
Initial Delivery Deadline	The later of (a) 365 days following CPUC Approval (or waiver in writing by SDG&E of the requirement of CPUC Approval under Article 3), subject to extension as set forth in Section 2.2 below, or (b) the Expected Initial Delivery Date

2.2 Initial Delivery Date; Initial Delivery Deadline

Notwithstanding any other provision in this Agreement, Seller shall cause the Initial Delivery Date to occur no later than the Initial Delivery Deadline. The Initial Delivery Deadline shall be extended on a day for day basis, for up to six (6) months in the aggregate, to the extent Seller is actually and demonstrably delayed in achieving the Initial Delivery Date as a result of Force Majeure.

The “Initial Delivery Date” shall be the later of (a) the first day of the calendar month following the date that Seller provides SDG&E with an Acceptable Pre-Delivery Period Inspection Report (which report has an Inspection Date no earlier than three (3) months prior to the Initial Delivery Date) that finds that the Project Requirements for the first (1st) Contract Year have been met, or (b) the Expected Initial Delivery Date.

2.3 Delivery Period; Term

The “Delivery Period” of this Agreement shall commence upon the Initial Delivery Date and shall continue until the end of the *[Insert Length of Delivery Period]* Contract Year after the Initial Delivery Date or the earlier termination of this Agreement.

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

2.4 Monthly Contract Price Payment

- (a) Generally. Subject to Section 2.4(b) and Section 2.4(c) below, for each calendar month (“Billing Month”) of a Contract Year (i.e., the Billing Contract Year) during the Delivery Period, SDG&E shall pay Seller an amount (“Monthly Contract Price Payment”) calculated as follows:

$$MCCP = MCP \times TSF$$

Where:

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

MCCP = The Monthly Contract Price Payment for each Billing Month of such Billing Contract Year;

MCP = The Monthly Contract Price for such Billing Contract Year; and

TSF = The Total Savings Factor (as defined below) for such Billing Contract Year.

The “Total Savings Factor” for a Billing Contract Year shall be calculated as follows:

$$\text{TSF} = (\text{CWF} \times \text{PCSF}) + (\text{EWF} \times \text{ESF})$$

Where:

TSF = The Total Savings Factor for such Billing Contract Year;

CWF = The Capacity Weighted Factor, which shall be 0.30; *[Note to Sellers: SDG&E assumes a typical 70%/30% weighted allocation of the contract’s value to SDG&E between energy and capacity. The allocation may be subject to revision if the bid Project’s value materially differs from this allocation.]*

PCSF = The Peak Capacity Savings Factor, which is equal to the Forecasted Annual Peak Capacity Savings amount (as defined below) for such Billing Contract Year divided by the Contracted Annual Peak Capacity Savings for such Billing Contract Year, provided that if the calculation of the Peak Capacity Savings Factor for a Billing Contract Year results in a number greater than one (1), then such Peak Capacity Savings Factor for such Billing Contract Year shall be one (1);

EWF = The Energy Weighted Factor, which shall be 0.70; and

ESF = The Energy Savings Factor, which is equal to the Forecasted Annual Energy Savings amount (as defined below) for such Billing Contract Year divided by the Contracted Annual Energy Savings for such Billing Contract Year, provided that if the calculation of the Energy Savings Factor for a Billing Contract Year results in a number greater than one (1), then such Energy Savings Factor for such Billing Contract Year shall be one (1).

The “Forecasted Annual Peak Capacity Savings” amount for a Billing Contract Year shall be the aggregate Annual Peak Capacity Savings amount for all Measures

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

comprising the Project as set forth in the Acceptable Annual Inspection Report delivered in respect of the Contract Year immediately before the Billing Contract Year (unless such Billing Contract Year is the first (1st) Contract Year, in which case, the Forecasted Annual Peak Capacity Savings amount for such Billing Contract Year shall be the aggregate Annual Peak Capacity Savings amount reported in the Acceptable Pre-Delivery Period Inspection Report).

The “Forecasted Annual Energy Savings” amount for a Billing Contract Year shall be the forecasted aggregate Annual Energy Savings amount for such Billing Contract Year for all Measures comprising the Project as set forth in the Acceptable Annual Inspection Report delivered in respect of the Contract Year immediately before the Billing Contract Year (unless such Billing Contract Year is the first (1st) Contract Year, in which case, the Forecasted Annual Energy Savings amount for such Billing Contract Year shall be the forecasted aggregate Annual Energy Savings amount reported in the Acceptable Pre-Delivery Period Inspection Report).

For the avoidance of doubt and notwithstanding anything contained in this Agreement to the contrary, in the calculation of a Monthly Contract Price Payment, under no circumstance shall Seller be credited or otherwise receive any benefit for Annual Energy Savings or Annual Peak Capacity Savings that were not procured or reported due to a Force Majeure event.

- (b) Temporary Withholding. Starting with the Billing Contract Year that is the second (2nd) Contract Year, if an Acceptable Annual Inspection Report for the Contract Year immediately before the Billing Contract Year has not been provided to SDG&E before the beginning of such Billing Contract Year, then until such Acceptable Annual Inspection Report has been delivered to SDG&E, SDG&E shall be entitled to withhold the payment of any Monthly Contract Price Payments in respect of such Billing Contract Year until such Acceptable Annual Inspection has been delivered to SDG&E; provided that if such Acceptable Annual Inspection has not been provided to SDG&E by the end of such Billing Contract Year, then SDG&E shall be entitled to retain all such withheld amounts without any further obligation to release such withheld amounts. Following the receipt of such Acceptable Annual Inspection Report before the end of such Billing Contract Year, SDG&E shall release all such withheld Monthly Contract Price Payments in respect of such Billing Contract Year (but only to the extent based on the Reported Annual Peak Capacity Savings amount and Forecasted Annual Energy Savings amount set forth in such Acceptable Annual Inspection Report) in accordance with the invoicing and payment provisions of Article 4. If, following the expiration or earlier termination of this Agreement, SDG&E continues to retain any withheld amounts of Monthly Contract Price Payments for which SDG&E was required to release under this Section 2.4(b), then such amount shall be released by SDG&E within sixty (60) days following the receipt by SDG&E of an invoice for such amount from Seller.

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

- (c) No Waiver of Remedies. Nothing in this Section 2.4 shall be deemed to limit or waive either Party's rights and remedies under Article 8 as a result of an Event of Default of the other Party, and each Party's rights under this Section 2.4 shall be subject to such other Party's rights and remedies under Article 8.

2.5 Inspections

- (a) Generally.
- (i) Seller shall, and shall cause all End-Use Customer(s) of the Project to, provide all Evaluators access to the Sites and Project to examine, test, measure, and inspect the Project and to perform all Inspections. Seller shall also provide all Evaluators access to, and the ability to review, any records or documents needed to examine, test, measure, or inspect the Project, and properly perform all Inspections. Access shall be granted for the number of days needed to complete any such Inspections. The obligation to provide access described in this paragraph shall apply regardless of whether the End-Use Customer associated with the Project, a Site, or Measure changes during the Term of the Agreement.
 - (ii) With respect to an Evaluator engaged by Seller, Seller shall make the Evaluator available to SDG&E to discuss any Inspection and any of the information contained in an Inspection Report upon SDG&E's request. SDG&E shall also have the right to review all records and Documentation related to an Inspection or Inspection Report. SDG&E may, in its sole discretion, request access to any Site and the Project to examine, test, measure, and inspect the Project. Seller shall, and shall cause all End-Use Customer(s) of the Project to, provide access to the Site and Project to SDG&E and/or an Evaluator engaged by SDG&E pursuant to this Agreement.
 - (iii) All Inspection Reports provided by Seller's Evaluator shall be issued for the benefit of SDG&E and shall expressly allow SDG&E to rely on such reports.
- (b) Pre-Delivery Period Inspection.
- (i) Prior to the occurrence of the Initial Delivery Date, Seller, at Seller's expense, shall have caused an Evaluator to conduct an on-site inspection ("Pre-Delivery Period Inspection") that is consistent with the M&V Plan and to issue a Pre-Delivery Period Inspection Report in accordance with this Section 2.5(b) that demonstrates that Seller has met the Project Requirements for the first (1st) Contract Year. The selection of any Evaluator under this subsection (i) shall be subject to SDG&E's consent, which shall not be unreasonably withheld or delayed.

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

- (ii) Seller shall cause the Evaluator to issue a Pre-Delivery Period Inspection Report within thirty (30) days after the completion of the Pre-Delivery Period Inspection. The Pre-Delivery Period Inspection Report shall include the following information:
- (A) The Inspection Date of the Pre-Delivery Period Inspection Report;
 - (B) A description of each Measure installed on such Inspection Date, which description shall include the type of Measure, the Site of the Measure, and the End-Use Customer at whose Site such Measure was installed;
 - (C) The Annual Peak Capacity Savings for each Measure and the Project in the aggregate on such Inspection Date, calculated in accordance with Exhibit B;
 - (D) The forecasted Annual Energy Savings for the first (1st) Contract Year for each Measure and the Project in the aggregate on such Inspection Date, calculated in accordance with Exhibit B;
 - (E) A certification signed by an authorized representative of the Evaluator that the statements and calculations made in such Pre-Delivery Period Inspection Report is true and accurate as of such Inspection Date; and
 - (F) Any other information reasonably requested by SDG&E to determine (i) the Project's compliance with the Project Requirements for the first (1st) Contract Year, (ii) the Annual Peak Capacity Savings for each Measure and the Project in the aggregate on such Inspection Date, and (iii) the forecasted Annual Energy Savings during the first (1st) Contract Year for each Measure and the Project in the aggregate on such Inspection Date.
- (iii) Within thirty (30) days after receipt of the Pre-Delivery Period Inspection Report, SDG&E shall either (A) provide Notice to Seller that it has accepted the Pre-Delivery Period Inspection Report, or (B) provide Notice to Seller that it is not accepting the Pre-Delivery Period Inspection Report to its reasonable satisfaction, which reasons may include, but is not limited to, the Pre-Delivery Period Inspection Report being materially inaccurate or incomplete, not properly determining or providing enough information in support of finding whether the Project meets the Project Requirements for the first (1st) Contract Year, the amount of Annual Peak Capacity Savings, or the amount of forecasted Annual Energy Savings, indicating that the Pre-Delivery Period Inspection was not conducted consistent with the M&V Plan, or being materially deficient in any manner whatsoever. If SDG&E provides the Notice under subsection (B), then Seller shall cause the Evaluator (or another Evaluator) to re-submit a Pre-Delivery Period Inspection Report that

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

is not deficient for the reasons cited by SDG&E (in which case the procedure set forth in this clause (iii) shall re-apply). If SDG&E fails to provide Notice under subsection (A) or (B) above within the prescribed thirty (30)-day period, then SDG&E shall be deemed to have accepted Seller's Pre-Delivery Period Inspection Report.

(c) Annual Inspections.

- (i) No later than the last day of each Contract Year, Seller, at Seller's expense, shall cause an Evaluator to conduct an on-site inspection ("Annual Inspection") that is consistent with the M&V Plan and to issue an Annual Inspection Report for such Contract Year in accordance with this Section 2.5(c). The selection of any Evaluator under this subsection (i) shall be subject to SDG&E's consent, which shall not be unreasonably withheld or delayed. An Annual Inspection Report shall have an Inspection Date that is both no earlier than the date that is thirty (30) days prior to the last day of such Contract Year and no later than the last day of such Contract Year.
- (ii) Seller shall cause the Evaluator to issue an Annual Inspection Report no later than thirty (30) days following the end of each Contract Year (the "Annual Inspection Report Deadline"). The Annual Inspection Report shall include the following information:
 - (A) The Inspection Date of the Annual Inspection Report;
 - (B) A description of each Measure installed on such Inspection Date, which description shall include the type of Measure, the Site of the Measure, and the End-Use Customer at whose Site such Measure was installed;
 - (C) The Annual Peak Capacity Savings for each Measure and the Project in the aggregate on such Inspection Date, calculated in accordance with Exhibit B;
 - (D) The actual aggregate Annual Energy Savings for the Project during such Contract Year, calculated in accordance with Exhibit B;
 - (E) The forecasted Annual Energy Savings for the following Contract Year for each Measure and the Project in the aggregate as of such Inspection Date, calculated in accordance with Exhibit B;
 - (F) A certification signed by an authorized representative of the Evaluator that the statements and calculations made in such Annual Inspection Report is true and accurate as of such Inspection Date; and

**MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY**

- (G) Any other information reasonably requested by SDG&E to determine (i) the Project's compliance with the Project Requirements for the following Contract Year, (ii) the Annual Peak Capacity Savings for each Measure and the Project in the aggregate on the Inspection Date, (iii) the actual aggregate Annual Energy Savings for the Project during such Contract Year, (iii) the actual aggregate Annual Energy Savings for the Project during such Contract Year, and (iv) the forecasted Annual Energy Savings for the following Contract Year for each measure and the Project in the aggregate as of such Inspection Date.
- (iii) Within thirty (30) days of receipt of an Annual Inspection Report, SDG&E shall either (A) provide Notice to Seller that it has accepted the Annual Inspection Report, or (B) provide Notice to Seller that it is not accepting the Annual Inspection Report to its reasonable satisfaction, which reasons may include, but is not limited to, the Annual Inspection Report being materially inaccurate or incomplete, not properly determining or providing enough information in support of finding whether the Project meets the Project Requirements for the following Contract Year, the amount of Annual Peak Capacity Savings, or the amount of actual or forecasted Annual Energy Savings, indicating that the Annual Inspection was not conducted consistent with the M&V Plan, or being materially deficient in any manner whatsoever. If SDG&E provides the Notice under subsection (B), then Seller cause the Evaluator (or another Evaluator) to re-submit an Annual Inspection Report that is not deficient for the reasons cited by SDG&E (in which case the procedure set forth in this clause (iii) shall re-apply). If SDG&E fails to provide Notice under subsection (A) or (B) above within the prescribed thirty (30)-day period, then SDG&E shall be deemed to have accepted Seller's Annual Inspection Report.
- (iv) For the avoidance of doubt, as used in this Agreement, an Annual Inspection Report or Acceptable Annual Inspection Report "for" or "in respect of" a Contract Year shall refer to the Annual Inspection Report (or Acceptable Annual Inspection Report) delivered by Seller in connection with an Annual Inspection performed at or about the end of such Contract Year, even if such Annual Inspection Report (or Acceptable Annual Inspection Report) is delivered after the end of such Contract Year.

2.6 Annual True-Up

The Parties acknowledge and agree that the Monthly Contract Price Payments payable by SDG&E under Section 2.4(a) during a Contract Year is based upon SDG&E's expectation that sufficient Measures will have been installed under the Project during the entirety of such Contract Year so as to deliver no less than the Forecasted Annual Peak Capacity Savings amount (or the Contracted Peak Capacity Savings amount, if lower) during such

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

Contract Year. If the results of an Acceptable Annual Inspection Report delivered by Seller in respect of a Contract Year demonstrates the occurrence of a Deficiency Event (as defined below), then Seller shall pay SDG&E an Annual True-Up Payment in respect of such Contract Year calculated in accordance with this Section 2.6. A “Deficiency Event” shall have occurred if such Acceptable Annual Inspection Report for such Contract Year shows either (a) that the Reported Annual Peak Capacity Savings amount set forth in such Acceptable Inspection Report is less than the Forecasted Annual Peak Capacity Savings amount used to calculate the Monthly Contract Price Payments during such Contract Year, and/or (b) that the actual aggregate Annual Energy Savings for such Contract Year set forth in such Acceptable Inspection Report is less than the Forecasted Annual Energy Savings amount used to calculate the Monthly Contract Price Payments during such Contract Year.

Such “Annual True-Up Payment” amount for a Contract Year shall be calculated as follows:

$$\text{ATP} = \{[\text{CWF} \times 6 \text{ months} \times (\text{FAPCS} - \text{RAPCS}) / \text{CAPCS}] + [\text{EWF} \times 12 \text{ months} \times (\text{FAES} - \text{AAES}) / \text{CAES}]\} \times \text{MCCP}$$

Where:

ATP = The Annual True-Up Payment for such Contract Year;

CWF = The Capacity Weighted Factor;

FAPCS = The lesser of (a) the Forecasted Annual Peak Capacity Savings amount used to calculate the Monthly Contract Price Payments during such Contract Year, or (b) the Contracted Annual Peak Capacity Savings amount for such Contract Year;

RAPCS = The Reported Annual Peak Capacity Savings amount for such Contract Year set forth in such Acceptable Annual Inspection Report;

CAPCS = The Contracted Annual Peak Capacity Savings amount for such Contract Year;

EWF = The Energy Weighted Factor;

FAES = The Forecasted Annual Energy Savings amount used to calculate the Monthly Contract Price Payments during such Contract Year;

AAES = The actual aggregate Annual Energy Savings for such Contract Year set forth in such Acceptable Annual Inspection Report;

CAES = The Contracted Annual Energy Savings amount for such Contract Year; and

MCCP = The Monthly Contract Price Payment for such Contract Year;

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

provided, however, for clarity, if the value of (FAPCS – RAPCS) or the value of (FAES – AAES) results in an amount less than zero (0), then such value shall be zero (0). For the avoidance of doubt and notwithstanding anything contained in this Agreement to the contrary, in the calculation of an Annual True-Up Payment, under no circumstance shall Seller be credited or otherwise receive any benefit for Annual Energy Savings or Annual Peak Capacity Savings that were not procured or reported due to a Force Majeure event.

Annual True-Up Payment amounts shall be credited against the next successive Monthly Contract Price Payments, provided that if any Annual True-Up Payment amounts remains unpaid following the expiration or earlier termination of this Agreement, then such amount shall be paid by Seller within thirty (30) days following the receipt by Seller of an invoice for such amount from SDG&E, which payment shall be made by check or wire transfer as set forth in such invoice.

The Parties acknowledge that an Acceptable Annual Inspection Report in respect of a Contract Year might not be available until after the start of the next Contract Year (or if such Contract Year is the last Contract Year of the Delivery Period, after the expiration or earlier termination of the Agreement) and that such delay shall not in any way abrogate or diminish each Party's obligations under this Section 2.6.

The Parties acknowledge and agree that the actual damages that SDG&E would incur due to a Deficiency Event would be difficult or impossible to predict with certainty, and that the Annual True-Up Payment is a reasonable and appropriate approximation of such damages, and is SDG&E's exclusive remedy for such Deficiency Event (but shall not otherwise act to limit any of SDG&E's rights or remedies arising from any other Event of Default by Seller).

2.7 Permits and Licenses

Seller, at its own expense, shall obtain and maintain, or shall cause the End-Use Customer to obtain and maintain, as applicable, any and all Permits needed to install the Project and to maintain and operate the Project at the Site(s). Seller shall at all times require the End-Use Customer to adhere to all applicable safety standards in accordance with California utility industry standards, Accepted Electrical Practice, and applicable Law in connection with the Project at the End-Use Customer's Site.

2.8 Advertising and Marketing

- (a) **No Use of Marks.** Seller shall not use SDG&E's or any of its Affiliates' corporate names, trademarks, service marks, trade names, logos, identities or any affiliations for any reason, without SDG&E's prior written consent.
- (b) **No Endorsement.** Seller shall not state or represent to third parties, End-Use Customers (prospective or otherwise) or Project participants that SDG&E has endorsed or approved Seller or its contractors or subcontractors of their work.

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

- (c) Funding Source Disclosure. Seller shall disclose its source of funding for the Project by stating prominently on all advertising, promotion or marketing materials that the Project is “funded, in whole or in part, by California ratepayers under the auspices of the California Public Utilities Commission.”
- (d) No Obligation to Purchase. As appropriate and directed by SDG&E, Seller shall prominently disclose to prospective End-Use Customers, in writing, that customers are not obligated to purchase any service or product offered by Seller.

2.9 Records

- (a) Information Production. Upon request from SDG&E, Seller shall, within ten (10) Business Days of such request, produce any and all documents, information, or records related to the Project or a Measure that is part of the Project, including any documents, information, or records needed to measure the energy or capacity reductions of the Project or Measure. For purposes of this Section 2.9(a), Seller shall be obligated to provide any documents, information, or records of an Evaluator engaged by Seller related to the subject matter of this Section 2.9(a).
- (b) WMDVBE Reporting. During the Term, no later than twenty (20) days after each semi-annual period ending on June 30th or December 31st, or more frequently if requested by SDG&E, a report listing all WMDVBEs that supplied goods or services to Seller during such period, including any certifications or other Documentation of such WMDVBEs’ status as such and the aggregate amount paid to WMDVBEs during such period.
 - (i) SDG&E has the right to disclose to the CPUC all such information provided by Seller pursuant to this Section 2.9(b).
 - (ii) Seller shall make reasonable efforts to accommodate requests by the CPUC (or by SDG&E in response to a request by the CPUC) to audit Seller in order to verify data provided by Seller pursuant to this Section 2.9(b).

2.10 Subcontractors

Seller shall obtain SDG&E’s written consent prior to retaining contractors or subcontractors to perform any portion of the work related to the Project, provided that any such consent may be revoked by SDG&E with no less than thirty (30) days prior written notice for just and reasonable cause. Seller shall at all times be responsible for the acts and omissions of such contractors and subcontractors, and any persons performing such work on their behalf, employed directly or indirectly by Seller and shall contractually require each such contractor and subcontractor to be bound by the same terms and conditions as binding Seller under this Agreement. Seller shall be responsible for performance of all work related to the Project as set forth in this Agreement, whether performed by Seller or any contractor or subcontractor of Seller or any other person performing such work on their behalf. This Agreement shall not give rise to any contractual relationship between SDG&E and any contractor or

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

subcontractor of Seller. SDG&E does not undertake any obligation to pay or to be responsible for the payment of any sums to any contractor or subcontractor or agent of Seller. Upon request of SDG&E, Seller shall furnish to SDG&E copies of any executed contracts or subcontracts entered into between Seller and any such contractor or subcontractor.

2.11 Customer Complaint and Dispute Resolution Procedures

Seller shall be responsible, to the complete satisfaction of SDG&E, for developing and implementing a process for the management of customer complaints. Seller shall undertake activities to resolve customer complaints in an expedited manner including, but not limited to, (a) ensuring adequate levels of professional customer service staff, (b) direct access of customer complaints to supervisory and/or management personnel, and (c) ensuring sufficient levels of delivery personnel expected during times of high volume. Seller shall implement a Customer Comment Tracking System for recording customer inquiries, complaints, and positive feedback for SDG&E. The Customer Comment Tracking System shall include, but is not limited to, dates of customer complaints, information on the number, characterization, and resolution of customer complaints, date of each complaint resolution and tracking of the total number of telephone calls, duration of calls, number of calls placed on hold, duration of time calls are on hold, and number of cancelled calls (hang-ups). Seller shall provide SDG&E with a monthly status report on such customer comments and status of customer complaints (on a cumulative basis).

2.12 Documentation

Title to all Documentation, including any and all inspection reports, including copyright ownership in the Documentation, shall pass to SDG&E when prepared (whether prepared by Seller, its contractor or subcontractor or its Evaluator). To the extent any invention, discovery, trade secret, patent, copyright, or other intellectual property (collectively, “Proprietary Rights”) conceived, developed or reduced to practice by Seller is used in and have become integral with the Documentation, or are necessary for SDG&E to have complete enjoyment of the Documentation, Seller shall grant to SDG&E a non-exclusive, irrevocable, royalty-free license, as may be required by SDG&E for complete enjoyment of the Documentation, including the right to reproduce, correct, repair, replace, maintain, translate, publish, use, modify, copy or dispose of any or all of the Documentation and grant sublicenses to others with respect to such Documentation. If the Documentation includes the Proprietary Rights of others, Seller shall procure, at no additional cost to SDG&E, all necessary licenses regarding such Proprietary Rights of others so as to allow SDG&E the complete enjoyment of the Documentation, including the right to reproduce, correct, repair, replace, maintain, translate, publish, use, modify, copy or dispose of any or all of the Documentation and grant sublicenses to others with respect to such Documentation.

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

ARTICLE 3. CPUC APPROVAL

Unless otherwise specified herein, notwithstanding SDG&E's execution and delivery of this Agreement, SDG&E's obligations under this Agreement (including, without limitation, the obligation to pay the Monthly Contract Price Payment) shall only become effective upon CPUC Approval. Seller shall use commercially reasonable efforts to support SDG&E in obtaining CPUC Approval. SDG&E has no obligation to seek rehearing or to appeal a Commission decision which fails to approve this Agreement or which contains findings required for CPUC Approval with conditions or modifications unacceptable to either Party.

Either Party has the right to terminate this Agreement on Notice, which will be effective on the date such Notice is given, if CPUC Approval has not been obtained or waived by SDG&E in its sole discretion within 365 days after SDG&E files its request for CPUC Approval and such Notice of termination is given on or before the 395th day after SDG&E files the request for CPUC Approval.

Failure to obtain CPUC Approval in accordance with this Article 3 will not be deemed to be a failure of Seller to install the Project or a failure of SDG&E to make payment for such installation, and will not be or cause an Event of Default by either Party. No Settlement Amount with respect to this Agreement will be due or owing by either Party upon termination of this Agreement due solely to failure to obtain CPUC Approval.

ARTICLE 4. PAYMENT AND BILLING

4.1 Invoicing and Payment

- (a) Invoicing. For any Billing Month in which payment from Buyer to Seller is due, Seller shall send an invoice to SDG&E for such Billing Month's Monthly Contract Price Payment no later than the tenth (10th) day of such Billing Month. Invoices shall be submitted to the address for invoices set forth in Section 7.2 below.

As a condition to SDG&E's payment of an invoice, all invoices submitted must reference the Agreement number and the invoice contact and have complete support documentation of all charges incurred.

- (b) Payment. So long as no Event of Default with respect to the Seller has occurred and is continuing, and without limiting the provisions of Section 2.6(b) above and subject to Sections 4.2 and 4.3 below, SDG&E shall pay such Monthly Contract Price Payment no later than sixty (60) days after receipt of an invoice. Payment may be made through check, credit card or wire transfer protocol to the following address:

[Seller to provide]

If either the invoice deadline or payment deadline is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Any

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Default Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

4.2 Disputes and Adjustments of Invoices

A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Default Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 4.2 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not Affiliated with the Party claiming the error and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

4.3 Netting

SDG&E may offset any payments that are due and owing by any amount(s) that were previously overpaid through netting, such that only the excess amount remaining due shall be paid by SDG&E.

ARTICLE 5. PERFORMANCE ASSURANCE

5.1 Performance Assurance Amount.

Seller shall post and thereafter maintain security (“Performance Assurance”) equal to **[To be Inserted]** Dollars (\$**[_____]**), in accordance with the following terms and conditions:

- (a) Seller shall post **[Insert 2% of total contract price]** (\$**[_____]**) of Performance Assurance on or before the Execution Date and the remaining amount of **[To be Inserted]** Dollars (\$**[_____]**) within ten (10) Business Days after CPUC Approval;

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

- (b) Performance Assurance shall be held by SDG&E as security for Seller's obligations under the Agreement;
- (c) The Performance Assurance must be in the form of either Cash or a Letter of Credit;
- (d) If Seller posts any Performance Assurance in Cash, Seller will receive Interest Amounts in accordance with the procedure specified in Section 5.4(a)(ii); and
- (e) If Seller establishes the Performance Assurance by means of a Letter of Credit, such Letter of Credit must be provided substantially in the form of Exhibit A.

5.2 Return of Performance Assurance

So long as no Event of Default or Potential Event of Default with respect to the Seller has occurred and is continuing, and no Early Termination Date has occurred or been designated as the result of an Event of Default with respect to the Seller, SDG&E shall return all unused Performance Assurance to Seller within fifteen (15) Business Days after the date that all of Seller's obligations have been indefeasibly paid in full after the end of the Term of the Agreement.

5.3 Grant of Security Interest/Remedies

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

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

5.4 Administration of Performance Assurance

- (a) Cash. Performance Assurance provided in the form of Cash to SDG&E shall be subject to the following provisions:
- (i) Notwithstanding the provisions of applicable Law, if no Event of Default has occurred and is continuing with respect to SDG&E and no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to SDG&E for which there exist any unsatisfied payment obligations, then SDG&E shall have the right to sell, pledge, re-hypothecate, assign, invest, use, commingle or otherwise use in its business any Cash that it holds as Performance Assurance hereunder, free from any claim or right of any nature whatsoever of the Seller, including any equity or right of redemption by the Seller.
 - (ii) So long as no Event of Default or Potential Event of Default with respect to the Seller has occurred and is continuing, and no Early Termination Date for which any unsatisfied payment obligations of the Seller exist has occurred or been designated as the result of an Event of Default with respect to the Seller, and to the extent that an obligation to Transfer Performance Assurance would not be created or increased by the Transfer, in the event that SDG&E is holding Cash, SDG&E will Transfer (or caused to be Transferred) to the Seller, in lieu of any interest or other amounts paid or deemed to have been paid with respect to such Cash (all of which may be retained by SDG&E), the Interest Amount. The Seller shall invoice SDG&E annually setting forth the calculation of the Interest Amount due, and SDG&E shall make payment thereof by the later of (A) the tenth (10th) Business Day of the first month after the last month to which such invoice relates or (B) the tenth (10th) Business Day after the day on which such invoice is received. On or after the occurrence of a Potential Event of Default or an Event of Default with respect to the Seller or an Early Termination Date as a result of an Event of Default with respect to the Seller, SDG&E shall retain any such Interest Amount as additional Performance Assurance hereunder until the obligations of the Seller under the Agreement have been satisfied in the case of an Early Termination Date or for so long as such Event of Default is continuing in the case of an Event of Default.
- (b) Letters of Credit. Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions.
- (i) Each Letter of Credit shall be maintained for the benefit of SDG&E. The Seller shall (A) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (B) if the bank or financial institution that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide either a

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

substitute Letter of Credit or Cash, in each case at least sixty (60) Calendar Days prior to the expiration of the outstanding Letter of Credit, and (C) if a bank or financial institution issuing a Letter of Credit shall fail to honor SDG&E's properly documented request to draw on an outstanding Letter of Credit, provide for the benefit of SDG&E either a substitute Letter of Credit that is issued by a bank or financial institution acceptable to SDG&E or Cash, in each case within one (1) Business Day after such refusal.

- (ii) As one method of providing Performance Assurance, the Seller may increase the amount of an outstanding Letter of Credit or establish one or more additional Letters of Credit.
 - (iii) Upon the occurrence of a Letter of Credit Default, the Seller agrees to Transfer to SDG&E either a substitute Letter of Credit or Cash, in each case on or before the first (1st) Business Day after the occurrence thereof (or the fifth (5th) Business Day after the occurrence thereof if only clause (i) under the definition of Letter of Credit Default applies).
 - (iv) Upon or at any time after the occurrence and continuation of an Event of Default or Letter of Credit Default with respect to the Seller, or if an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Seller for which there exist any unsatisfied payment obligations, then SDG&E may draw on the entire, undrawn portion of any outstanding Letter of Credit upon submission to the bank or financial institution issuing such Letter of Credit of one or more certificates specifying that such Event of Default, Letter of Credit Default or Early Termination Date has occurred and is continuing. Cash proceeds received from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for the Seller's obligations to SDG&E, and SDG&E shall have the rights and remedies set forth in Section 5.5 with respect to such Cash proceeds. Notwithstanding SDG&E's receipt of Cash proceeds of a drawing under the Letter of Credit, the Seller shall remain liable (A) for any failure to Transfer sufficient Performance Assurance and (B) for any amounts owing to SDG&E and remaining unpaid after the application of the amounts so drawn by SDG&E.
 - (v) In all cases, the costs and expenses of establishing, renewing, substituting, canceling, and increasing the amount of a Letter of Credit shall be borne by the Seller.
- (c) Care of Performance Assurance. Except as otherwise provided in Section 5.4(a)(i) and in the exercise of reasonable care in the custody thereof, SDG&E shall have no duty as to any Performance Assurance in its possession or control or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto. SDG&E shall be deemed to have exercised reasonable care in the

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

custody and preservation of the Performance Assurance in its possession if the Performance Assurance is accorded treatment substantially equal to that which it accords its own property, and shall not be liable or responsible for any loss or damage to any of the Performance Assurance, or for any diminution in the value thereof, except to the extent such loss or damage is the result of SDG&E's willful misconduct or gross negligence. SDG&E shall at all times retain possession or control of any Performance Assurance Transferred to it.

5.5 Exercise of Rights Against Performance Assurance

- (a) In the event that an Event of Default with respect to the Seller has occurred and is continuing or an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Seller, SDG&E may exercise any one or more of the rights and remedies provided under this Agreement, or as otherwise available under applicable Law. Without limiting the foregoing, if at any time an Event of Default with respect to the Seller has occurred and is continuing, or an Early Termination Date occurs or is deemed to occur as a result of an Event of Default with respect to the Seller, then SDG&E may, in its sole discretion, exercise any one or more of the following rights and remedies:
- (i) all rights and remedies available to SDG&E under the Uniform Commercial Code and any other applicable jurisdiction and other applicable Laws with respect to the Performance Assurance held by or for the benefit of SDG&E;
 - (ii) the right to set off any Performance Assurance held by or for the benefit of SDG&E against and in satisfaction of any amount payable by the Seller in respect of any of its obligations; and
 - (iii) the right to draw on any outstanding Letter of Credit issued for its benefit.
- (b) SDG&E shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available hereunder. The Seller shall in all events remain liable to SDG&E for any amount payable by the Seller in respect of any of its obligations remaining unpaid after any such liquidation, application and set off.
- (c) Subject to Section 5.2 above, in the event that SDG&E draws or otherwise sets off any portion of the Performance Assurance, Seller shall replenish such drawn or set off amount so as to maintain the full amount of the Performance Assurance as required under Section 5.1 above.

5.6 Financial Information

If requested by a Party, the other Party shall deliver (a) within one hundred and twenty (120) days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements (income statement, balance sheet, statement of cash flows

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

and statement of retained earnings and all accompanying notes) for such fiscal year setting forth in each case in comparative form the figures for the previous year for the Party, and (b) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of a quarterly report containing unaudited consolidated financial statements for such fiscal quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year, and if the Party files reports with the Securities and Exchange Commission, certified in accordance with all applicable laws and regulations, including without limitation all applicable Securities and Exchange Commission rules and regulations. If the Party does not file reports with the Securities and Exchange Commission, the reports must be certified by a Chief Financial Officer, Treasurer or any Assistant Treasurer as being fairly stated in all material respects (subject to normal year-end audit adjustments); provided however, for the purposes of this subsection (a) and (b), if a Party's financial statements are publicly available electronically on the Securities and Exchange Commission's website, then this requirement shall be deemed satisfied. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements. Without limiting anything contained in this Section 5.6, Seller shall promptly provide any and all financial information as may be requested by the CPUC from time to time.

5.7 Uniform Commercial Code Waiver

This Agreement sets forth the entirety of the agreement of the Parties regarding credit, collateral, financial assurances and adequate assurances. Except as expressly set forth in this Agreement, including, but not limited to, those provisions set forth in Article 5 and Article 8, neither Party:

- (a) has or will have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, or
- (b) will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of Article 5 and Article 8 of this Agreement; and all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived.

ARTICLE 6. REPRESENTATIONS, WARRANTIES AND COVENANTS

6.1 Representations and Warranties of Both Parties

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

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

- (a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) Except for CPUC Approval in the case of SDG&E, it has or will timely acquire all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;
- (c) The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Law, rule, regulation, order or the like applicable to it;
- (d) This Agreement constitutes its legally valid and binding obligation, enforceable against it in accordance with its terms;
- (e) It is not Bankrupt and there are not proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or become Bankrupt;
- (f) Except for proceedings related to obtaining CPUC Approval in the case of SDG&E, there is not pending or, to its knowledge, threatened against it, any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement; and
- (g) It (i) is acting for its own account, (ii) has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, (iii) is not relying upon the advice or recommendations of the other Party in so doing, and (iv) is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions, and risks of this Agreement.

6.2 Additional Seller Representations, Warranties and Covenants

- (a) Eligibility. Seller hereby represents, warrants and covenants to SDG&E throughout the Term that:
 - (i) The Project, and every Measure in the Project, is within SDG&E's Service Territory;
 - (ii) Seller will not use, submit, claim, or receive a Double Incentive for the Project, or any Measure in the Project;
 - (iii) Seller will not knowingly provide an Incentive to an End-Use Customer for any Measure in the Project who would receive a Double Incentive as a result of receiving such Incentive; and

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

- (iv) Prior to providing an Incentive to an End-Use Customer, Seller shall obtain a signed form from such End-Use Customer whereby such End-Use Customer certifies that (A) such End-Use Customer has not received any rebate, incentive or discount for the same service or measure from any other SDG&E program or from another utility, state or local program, and (B) such End-Use Customer will not apply for any rebate, incentive or discount for the same service or measure from any other SDG&E program or from another utility, state or local program. Seller shall keep such End-Use Customer-signed forms for at least four (4) years after the end of the Term of this Agreement.
- (b) Measures. Seller hereby represents and warrants that, to the best of Seller's knowledge, at all times during the Term, all of the Measures comprising the Project have been installed in accordance with this Agreement, including Exhibit B, applicable Law and Accepted Electrical Practices. Seller shall take reasonable steps to ensure that (i) every Measure in the Project remains installed for the duration of the Delivery Period and (ii) the Project or any Measure in the Project is not removed, replaced or decommissioned during its useful life (except in the ordinary course of operation or repairs).
- (c) Performance Assurance. On each day on which Performance Assurance is held by SDG&E under this Agreement, the Seller hereby represents and warrants that:
- (i) the Seller has good title to and is the sole owner of such Performance Assurance, and the execution, delivery and performance of the covenants and agreements of this Agreement, do not result in the creation or imposition of any lien or security interest upon any of its assets or properties, including, without limitation, the Performance Assurance, other than the security interests and liens created under this Agreement;
- (ii) upon the Transfer of Performance Assurance by the Seller to SDG&E, SDG&E shall have a valid and perfected first priority continuing security interest therein, free of any liens, claims or encumbrances, except those liens, security interests, claims or encumbrances arising by operation of law that are given priority over a perfected security interest; and
- (iii) it is not and will not become a party to or otherwise be bound by any agreement, other than this Agreement, which restricts in any manner the rights of any present or future holder of any of the Performance Assurance with respect hereto.

6.3 Taxes

- (a) Seller Liability. Seller assumes exclusive liability for and shall pay before delinquency, all federal, state, regional, municipal or local sales, use, excise and other taxes, charges or contributions imposed on, or with respect to, or measured by

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

- (i) the equipment, materials, supplies or labor furnished hereunder, (ii) the wages, salaries or other remunerations paid to individuals employed in connection with the performance of the work under this Agreement, or (iii) any failure to comply with the Patient Protection and Affordable Care Act of 2010, as amended (the “Affordable Care Act”) with respect to individuals performing the work under this Agreement. Seller shall assume sole risk, responsibility and liability for, and shall indemnify, reimburse, defend, and hold harmless SDG&E and SDG&E’s directors, officers, employees, agents, assigns, and successors in interest (each, an “Indemnified Party”) for, from and against, any and all loss, liability, damage, claim, cost, charge, demand, penalty, fine or expense of any kind or nature (including any direct, damage, claim, cost, charge, demand, or expense, and attorneys’ fees (including cost of in-house counsel) and other costs of litigation, arbitration or mediation, and in the case of third-party claims only, indirect or consequential loss or damage of such third-party) arising from, caused by, or in connection with, Seller’s failure to pay such taxes, charges or contributions.
- (b) Tax Minimization. Each Party shall make commercially reasonable efforts to cooperate with each other to minimize the tax liability of both Parties to the extent legally permissible (and with no duty to increase either parties tax liability), including separately stating taxable charges on Seller’s invoices and supplying resale and exemption certificates, if applicable, and any other information as reasonably requested.

ARTICLE 7. NOTICES

7.1 Notice

All Notices, requests, statements or payments from one Party to the other Party shall be made to the addresses and persons specified in Section 7.2. All Notices, requests, statements or payments from one Party to the other Party shall be made in writing except where this Agreement expressly provides otherwise. Notices required to be in writing shall be delivered by hand delivery, overnight delivery, or facsimile. Notice from one Party to the other Party by facsimile (where confirmation of successful transmission is received) shall be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it shall be deemed received on the next Business Day). Notice from one Party to the other Party by hand delivery or overnight delivery shall be deemed to have been received when delivered. A Party may change its contact information by providing Notice of the same in accordance herewith.

7.2 Contact Information

For SDG&E:

Contract Representative
[Name]

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

Phone:
Facsimile:

Invoice Representative:

[Name]

Phone:
Facsimile:

Accounts Payable and Invoice Submittal Address:

San Diego Gas & Electric
Attn: Accounts Payable
P.O. Box 129007
San Diego, CA 92112

Credit and Collections:

Attn: Manager of Credit for SDG&E
555 W. 5th St. ML18A3
Los Angeles, CA 90013
Phone: (866) 313-6622
Facsimile: (213) 244-8316

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

SDG&E Law Department, General Counsel
Phone: (858) 650-6141
Facsimile: (619) 696-4443

For Seller:

Billing Representative

[Name]

Phone:
Facsimile:

Contract Representative

[Name]

Phone:
Facsimile:

Settlements

[Name]

Phone:
Facsimile:

Other Seller Contact Information:

[Name, if any]

Credit and Collections

Attn:
Phone:
Facsimile:

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

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

[Name]

Phone:

Facsimile:

The Parties acknowledge and agree that those persons set forth in this Section 7.2 are designated by each Party as their respective authorized representatives to act on their behalf for the purposes described therein.

ARTICLE 8. EVENTS OF DEFAULT; TERMINATION

8.1 Events of Default

- (a) Generally. An “Event of Default” shall mean, with respect to a Party (“Defaulting Party”), the occurrence of any of the following:
- (i) the failure to make, when due, any payment required to be made to the other Party pursuant to this Agreement, if such failure is not remedied within three (3) Business Days after written Notice of such failure is given by the Non-Defaulting Party;
 - (ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature;
 - (iii) the failure to perform any material covenant, obligation, term or condition of this Agreement (except to the extent constituting a separate Event of Default), where such breach is not remedied within five (5) Business Days of Notice of such breach by the Non-Defaulting Party;
 - (iv) such Party becomes Bankrupt;
 - (v) such Party disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of this Agreement; or
 - (vi) such Party assigns this Agreement to any of its rights hereunder other than in compliance with Section 15.3.
- (b) Seller Events of Default. In addition to the Events of Default set forth in Section 8.1(a) above, the following shall be an Event of Default of Seller:
- (i) the failure of Seller to satisfy the collateral requirements set forth in Article 5, including failure to post and maintain Performance Assurance;

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

- (ii) the failure of Seller to achieve the Initial Delivery Date by the Initial Delivery Deadline (as such Initial Delivery Deadline shall have been extended pursuant to Section 2.2);
- (iii) Seller abandons the Project;
- (iv) the failure to maintain the necessary Permits under Section 2.7;
- (v) a breach by Seller of any representation, warranty, covenant or obligation under Section 6.2;
- (vi) Seller fails to cause an Evaluator to issue an Annual Inspection Report by the date that is thirty (30) days following the applicable Annual Inspection Report Deadline, and such failure is not remedied within ten (10) Business Days after written Notice of such failure is given by SDG&E;
- (vii) SDG&E has not received an Acceptable Annual Inspection Report within ninety (90) days following the applicable Annual Inspection Report Deadline, and such failure is not remedied within ten (10) Business Days after written Notice of such failure is given by SDG&E; or
- (viii) For two (2) consecutive Contract Years, the Reported Annual Peak Capacity Savings amount reported in the Acceptable Annual Inspection Report for each such Contract Year does not meet the Project Requirements for the following Contract Year.

8.2 Remedies

If an Event of Default shall have occurred with respect to a Defaulting Party, the other Party (the “Non-Defaulting Party”) has the right:

- (a) To designate by Notice, which will be effective five (5) Business Days after the Notice is given, a day, no later than twenty (20) calendar days after the Notice is effective, for the early termination of this Agreement (an “Early Termination Date”) and the concurrent payment of the Termination Payment determined in accordance with Section 8.3 below;
- (b) Suspend performance of this Agreement (including making payments due to the Defaulting Party under this Agreement), but excluding the obligation to post and maintain Performance Assurance in accordance with Article 5; and
- (c) To pursue all other remedies available at law or in equity against the Defaulting Party (including monetary damages), except to the extent that such remedies are limited by the terms of this Agreement.

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

8.3 Termination Payment

As soon as practicable after an Early Termination Date is declared, the Non-Defaulting Party shall provide Notice to the Defaulting Party of the Termination Payment.

The Notice must include a written statement setting forth, in reasonable detail, the calculation of such Termination Payment including the Settlement Amount, together with appropriate supporting Documentation.

If the Termination Payment is positive, the Defaulting Party shall pay such amount to the Non-Defaulting Party within two (2) Business Days after the Notice is provided. If the Termination Payment is negative (i.e., the Non-Defaulting Party owes the Defaulting Party more than the Defaulting Party owes the Non-Defaulting Party), then the Non-Defaulting Party shall pay such amount to the Defaulting Party within thirty (30) days after the Notice is provided.

Each Party acknowledges and agrees that (a) the actual damages that the Non-Defaulting Party would incur in connection with a termination of this Agreement by the Non-Defaulting Party as a result of an Event of Default of the Defaulting Party would be difficult or impossible to predict with certainty, (b) the Termination Payment described in this Section 8.3 is a reasonable and appropriate approximation of such damages, and (c) the Termination Payment is the exclusive remedy of the Non-Defaulting Party in connection with such termination but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect such termination as its remedy for an Event of Default by the Defaulting Party.

ARTICLE 9. INDEMNIFICATION

9.1 Seller's Indemnification Obligations

- (a) General Indemnity. In addition to any other indemnification obligations Seller may have elsewhere in this Agreement, which are hereby incorporated in this Section 9.1, Seller releases, and shall indemnify, defend and hold harmless SDG&E and each other Indemnified Party, from and against any and all loss, liability, damage, claim, cost, charge, demand, penalty, fine or expense of any kind or nature (including any direct, damage, claim, cost, charge, demand, or expense, and attorneys' fees (including cost of in-house counsel) and other costs of litigation, arbitration or mediation, and in the case of third-party claims only, indirect or consequential loss or damage of such third-party) incurred by such Indemnified Party, arising out of or in connection with:
 - (i) The performance of work under this Agreement (whether such performance is by Seller, Seller's contractor or subcontractor, any other person performing on behalf of Seller or Seller's contractor or subcontractor or otherwise);

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

- (ii) The installation, construction, operation or maintenance of any Measure installed for the Project (whether such work was performed by Seller, an End-Use Customer, any contractor or subcontractor of either of them, or any other person) in a manner that violates any Law, Permit or Accepted Electrical Practice;
- (iii) any violation of a Law arising out of or in connection with Seller's performance of, or failure to perform, this Agreement, including any strict liability imposed by any Law; or
- (iv) Any violation by Seller or any of Seller's contractors or subcontractors of any third party license to use intellectual property in connection with work performed under this Agreement;

except to the extent any of the foregoing is caused by such Indemnified Party's negligence or willful misconduct.

- (b) Hazardous Materials. Seller acknowledges that any claims, demands, losses, damages, costs, expenses, and legal liability that arise out of, result from, or are in any way connected with the release or spill of any legally designated hazardous material or waste as a result of the work performed under or in connection with this Agreement are expressly within the scope of this indemnity, and that the costs, expenses, and legal liability for environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remedial work, penalties, and fines arising from strict liability, or violation of any Law, attorney's fees, disbursements, and other response costs incurred as a result of such releases or spills are expressly within the scope of the indemnity set forth in this Section 9.1.
- (c) Intellectual Property Infringement. Seller shall indemnify, defend and hold harmless SDG&E and each Indemnified Party from and against any actual or alleged infringement or misappropriation by Seller, any End-Use Customer or any of its or their contractors or subcontractors of any patent, copyright, trade secret, trademark, service mark, trade name, or other intellectual property right in connection with work performed under this Agreement or in connection with the Project.
- (d) Liens. Seller shall indemnify, defend and hold harmless SDG&E and each Indemnified Party from and against any mechanics lien or stop notice claim against such Indemnified Party by Seller, End-Use Customer or any of its or their contractors, subcontractors, employees, suppliers or agents pertaining the work under this Agreement or in connection with the Project. If Seller fails to remove or discharge by bond, payment or otherwise any lien or claim within five (5) Business Days after an Indemnified Party's written demand to do so, SDG&E may offset the compensation otherwise payable to SDG&E under this Agreement in order to pay such lienors directly.

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

9.2 Indemnification Claims.

All claims for indemnification by an Indemnified Party under this Agreement will be asserted and resolved as follows:

- (a) If a claim or demand for which SDG&E may claim indemnity is asserted against or sought to be collected from Seller by a third party, SDG&E shall as promptly as practicable give Notice to the Seller; provided, failure to provide this Notice will relieve Seller only to the extent that the failure actually prejudices Seller;
- (b) Seller will have the right to control the defense and settlement of any claims in a manner not adverse to SDG&E but cannot admit any liability or enter into any settlement without SDG&E's approval; and
- (c) SDG&E may employ counsel at its own expense with respect to any claims or demands asserted or sought to be collected against it; provided, if counsel is employed due to a conflict of interest or because Seller does not assume control of the defense, Seller will bear the expense of this counsel.

ARTICLE 10. LIMITATION OF REMEDIES, LIABILITY, AND DAMAGES

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

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

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

UNLESS EXPRESSLY PROVIDED IN THIS AGREEMENT, INCLUDING WITHOUT LIMITATION THE PROVISIONS OF ARTICLE NINE (INDEMNITY), NEITHER

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

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

SDG&E'S AND/OR ITS CONSULTANTS' REVIEW OF THE DESIGN, CONSTRUCTION, OPERATION OR MAINTENANCE OF THE PROJECT SHALL NOT CONSTITUTE ANY REPRESENTATION AS TO THE ECONOMIC OR TECHNICAL FEASIBILITY, OPERATIONAL CAPABILITY, OR RELIABILITY OF THE PROJECT OR OF THE PROJECT'S ABILITY TO PROVIDE ANY ENERGY OR CAPACITY SAVINGS, REDUCTIONS OR EFFICIENCY. SELLER SHALL IN NO WAY REPRESENT TO ANY THIRD PARTY THAT SDG&E'S REVIEW OF THE PROJECT, INCLUDING, BUT NOT LIMITED TO, SDG&E'S AND/OR ITS CONSULTANTS' REVIEW OR ANALYSIS OF THE DESIGN, CONSTRUCTION, OPERATION OR MAINTENANCE OF THE PROJECT, IS A REPRESENTATION BY SDG&E AS TO THE ECONOMIC OR TECHNICAL FEASIBILITY, OPERATIONAL CAPABILITY, AND RELIABILITY OF SUCH PROJECT OR AS TO THE PROJECT'S ABILITY TO PROVIDE ANY ENERGY OR CAPACITY SAVINGS, REDUCTIONS OR EFFICIENCY. SELLER IS SOLELY RESPONSIBLE FOR THE ECONOMIC AND TECHNICAL FEASIBILITY, OPERATIONAL CAPABILITY AND RELIABILITY OF SELLER'S PROJECT AND THE ENERGY AND CAPACITY SAVINGS OR REDUCTIONS ASSOCIATED THEREWITH.

ARTICLE 11. CONFIDENTIALITY

11.1 Agreement Terms.

Neither Party shall disclose the non-public terms or conditions of this Agreement or any transaction hereunder to a third party, other than (a) the Party's Affiliates and its and their

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

officers, directors, employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential, (b) for disclosure to the Buyer's Procurement Review Group, as defined in CPUC Decision (D) 02-08-071, subject to a confidentiality agreement, (c) to the CPUC under seal for purposes of review, (d) in order to comply with any applicable Law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the Party seeking to disclose such non-public terms or conditions or transaction hereunder ("Disclosing Party"), other than to those entities set forth in subsection (e); or (e) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the Federal Energy Regulatory Commission. In connection with requests made pursuant to clause (iv) of this Section 11.1 ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts to prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (i) prohibited from complying with a Disclosure Order or (ii) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

11.2 Publicity.

No announcement, publicity, advertising, press release, promotional or marketing materials regarding the arrangement contemplated under this Agreement, including the existence hereof, shall be made by either Party without the prior written approval of the other Party which approval shall not be unreasonably withheld or delayed.

11.3 End-Use Customer Information.

Notwithstanding anything contained in this Agreement to the contrary (including without limitation the terms of Sections 11.1 and 11.2), Seller shall keep confidential and shall not disclose to any third party (other than to its contractors and subcontractors for the sole purpose of performing the work under this Agreement and only if such contractors and subcontractors have agreed in writing to confidentiality obligations at least as stringent as set forth in this Section 11.3 as if they were the "Seller" hereunder) any information related an End-Use Customer, including but not limited to names, addresses, billing information and energy usage data, except in the event, and only to the extent, that Seller is required to do so by the disclosure of requirements of any Law applicable to Seller, provided that Seller has provided SDG&E with prompt written notice of any such requirement prior to making or permitting any such disclosure so that SDG&E (with Seller's assistance if requested by SDG&E) may have a reasonable opportunity to seek a protective order or other appropriate remedy. Seller shall cause its contractors and subcontractors to comply with the requirements of this Section 11.3 as if they were the "Seller" hereunder.

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

ARTICLE 12. FORCE MAJEURE

If, because of a Force Majeure, either Party is unable to perform an obligation under this Agreement, such Party (the “Claiming Party”) shall not be in default under this Agreement as a result of such failure of performance but only to the extent and for the duration so affected, provided:

- (a) the Claiming Party promptly, but no more than one (1) Business Day after the initial occurrence of the claimed Force Majeure, gives the other Party Notice describing the particulars of the occurrence;
- (b) the Claiming Party, within five (5) Business Days of providing Notice of occurrence of the Force Majeure, provides evidence reasonably sufficient to establish that the occurrence constitutes a Force Majeure as defined in this Agreement;
- (c) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure; and
- (d) as soon as Claiming Party is able to resume performance of its obligations under this Agreement, it shall do so and shall promptly give the other Party Notice of this resumption.

Notwithstanding anything contained in this Article 12 to the contrary, a Force Majeure shall not excuse:

- (i) the Claiming Party’s obligation to make payments then due or becoming due with respect to performance prior to such Force Majeure;
- (ii) the Claiming Party’s indemnification, hold harmless or defense obligations under this Agreement;
- (iii) an Event of Default by Seller under Section 8.1(b)(ii) (with the understanding that the Initial Delivery Deadline may be extended as a result of a Force Majeure pursuant to Section 2.2);
- (iv) an Event of Default by Seller under Section 8.1(b)(v); or
- (v) an Event of Default by Seller under Section 8.1(b)(vi).

This Agreement may be terminated upon Notice by the non-Claiming Party with no further obligation to the Claiming Party if the total number of Force Majeure extension days claimed by such Claiming Party (which may be from one or more Force Majeure events) during the Term of the Agreement exceeds 365 days.

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

ARTICLE 13. INSURANCE

13.1 Insurance

Throughout the Term and for such additional periods as may be specified below, Seller shall, at its own expense, provide and maintain in effect the insurance policies and minimum limits of coverage specified below, and such additional coverage as may be required by applicable law, with insurance companies which are authorized to do business in the state in which the services are to be performed and which have an A.M. Best's Insurance Rating of not less than A-;VII. The minimum insurance requirements specified herein do not in any way limit or relieve Seller of any obligation assumed elsewhere in this Agreement, including, but not limited to, Seller's defense, liability and indemnity obligations.

- (a) Workers' Compensation Insurance with the statutory limits required by the state having jurisdiction over Seller's employees;
- (b) Employer's Liability Insurance with limits of not less than:
 - (i) Bodily injury by accident – One Million dollars (\$1,000,000) each accident
 - (ii) Bodily injury by disease – One Million dollars (\$1,000,000) policy limit
 - (iii) Bodily injury by disease – One Million dollars (\$1,000,000) each employee
- (c) Commercial General Liability Insurance (which, except with the prior written consent of SDG&E and subject to subsections 13.1(c)(i) and 13.1(c)(ii) below, shall be written on an "occurrence," not a "claims-made" basis), covering all operations by or on behalf of Seller arising out of or connected with this Agreement, including coverage for bodily injury, broad form property damage, personal and advertising injury, products/completed operations, and contractual liability. Such insurance shall bear a combined single limit per occurrence and annual aggregate of not less than *[TBD (or) \$3,000,000 per occurrence and \$6,000,000 general aggregate]*, exclusive of defense costs, for all coverages. Such insurance shall contain standard cross-liability and severability of interest provisions and no explosion, collapse, or underground exclusions.

If Seller elects, with SDG&E's written concurrence, to use a "claims made" form of Commercial General Liability Insurance, then the following additional requirements apply:

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

- (i) The retroactive date of the policy must be prior to the Execution Date; and
 - (ii) Either the coverage must be maintained for a period of not less than three (3) years after the Agreement terminates, or the policy must provide for a supplemental extended reporting period of not less than three (3) years after the Agreement terminates.
- (d) Commercial Automobile Liability Insurance covering bodily injury and property damage with a combined single limit of not less than One Million dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired automobiles in the performance of the Agreement.
- (e) Pollution Liability Insurance, (which, except with the prior written consent of SDG&E and subject to subsections 13.1(e)(i) and 13.1(e)(ii) below, shall be written on an "occurrence," not a "claims-made" basis) with limits of not less than *[TBD (or) \$5,000,000 per occurrence or each claim and in the annual aggregate]*, covering losses involving hazardous material(s) and caused by pollution incidents or conditions that arise from the Project, including but not limited to, coverage for bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death, property damage including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically damaged or destroyed, and defense costs.

If Seller elects, with SDG&E's written concurrence, to use a "claims made" form of Pollution Liability Insurance, then the following additional requirements apply:

- (i) The retroactive date of the policy must be prior to the Execution Date; and
 - (ii) Either the coverage must be maintained for a period of not less than three (3) years after the Agreement terminates, or the policy must provide for a supplemental extended reporting period of not less than three (3) years after the Agreement terminates.
- (f) Umbrella/Excess Liability Insurance, written on an "occurrence," not a "claims-made" basis, providing coverage excess of the underlying Employer's Liability, Commercial General Liability, and Commercial Automobile Liability insurance, on terms at least as broad as the underlying coverage, with limits of not less than *[TBD (or) \$10,000,000 per occurrence and in the annual aggregate]* per occurrence and in the aggregate. The insurance requirements of this Article 13 can be provided by any combination of Seller's primary and excess liability policies.

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

13.2 SDG&E as Insured

The insurance required in Section 13.1 shall apply as primary insurance to, without a right of contribution from, any other insurance or self-insurance maintained by or afforded to SDG&E, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, and employees, regardless of any conflicting provision in Seller's policies to the contrary. To the extent permitted by law, Seller and its insurers shall be required to waive all rights of recovery from or subrogation against SDG&E, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, employees and insurers. The Commercial General Liability, Pollution Liability and Umbrella/Excess Liability insurance required above shall name SDG&E, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents and employees, as additional insureds for liability arising out of Seller's obligations under this Agreement.

13.3 Certificates of Insurance and Endorsements

At the time this Agreement is executed, or within a reasonable time thereafter, and within a reasonable time after coverage is renewed or replaced, Seller shall furnish to SDG&E certificates of insurance and applicable endorsements evidencing the coverage required above, written on forms and with deductibles reasonably acceptable to SDG&E. All deductibles, co-insurance and self-insured retentions applicable to the insurance above shall be paid by Seller. All certificates of insurance and endorsements shall note that the insurers issuing coverage shall endeavor to provide SDG&E with at least thirty (30) days' prior written notice in the event of cancellation of coverage. SDG&E's receipt of certificates or endorsements that do not comply with the requirements stated herein, or Seller's failure to provide certificates or endorsements, shall not limit or relieve Seller of the duties and responsibility of maintaining insurance in compliance with the requirements in this Article 13 and shall not constitute a waiver of any of the requirements in this Article 13.

13.4 Failure to Comply

If Seller fails to comply with any of the provisions of this Article 13, Seller, among other things and without restricting SDG&E's remedies under the law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required Commercial General Liability, Pollution Liability, Umbrella/Excess Liability and Commercial Automobile Liability insurance, Seller shall provide a current, full and complete defense to SDG&E, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above.

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

ARTICLE 14. DISPUTE RESOLUTION

14.1 Intent of the Parties

Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating to this Agreement or any related agreement is the dispute resolution procedure set forth in this Article 14. Either Party may seek a preliminary injunction or other provisional judicial remedy if such action is necessary to prevent irreparable harm or preserve the status quo, in which case both Parties nonetheless will continue to pursue resolution of the dispute by means of the dispute resolution procedure set forth in this Article 14.

14.2 Management Negotiations

- (a) The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement or any related agreements by prompt negotiations between each Party's authorized representative designated in writing as a representative of the Party (each a "Manager"). Either Manager may, by Notice to the other Party, request a meeting to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place (either in person or telephonically). If the matter is not resolved within fifteen (15) Business Days of their first meeting ("Initial Negotiation End Date"), the Managers shall refer the matter to the designated senior officers of their respective companies that have authority to settle the dispute ("Executive(s)"). Within five (5) Business Days of the Initial Negotiation End Date ("Referral Date"), each Party shall provide one another Notice confirming the referral and identifying the name and title of the Executive who will represent the Party.
- (b) Within five (5) Business Days of the Referral Date, the Executives shall establish a mutually acceptable location and date, which date shall not be greater than thirty (30) days from the Referral Date, to meet. After the initial meeting date, the Executives shall meet, as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute.
- (c) All communication and writing exchanged between the Parties in connection with these negotiations shall be confidential and shall not be used or referred to in any subsequent binding adjudicatory process between the Parties.
- (d) If the matter is not resolved within forty-five (45) days of the Referral Date, or if the Party receiving the Notice to meet, pursuant to Section 14.2(a) above, refuses or does not meet within the ten (10) Business Day period specified in Section 14.2(a) above, either Party may initiate arbitration of the controversy or claim by providing Notice of a demand for binding arbitration at any time thereafter.

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

14.3 Arbitration

Any dispute that cannot be resolved by management negotiations as set forth in Section 14.2 above shall be resolved through binding arbitration by a retired judge or justice from the JAMS panel conducted in San Diego, California, administered by and in accordance with JAMS Comprehensive Arbitration Rules and Procedures (“Arbitration”).

- (a) Any arbitrator shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. The Parties shall cooperate with one another in selecting the arbitrator within sixty (60) days after Notice of the demand for arbitration. If, notwithstanding their good faith efforts, the Parties are unable to agree upon a mutually-acceptable arbitrator, the arbitrator shall be appointed as provided for in JAMS Comprehensive Arbitration Rules and Procedures.
- (b) At the request of a Party, the arbitrator shall have the discretion to order depositions of witnesses to the extent the arbitrator deems such discovery relevant and appropriate. Depositions shall be limited to a maximum of three (3) per Party and shall be held within thirty (30) days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrator, and for good cause shown. Each deposition shall be limited to a maximum of six (6) hours duration unless otherwise permitted by the arbitrator for good cause shown. All objections are reserved for the Arbitration hearing except for objections based on privilege and proprietary and confidential information. The arbitrator shall also have discretion to order the Parties to exchange relevant documents. The arbitrator shall also have discretion to order the Parties to answer interrogatories, upon good cause shown.
- (c) The arbitrator shall have no authority to award punitive or exemplary damages or any other damages other than direct and actual damages and the other remedies contemplated by this Agreement.
- (d) The arbitrator shall prepare in writing and provide to the Parties an award including factual findings and the reasons on which their decision is based.
- (e) The arbitrator’s award shall be made within nine (9) months of the filing of the notice of intention to arbitrate (demand) and the arbitrator shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the arbitrator, if necessary.
- (f) Judgment on the award may be entered in any court having jurisdiction.
- (g) Each Party shall bear its own costs, expenses and attorneys’ fees associated with the dispute resolution process, and the arbitrator shall not have authority to allocate the costs or expenses of the Arbitration, including the arbitrator’s fees, to either Party.

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

- (h) The arbitrator shall have the authority to grant dispositive motions prior to the commencement of or following the completion of discovery if the arbitrator concludes that there is no material issue of fact pending before the arbitrator.
- (i) The existence, content, and results of any Arbitration hereunder is confidential information that is subject to the provisions of Article 11.

ARTICLE 15. MISCELLANEOUS

15.1 Governing Law and Venue

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS. ANY ACTION OR LITIGATION BROUGHT TO ENFORCE OR INTERPRET THIS AGREEMENT SHALL BE BROUGHT IN A SUPERIOR COURT OF CALIFORNIA LOCATED IN SAN DIEGO COUNTY, CALIFORNIA (OR, IF THE FEDERAL COURTS HAVE EXCLUSIVE JURISDICTION OVER THE SUBJECT MATTER OF THE DISPUTE, IN THE U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA), AND THE PARTIES HEREBY SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURT.

15.2 Amendment

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

15.3 Assignment

Neither Party shall assign this Agreement or its rights hereunder, as the case may be, without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) assign this Agreement or the accounts, revenues or proceeds hereof or thereof, as the case may be, in connection with any financing or other financial arrangements to its financing providers as collateral, (ii) transfer or assign this Agreement to an Affiliate of such Party which Affiliate's creditworthiness is equal to or higher than that of such Party (and, where Seller is the assignor, demonstrates, to SDG&E's reasonable satisfaction, that such assignee Affiliate has the experience and expertise to perform all of Seller's obligations under this Agreement), or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party and whose creditworthiness is equal to or higher than that of such Party (and, where Seller is the assignor, demonstrates, to SDG&E's reasonable satisfaction, that such assignee Affiliate has the experience and expertise to perform all of Seller's obligations under this Agreement); provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

15.4 Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of, the Parties and their respective permitted successors and assigns.

15.5 Waiver

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

15.6 Obligations Surviving Termination

Except as may be provided or limited by this Agreement, the obligations which by their nature are intended to survive termination of this Agreement, including representations, warranties, covenants and rights and obligations with respect to indemnification, payment, settlement, and confidentiality, shall so survive.

15.7 No Agency

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

15.8 No Third Party Beneficiaries

This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound by this Agreement), except where such third party is an Indemnified Party under this Agreement.

15.9 Entire Agreement

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

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

15.10 Severability

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

15.11 Multiple Originals

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

15.12 Audit Rights

SDG&E, or its designee, shall have the right, at its sole expense and during normal working hours, to audit the documents, records or data of Seller to the extent reasonably necessary to verify the accuracy of any statement, claim, charge or calculation made pursuant to this Agreement. Seller shall promptly comply with any reasonable request by SDG&E under this Section and provide copies of documents, records or data to SDG&E. The rights and obligations under this Section shall survive the termination of this Agreement for a period of five (5) years. Seller shall include a similar clause in its arrangements with its contractors and subcontractors reserving the right to designate Seller's own designee and/or representative of SDG&E, who shall have the right to verify the accuracy of any statement, claim, charge or calculation made in connection with the work performed under this Agreement.

15.13 Performance Under this Agreement

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

15.14 Independent Contractor

- (a) Seller's Relationship with SDG&E. The Parties agree that Seller is performing all work under this Agreement as an independent contractor and no principal-agent or employer-employee relationship or joint-venture or partnership shall be created with SDG&E. Seller represents to SDG&E that Seller and its contractors and subcontractors and agents are properly licensed, fully experienced and qualified (including having all necessary authorizations) to perform the class and type of the work as specified in this Agreement, in addition to being properly insured, equipped,

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

organized, staffed and financed to handle such work. Seller shall perform the work under this Agreement in an orderly and professional manner in accordance with industry standards. Seller shall not employ for the work any personnel or contractor or subcontractor unskilled in the work assigned. Seller shall use prudent business practices in its relationships with subcontractors, suppliers and agents.

- (b) Individuals Performing the Work; Benefits and Affordable Care Act. Regardless of the nature or duration of any assignment with SDG&E, neither Seller, its contractor or subcontractor nor any individuals performing work under this Agreement shall be eligible for or entitled to participate in any of SDG&E's employee benefit plans, programs, policies or practices which may now or in the future be in effect, including, without limitation, any pension, retirement, or 401(k) plan; any profit sharing, stock option, bonus or incentive compensation plan; any life or health insurance plan; any vacation or holiday pay plan; or any separation payment plan. Seller shall, or shall require that the appropriate contractor and subcontractor is contractually obligated to, treat individuals performing the work under this Agreement as its employees for the purposes of satisfying the requirements of the Affordable Care Act, including but not limited to the requirements of Internal Revenue Code Section 4980H, the associated reporting requirements of Internal Revenue Code Section 6056, and the requirements of Sections 18A and 18B of the Fair Labor Standards Act. Furthermore, Seller shall, or shall require that the appropriate contractor and subcontractor is contractually obligated to, offer minimum essential coverage that is both affordable and minimum value to all individuals performing work under this Agreement who are full-time employees (and their dependents) in accordance with Internal Revenue Code section 4980H and the regulations issued thereunder, provided that the Seller or applicable subcontractor is a "large employer" subject to section 4980H.

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**MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY**

IN WITNESS WHEREOF, the Parties have read this Agreement, understand it, and agree to be bound by its terms as of the Execution Date.

**SAN DIEGO GAS & ELECTRIC
COMPANY**

[SELLER]

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

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

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

EXHIBIT A

Form of Letter of Credit

IRREVOCABLE NONTRANSFERABLE STANDBY

LETTER OF CREDIT

Reference Number:

Transaction Date:

BENEFICIARY:

San Diego Gas & Electric Company
555 W. 5th St. ML18A3
Los Angeles, CA 90013
Attention Credit Manager

Ladies and Gentlemen:

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

This Letter of Credit shall be of no further force or effect upon the close of business on the Expiration Date or, if such day is not a Business Day (as hereinafter defined), on the next Business Day.

For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in Los Angeles, California.

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

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

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

Notwithstanding the foregoing, any full or partial drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at _____ or such other number as specified from time-to-time by the Bank.

The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

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

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

Banking charges shall be the sole responsibility of the Applicant.

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

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

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

AUTHORIZED SIGNATURE for Issuer

(Name)

Title: _____

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

ATTACHMENT A

TO **[ISSUING BANK NAME]**

IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT

No. _____

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Non-transferable Standby Letter of Credit

Reference Number: _____

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

1. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to \$ _____, for the following reason(s) [check applicable provision]:

]A. An Event of Default, as defined in that certain Energy Efficiency Resource Purchase Agreement between Applicant and Beneficiary, dated as of **[Date of Execution]** (the “Agreement”) with respect to the Applicant has occurred and is continuing.

]B. A Letter of Credit Default (as defined in the Agreement) has occurred and is continuing.

]C. An Early Termination Date (as defined in the Agreement) has occurred or been designated as a result of an Event of Default (as defined in the Agreement) with respect to the Applicant for which there exist any unsatisfied payment obligations.

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

]E. The Bank or Applicant has heretofore provided written notice to the Beneficiary of the Bank’s or Applicant’s intent not to renew the Letter of Credit

**MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY**

following the present Expiration Date thereof, and Applicant has failed to provide the Beneficiary with a replacement letter of credit satisfactory to Beneficiary in its sole discretion within thirty (30) days following the date of the notice of non-renewal.

[]F. The Beneficiary has not been paid any or all of the Applicant's payment obligations now due and payable under the Agreement.

2. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS AND ____/100ths (U.S.\$_____), which amount does not exceed (i) the amount set forth in paragraph 1 above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.
3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

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

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Beneficiary by its authorized representative as of this ____ day of _____, _____.

Beneficiary: SAN DIEGO GAS & ELECTRIC COMPANY

By:

Name:

Title:

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

EXHIBIT B

PROJECT DESCRIPTION & M&V PLAN

This Exhibit B (which includes Exhibits B-1, B-2, B-3 and B-4) describes the Project and the Measures that will deliver the capacity savings defined in this Agreement and sets forth the M&V Plan for determining the Annual Peak Capacity Savings for the Project.

A. Project Description

1. Goals & Objectives. *[To be developed based on bid]*
2. Marketing. *[To be developed based on bid].*
3. End-Use Customers. Seller shall exclusively target End-Use Customers in the following market segments:

Market Segment	NAICS Code	Description

Seller shall also work with SDG&E to identify high-cost CAISO PNodes and prioritize these areas for implementation.

4. Eligible Measures. Seller’s Project shall only comprise of the types of measures listed in Exhibit B-1, as well as any other measure types mutually agreed to by the Parties in writing (“Eligible Measures”). The Parties shall update Exhibit B-1 following the additional of any measure types mutually agreed to by the Parties.

Eligible Measures shall have a minimum effective useful life of five (5) years. SDG&E may allow certain Eligible Measures with an effective useful life of less than five (5) years at its sole and absolute discretion.

5. Measure Installation, Review, and Certification.

(a) Measure Installation Notices. Prior to the commencement of any physical construction or installation work for the installation of any measure for the Project, Seller shall notify SDG&E of its intent to install such measure using the form attached hereto as Exhibit B-2 (“Measure Installation Notice”) and obtain SDG&E’s signed approval to install such measure; provided that (i) SDG&E shall be afforded no more than sixty (60) days following receipt of such Measure Installation Notice to approve or disapprove of such measure, and if SDG&E does not provide a notice of disapproval within such sixty (60) days, then SDG&E shall be deemed to have approved of such measure and signed such Measure Installation Notice, and (ii) SDG&E shall only be permitted to disapprove of such measure for good and reasonable cause, which

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

causes may include, but is not limited to (A) non-compliance of Seller or such measure with any of the requirements of the Agreement (including Section 6.2(a) and this Exhibit B), (B) non-compliance of such measure or the installation thereof with applicable Law, (C) use of a contractor or subcontractor to construct or install such measure that is not permitted by this Agreement, (D) uncured breach by Seller of its obligations to maintain the insurance requirements under Article 13 of the Agreement, or (E) such measure is not being an Eligible Measure.

(b) Measure Installation Certificates. Following the completion of the installation of measure that is to be included in the Project, and as a condition to such measure being deemed a “Measure” for purposes of this Agreement and being included in the Project, an authorized representative of Seller shall submit a signed Measure Installation Certificate in the form attached hereto as Exhibit B-3 (“Measure Installation Certificate”).

6. List of Installed Measures. Exhibit B-4 attached hereto is an ongoing list of installed Measures for the Project, along with information regarding each such Measure’s End-Use Customer Site and a description of such Measure. No later than five (5) Business Days following the end of each calendar month during the Delivery Period, Seller shall provide SDG&E an updated Exhibit B-4, and Seller represents and warrants that the information contained in each such updated Exhibit B-4 provided by Seller is true, accurate and complete as of the last day of such calendar month.

B. M&V Plan. The Annual Peak Capacity Savings and Annual Energy Savings for each type of Measure installed shall be calculated as follows:

[Note to Sellers: A sample M&V plan is provided below. Sellers may propose a different M&V Plan with their bid.]

1. Deemed Measures. For Eligible Measures for which an annual peak capacity savings and/or annual energy savings can be estimated using the Database for Energy Efficient Resources (“Deemed Measures”), the Annual Peak Capacity Savings and/or Annual Energy Savings for such Deemed Measures will be calculated using the applicable peak capacity savings and/or energy savings values from DEER in effect at the time on the applicable Inspection Date (as such values may have been amended or modified, the “Effective DEER Values”), less any degradation in the performance of the Measure following its installation, as documented by the Evaluator in an Annual Inspection Report (“Performance Degradation”). DEER values can be found at <http://www.deeresources.com>. For Deemed Measures, the Evaluator’s measurement and verification protocol will be limited to a recording that such Deemed Measure is still installed and performing at or near the rated performance level at the time of installation and a determination of the amount of Performance Degradation of such Measure.

2. Custom Measures. For Eligible Measures which are not Deemed Measures, the Annual Peak Capacity Savings will be calculated utilizing the methodologies specified in the following documents, guidelines and publications:

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

- (a) The Work Paper for such Measure, if such Work Paper is attached in Exhibit B-1;
- (b) *[SDG&E to insert industry-standard guidelines for calculating savings for non-residential EE programs]* (“Customized Guidelines”);
- (c) *Energy Efficiency Evaluation Protocol*, California Public Utilities Commission (2006), or its successor (“CPUC Protocols”); and
- (d) *International Performance Measurement and Verification Protocol: Concepts and Options for Determining Energy and Water Savings, Volume 1*, Efficiency Valuation Organization (January 2012), or its successor (“IPMVP Protocols”).

In the event of any conflict between terms contained in this Agreement or any of the other documents identified in clauses (a)-(d) above, the conflict shall be resolved by the following priority of documents: (i) this Agreement (including this Exhibit B, but excluding the Work Papers), (ii) the Work Paper for such Measure, if any, (iii) the Customized Guidelines, (iv) the CPUC Protocols, and (v) the IPMVP Protocols

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

EXHIBIT B-1

ELIGIBLE MEASURES

[To be provided by Seller]

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

EXHIBIT B-2

MEASURE INSTALLATION NOTICE

PART I – SUMMARY

- A. LCR DEVELOPER: *[Name]*
 [Address]
 Contact:
- B. HOST FACILITY:
- C. OWNER:
- D. SDG&E METER:
- E. PROJECTED DATE OF COMMENCEMENT OF PHYSICAL CONSTRUCTION OR
INSTALLATION:
- F. PROJECTED INITIAL OPERATION DATE:
- G. DESCRIPTION OF PROPOSED MEASURES:
- 1.
 - 2.
 - 3.

PART II – BUILDING DESCRIPTION

- A. GENERAL:
- B. OCCUPANCY AND USE:
- C. HISTORICAL ENERGY USE:
- D. ENERGY SYSTEMS PROPOSED FOR RETROFIT:

PART III – MEASURE DESCRIPTION

- A. EXISTING CONDITIONS:

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

B. PROPOSED MODIFICATIONS:

PART IV – PROPOSED MEASURE SAVINGS

[Include performance of existing conditions and proposed performance and resulting energy and capacity savings. Details of any custom measures to be included here.]

PART V – PROPOSED IMPLEMENTATION TEAM

[Include a list of all proposed subcontractors, suppliers, sub-consultants, and other parties related to the measure implementation including contact information for each.]

Submitted by:

[SELLER]

By: _____
Name: _____
Title: _____

Approved by:

SAN DIEGO GAS & ELECTRIC COMPANY

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

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

EXHIBIT B-3

MEASURE INSTALLATION CERTIFICATE

This Measure Installation Certificate is being provided with respect to the following installed Measure:

Measure Summary

- A. HOST FACILITY:
- B. OWNER:
- C. SDG&E METER:
- D. DATE OF COMMENCEMENT OF PHYSICAL CONSTRUCTION OR INSTALLTION:
- E. INITIAL OPERATION DATE:
- F. DESCRIPTION OF MEASURE:
 - 1.
 - 2.
 - 3.
- G. IMPLEMENTATION TEAM:

Certification

Reference is made to that certain Energy Efficiency Resource Purchase Agreement, dated as of _____, 2016, by and between *[Seller]* and San Diego Gas & Electric Company (as may have been amended, modified or supplemented from time to time, the “Agreement”). Capitalized terms used but not defined herein shall have their meanings set forth in the Agreement.

I, *[Insert Name]*, on behalf of and as an authorized representative of Seller do hereby certify the following on the date set forth below:

- 1. The information set forth in the Measure Summary above is true and accurate;
- 2. The Measure described in the Measure Summary (the “Certified Measure”) is an Eligible Measure under the Agreement;

**MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY**

3. The installation of the Measure described in the Measure Summary (the “Certified Measure”) has been completed and [is][is ready to be] operational;

4. The Certified Measure has been installed in accordance with the requirements of the Agreement, applicable Law, and Accepted Electrical Practice; and

5. The representations and warranties in Section 6.2(a) of the Agreement are and continue to be true and accurate with respect to the Project and the Certified Measure.

Executed this ____ day of _____, 2____.

[SELLER]

By: _____
Name: _____
Title: _____

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

EXHIBIT B-4

INSTALLED MEASURES
(As of *[Insert Date]*)

End-Use Customer ID	Site Description	Installed Measure Description

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

EXHIBIT C

CONTRACTED ANNUAL ENERGY SAVINGS

Contract Year	MWh

MODEL ENERGY EFFICIENCY AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS & ELECTRIC COMPANY

EXHIBIT D

CONTRACTED ANNUAL PEAK CAPACITY SAVINGS

Contract Year	MW

NOTE TO SELLERS: SDG&E filed an Application for Rehearing on January 21, 2016 relating to Decision 15-12-025 for clarification on language addressing sales in excess of 115% of the annual Contract Quantity (i.e. 4.2(a)(ii)). If the Commission clarifies that SDG&E is required to permit sales to other third parties in addition to the CAISO, SDG&E will, pursuant to further directives from the Commission that are not presently authorized, make further conforming changes to this PPA to accommodate such additional third party sales.

[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

TABLE OF CONTENTS

COVER SHEET.....1

GENERAL TERMS AND CONDITIONS3

ARTICLE ONE: GENERAL DEFINITIONS.....3

 1.1 General.....3

 1.2 Interpretation.....22

ARTICLE TWO: EFFECTIVENESS OF AGREEMENT; CONDITIONS PRECEDENT23

 2.1 Effectiveness of Agreement Prior to CP Satisfaction Date.23

 2.2 Obligations of the Parties.....23

 2.3 Conditions Precedent.24

 2.4 Failure to Meet All Conditions Precedent.25

 2.5 Effectiveness of Agreement on and after CP Satisfaction Date.25

ARTICLE THREE: OBLIGATIONS AND DELIVERIES26

 3.1 Transaction.....26

 3.2 Transmission.29

 3.3 Scheduling.....30

 3.4 Dispatch Notices.36

 3.5 Standards of Care.....37

 3.6 Metering.....38

 3.7 Outage Notification.....39

 3.8 Operations Logs and Access Rights.40

 3.9 New Generation Facility.40

 3.10 Operating Procedures.....42

ARTICLE FOUR: COMPENSATION; MONTHLY PAYMENTS.....43

 4.1 *[For Dispatchable Product Only: Capacity Payment.....43*

 4.2 Energy Payment.....45

 4.3 Imbalance Energy.49

 4.4 Additional Compensation.50

 4.5 Energy Sales Prior to Commercial Operation Date.50

ARTICLE FIVE: EVENTS OF DEFAULT; FORCE MAJEURE.....50

 5.1 **Events of Default.....50**

 5.2 **Remedies; Declaration of Early Termination Date.....53**

 5.3 Termination Payment.....53

 5.4 **Notice of Payment of Termination Payment.....54**

 5.5 **Disputes With Respect to Termination Payment.....54**

 5.6 Rights And Remedies Are Cumulative.....54

 5.7 Mitigation.....54

5.8	Force Majeure	54
ARTICLE SIX: PAYMENT		55
6.1	Billing and Payment.....	55
6.2	Disputes and Adjustments of Invoices.....	55
6.3	Netting of Payments.....	56
ARTICLE SEVEN: LIMITATIONS		56
7.1	Limitation of Remedies, Liability and Damages.....	56
ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS		57
8.1	Buyer Financial Information.....	57
8.2	Seller Financial Information.....	57
8.3	Grant of Security Interest/Remedies.....	57
8.4	Performance Assurance.....	58
8.5	Interest on Cash.....	59
8.6	Costs of Letter of Credit.....	59
ARTICLE NINE: GOVERNMENTAL CHARGES		60
9.1	Cooperation.....	60
9.2	Governmental Charges.....	60
ARTICLE TEN: REPRESENTATIONS AND WARRANTIES; COVENANTS		60
10.1	General Representations and Warranties.....	60
10.2	Seller Representations and Warranties.....	61
10.3	Covenants.....	61
ARTICLE ELEVEN: TITLE, RISK OF LOSS, INDEMNITIES		62
11.1	Title and Risk of Loss.....	62
11.2	Indemnities.....	62
ARTICLE TWELVE: DISPUTE RESOLUTION.....		63
12.1	Intent of the Parties.....	63
12.2	Management Negotiations.....	63
12.3	Arbitration.....	64
ARTICLE THIRTEEN: MISCELLANEOUS.....		65
13.1	Confidentiality.....	65
13.2	Assignment.....	66
13.3	Audit.....	66
13.4	Sarbanes-Oxley and SEC Requirements.....	66
13.5	Entire Agreement.....	68
13.6	Recording.....	68
13.7	Forward Contract.....	68
13.8	Governing Law.....	68
13.9	Attorneys' Fees.....	68
13.10	General.....	69
13.11	Severability.....	69

13.12	Counterparts.....	69
13.13	Notices.....	69
13.14	Mobile Sierra.....	70
EXHIBIT A PROJECT DESCRIPTION INCLUDING DESCRIPTION OF SITE		A-1
EXHIBIT B MILESTONE SCHEDULE		B-1
EXHIBIT C FORM OF LETTER OF CREDIT		C-1
EXHIBIT D FORM OF GUARANTY.....		D-1
EXHIBIT E COMMERCIAL OPERATION CERTIFICATE.....		E-1
EXHIBIT F FORM OF QUARTERLY PROGRESS REPORT		F-1
EXHIBIT G OUTAGE NOTIFICATION FORM.....		G-1
EXHIBIT H PROJECT OPERATING RESTRICTIONS.....		H-1

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

Attn.: Major Markets, Credit and Collections

Phone: _____
Facsimile: _____

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

Attn: _____
Phone: _____
Facsimile: _____

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 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:

$$\text{Default Availability Factor} = (\text{PH} - (\text{EDH} - \text{EEDH})) / \text{PH}$$

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.

“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, 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, 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, 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 on any other affected system owner’s electrical system that are determined to be necessary by the CAISO, Participating Transmission Owner, other affected system owner, as applicable, to physically and electrically interconnect the Project to 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) through (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 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 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

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.

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).

“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.

“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 (4th) 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).

“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.

“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 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 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 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 (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.

[For TOD Pricing Only: "TOD Delivery Cap" has the meaning set forth in Section 4.[1/2](a).]

[For TOD Pricing Only: "TOD Factors" has the meaning set forth in Section 4.[1/2](b).]

[For TOD Pricing Only: "TOD Period" has the meaning set forth in Section 4.[1/2](b).]

"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 TWO: 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] Generator Interconnection Agreement 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] Generator Interconnection Agreement for the Project,

(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 THREE: 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] [*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 [*For TOD Pricing Only*: times the weighted average TOD Factor for such period of Product deficiency] times the Product deficiency, from (B) the product of the Replacement Price times the Product deficiency. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

(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 [*For TOD Pricing Only*: times the weighted average TOD Factor for such period of Product deficiency] 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. 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 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 so as to be able to deliver Energy to the CAISO Grid. Seller shall arrange for any interconnection agreement with the CAISO 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.] ***[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. [For Projects where SDG&E purchases Test Energy:*** Before or after the Commercial Operation Date,] 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. *[For Projects where SDG&E purchases Test Energy:* On and after the Commercial Operation Date], 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 *[For TOD Pricing Only:* the weighted average TOD Factor for such period of Economic Dispatch Down, times] the amount of Deemed Bundled Green Energy resulting from such Economic Dispatch Down *[For Projects receiving PTCs:* plus the product of the after tax value of any lost PTC benefits (in dollars per megawatt hour) that Seller has not been able to mitigate after use of reasonable efforts, times the amount of Deemed Bundled Green Energy resulting from such Economic Dispatch Down], 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. *[For Projects receiving PTCs:* Seller shall provide Buyer with documentation that establishes to Buyer's reasonable satisfaction (A) that Seller would have been entitled to receive PTCs for the Deemed Bundled Green Energy if it had actually been generated; and (B) the after tax value of any lost PTC benefits (in dollars per megawatt hour) due under this Section 3.4(c)(i).]

(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. 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) 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 FOUR: 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”):

$$MCP = CC \times CP \times SF \times AAF$$

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

Month	Monthly Shaping Factor (%)
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.

(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 (115%) 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;

(iii) if Seller delivers Bundled Green Energy in the aggregate for any TOD Period during the Delivery Term in excess of one hundred fifteen percent (115%) of the TOD Delivery Cap listed in the table below for that TOD Period (“TOD Delivery Cap”), then the Energy Price for such excess Bundled Green Energy in such TOD Period 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:

TOD Period	TOD Delivery Cap
Winter On-Peak	[Insert number which is derived from multiplying annual Contract Quantity times the TOD delivery profile ratio contained in bid form]
Winter Semi-Peak	[Insert number which is derived from multiplying annual Contract Quantity times the TOD delivery profile ratio contained in bid form]
Winter Off-Peak	[Insert number which is derived from multiplying annual Contract Quantity times the TOD delivery profile ratio contained in bid form]
Summer On-Peak	[Insert number which is derived from multiplying annual Contract Quantity times the TOD delivery profile ratio contained in bid form]
Summer Semi-Peak	[Insert number which is derived from multiplying annual Contract Quantity times the TOD delivery profile ratio contained in bid form]
Summer Off-Peak	[Insert number which is derived from multiplying annual Contract Quantity times the TOD delivery profile ratio contained in bid form]

(b) **[For TOD Pricing Only: TOD Factors and TOD Periods.** In accordance with all other terms of this Article 4, the Energy Price shall be adjusted by the following Time of Delivery Factors (“TOD Factors”) for each of the specified Time of Delivery Periods (“TOD Periods”) in which Energy is delivered:]

[For Projects Providing Local Resource Adequacy:

TOD Period	Period Days and Hours	TOD Factor
Winter On-Peak	Nov 1 - Jun 30 (696 Hours) Weekdays 5 pm to 9 pm PPT (HE 18 to HE 21)	1.495
Winter Semi-Peak	Nov 1 - Jun 30 (2262 Hours) Weekdays 6 am to 10 pm PPT (HE 7 to HE 22) excluding Winter On-Peak Hours	0.866
Winter Off-Peak	Nov 1 - Jun 30 (2874 Hours) All Weekend Hours NERC Holiday Hours and Weekday Hours not already considered Winter On-Peak or Winter Semi-Peak	0.746
Summer On-Peak	Jul 1 - Oct 31 (616 Hours) Weekdays 2 pm to 9 pm PPT (HE 15 to HE 21)	2.304
Summer Semi-Peak	Jul 1 - Oct 31 (792 Hours) Weekdays 6 am to 10 pm PPT (HE 7 to HE 22) excluding Summer On-Peak Hours	1.204
Summer Off-Peak	Jul 1 - Oct 31 (1544 Hours) All Weekend Hours, NERC Holiday Hours and Weekday Hours not already considered Summer On-Peak or Summer Semi-Peak	0.853

[For Projects Providing System Resource Adequacy:

TOD Period	Period Days and Hours	TOD Factor
Winter On-Peak	Nov 1 - Jun 30 (696 Hours) Weekdays 5 pm to 9 pm PPT (HE 18 to HE 21)	1.464
Winter Semi-Peak	Nov 1 - Jun 30 (2262 Hours) Weekdays 6 am to 10 pm PPT (HE 7 to HE 22) excluding Winter On-Peak Hours	0.948
Winter Off-Peak	Nov 1 - Jun 30 (2874 Hours) All Weekend Hours NERC Holiday Hours and Weekday Hours not already considered Winter On-Peak or Winter Semi-Peak	0.827

Summer On-Peak	Jul 1 - Oct 31 (616 Hours) Weekdays 2 pm to 9 pm PPT (HE 15 to HE 21)	1.927
Summer Semi-Peak	Jul 1 - Oct 31 (792 Hours) Weekdays 6 am to 10 pm PPT (HE 7 to HE 22) excluding Summer On-Peak Hours	0.958
Summer Off-Peak	Jul 1 - Oct 31 (1544 Hours) All Weekend Hours, NERC Holiday Hours and Weekday Hours not already considered Summer On-Peak or Summer Semi-Peak	0.869

[For Projects Providing Resource Adequacy in Imperial Valley:

TOD Period	Period Days and Hours	TOD Factor
Winter On-Peak	Nov 1 - Jun 30 (696 Hours) Weekdays 5 pm to 9 pm PPT (HE 18 to HE 21)	1.501
Winter Semi-Peak	Nov 1 - Jun 30 (2262 Hours) Weekdays 6 am to 10 pm PPT (HE 7 to HE 22) excluding Winter On-Peak Hours	0.911
Winter Off-Peak	Nov 1 - Jun 30 (2874 Hours) All Weekend Hours NERC Holiday Hours and Weekday Hours not already considered Winter On-Peak or Winter Semi-Peak	0.789
Summer On-Peak	Jul 1 - Oct 31 (616 Hours) Weekdays 2 pm to 9 pm PPT (HE 15 to HE 21)	2.013
Summer Semi-Peak	Jul 1 - Oct 31 (792 Hours) Weekdays 6 am to 10 pm PPT (HE 7 to HE 22) excluding Summer On-Peak Hours	1.105
Summer Off-Peak	Jul 1 - Oct 31 (1544 Hours) All Weekend Hours, NERC Holiday Hours and Weekday Hours not already considered Summer On-Peak or Summer Semi-Peak	0.870

[For Projects Not Providing Resource Adequacy:

TOD Period	Period Days and Hours	TOD Factor
Winter On-Peak	Nov 1 - Jun 30 (696 Hours) Weekdays 5 pm to 9 pm PPT (HE 18 to HE 21)	1.509
Winter Semi-Peak	Nov 1 - Jun 30 (2262 Hours) Weekdays 6 am to 10 pm PPT (HE 7 to HE 22) excluding Winter On-Peak Hours	0.977

Winter Off-Peak	Nov 1 - Jun 30 (2874 Hours) All Weekend Hours NERC Holiday Hours and Weekday Hours not already considered Winter On-Peak or Winter Semi-Peak	0.853
Summer On-Peak	Jul 1 - Oct 31 (616 Hours) Weekdays 2 pm to 9 pm PPT (HE 15 to HE 21)	1.581
Summer Semi-Peak	Jul 1 - Oct 31 (792 Hours) Weekdays 6 am to 10 pm PPT (HE 7 to HE 22) excluding Summer On-Peak Hours	0.957
Summer Off-Peak	Jul 1 - Oct 31 (1544 Hours) All Weekend Hours, NERC Holiday Hours and Weekday Hours not already considered Summer On-Peak or Summer Semi-Peak	0.896

(c) 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 [*For TOD Pricing Only:* times the TOD Factor for the applicable TOD Period] times the Bundled Green Energy in each hour (“Monthly Energy Payment”).

$$\text{Monthly Energy Payment} = \sum \text{Energy Price} \times [\textit{For TOD Pricing Only: TOD Factor} \times] \text{Bundled Green Energy}$$

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 FIVE: 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;]*

(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 SIX: PAYMENT

6.1 Billing and Payment. On or about the tenth (10th) 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 SEVEN: 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 EIGHT: 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 NINE: 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 TEN: 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 ELEVEN: 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 TWELVE: 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 THIRTEEN: 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 (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 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, 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 [_____]

SAN DIEGO GAS & ELECTRIC COMPANY
a California corporation

By: _____
Name: _____
Title: _____

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

	<i>Date</i>	<i>Project Name</i>
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. [<i>Omit if addressed by a Condition Precedent</i>]
4.		Receives a completed [Phase II Interconnection Study Report] [interconnection system impact study] and CAISO Deliverability Assessment Study report [<i>Omit if addressed by a Condition Precedent</i>]
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 a supply contract.
9.		Executes an Engineering, Procurement and Construction (“EPC”) contract.
10.		Delivers full NTP under EPC contract and begins construction of the Project.
11.		Executes Meter Service Agreement and Participating Generator Agreement.
12.		Delivers Energy to the Transmission Provider to which the Project is physically interconnected.
13.		Receives all Governmental Approvals necessary to achieve COD.
14.		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
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 Major² 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.

<p>Request Type: <input type="text" value="New Scheduled Maintenance Outage"/></p> <p>Generator Name: _____ Location Code: _____ Address: _____ _____</p> <p>Contact Name: _____ Phone Number: _____ Email: _____</p> <p>Alternate Name: _____ Alternate Number: _____ Email: _____</p>	<p>Previous Notification (if applicable)</p> <table border="1" style="width: 100%;"><tr><td>Date Sent: _____ mm/dd/yyyy</td></tr><tr><td>Time Sent: _____ hh:mm</td></tr></table> <p style="text-align: center;"><small>(For times, use 24hr format)</small></p> <p>Today's Date: _____ mm/dd/yyyy Current Time: _____ hh:mm</p> <p>Outage Start Date: _____ mm/dd/yyyy Outage Start Time: _____ hh:mm</p> <p>Outage End Date: _____ mm/dd/yyyy Outage End Time: _____ hh:mm</p> <p>Outage Duration: _____ MW Available During Outage: _____ MW Unavailable During Outage: _____ RMR Unit? <input type="checkbox"/> Yes/<input type="checkbox"/> No</p>	Date Sent: _____ mm/dd/yyyy	Time Sent: _____ hh:mm
Date Sent: _____ mm/dd/yyyy			
Time Sent: _____ hh:mm			

System (Select One)

<input checked="" type="radio"/> Boiler <small>Codes 0010-1999</small>	<input type="radio"/> Generator <small>Codes 4500-4899</small>	<input type="radio"/> Regulatory, Safety, Environmental <small>Codes 9504-9720</small>
<input type="radio"/> Balance of Plant <small>Codes 3110-3999</small>	<input type="radio"/> Pollution Control Equipment <small>Codes 8000-8835</small>	<input type="radio"/> Others <small>Codes 9900-9999</small>
<input type="radio"/> Steam Turbine <small>Codes 4000-4499</small>	<input type="radio"/> External <small>Codes 9000-9040</small>	

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

ENERGY STORAGE SYSTEM POWER PURCHASE TOLLING AGREEMENT

between

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

and

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

5-5-2016 Draft

Table Of Contents

<u>Section</u>	<u>Page</u>
ARTICLE 1. PURCHASE AND SALE OF PRODUCT	1
1.1 Product.....	1
1.2 Project.....	3
1.3 Delivery Points.....	3
ARTICLE 2. TERM; [CONDITIONS PRECEDENT] AND DELIVERY PERIOD	4
2.1 Term.....	4
2.2 Effectiveness of Agreement Prior to CP Satisfaction Date.....	4
2.3 Obligations of the Parties.....	4
2.4 Conditions Precedent.....	4
2.5 Failure to Meet All Conditions Precedent.....	5
2.6 Effectiveness of Agreement on and after CP Satisfaction Date.....	6
2.7 Guaranteed Initial Delivery Date.....	6
2.8 Delivery Period.....	6
2.9 Early Initial Delivery Date.....	7
2.10 Delayed Initial Delivery Date.....	7
ARTICLE 3. EVENTS OF DEFAULT; REMEDIES; TERMINATION	8
3.1 Events of Default.....	8
3.2 Seller Events of Default.....	9
3.3 Remedies.....	11
3.4 Calculation of Termination Payment.....	11
3.5 Notice of Payment of Termination Payment.....	12
3.6 Disputes Regarding Termination Payment.....	12
3.7 Suspension of Performance.....	12
3.8 Bankruptcy Without Early Termination.....	12
3.9 Effect of Termination.....	13
ARTICLE 4. INSURANCE.....	13
4.1 Required Insurance.....	13
4.2 Additional Terms and Conditions.....	14
4.3 Market Practicability.....	15
4.4 Application of Proceeds.....	16
ARTICLE 5. DESIGN AND CONSTRUCTION OF PROJECT	16
5.1 Seller's Obligations.....	16
5.2 Design Review.....	16
ARTICLE 6. CONSTRUCTION PERIOD AND MILESTONES.....	17
6.1 Milestone Schedule.....	17
6.2 Inspection Rights.....	17
ARTICLE 7. COMMISSIONING; TESTING; PERFORMANCE GUARANTEES.....	17
7.1 Testing Costs.....	17
7.2 Commercial Operation Test.....	18
7.3 Contract Capacity, Efficiency Rate & Ancillary Services Testing.....	18

Table Of Contents

<u>Section</u>	<u>Page</u>
7.4 Operational Readiness Testing	19
7.5 Independent Witness	19
7.6 Performance Guarantees	19
ARTICLE 8. SELLER'S OPERATION, MAINTENANCE AND REPAIR OBLIGATIONS.....	19
8.1 Seller's Operation Obligations.....	19
8.2 Seller's Maintenance and Repair Obligations.....	20
ARTICLE 9. CONTRACT CAPACITY, ASSOCIATED ENERGY AND ANCILLARY SERVICES.....	21
9.1 Compensation	21
9.2 Monthly Capacity Payment.....	21
9.3 Variable O&M Charge.....	21
9.4 Start-Up Costs.....	21
ARTICLE 10. PAYMENT AND BILLING.....	21
10.1 Billing Period.....	21
10.2 Timeliness of Payment.....	21
10.3 Disputes and Adjustments of Invoices.....	22
10.4 Netting of Payments.....	22
10.5 Payment Obligation Absent Netting	22
ARTICLE 11. CREDIT AND COLLATERAL	22
11.1 Financial Information.....	22
11.2 Seller's Credit Requirements	23
11.3 Form of Performance Assurance	24
11.4 First Priority Security Interest.....	25
11.5 Subordinated Security Interest and Mortgage.....	25
ARTICLE 12. COLLATERAL ASSIGNMENT.....	27
12.1 Consent to Collateral Assignment	27
ARTICLE 13. GOVERNMENTAL AND ENVIRONMENTAL CHARGES	27
13.1 Governmental Charges.....	27
13.2 Compliance with Laws and Indemnification	28
13.3 Environmental Costs.....	28
13.4 Greenhouse Gas Emissions Charges.....	28
ARTICLE 14.....	29
14.1 Buyer as Manager	29
14.2 Seller Charging Energy Responsibilities	29
14.3 Charging Energy Costs, Charges, and Payments.....	29
14.4 Charging Notice.....	29
ARTICLE 15. TOLLING	30
15.1 Tolling.....	30

Table Of Contents

<u>Section</u>	<u>Page</u>
15.2 Reserved.....	30
ARTICLE 16. CAISO AND NON-BUYER DISPATCHES	30
16.1 CAISO Dispatch.	30
16.2 Non-Buyer Dispatch.	30
ARTICLE 17. SCHEDULING COORDINATOR.....	30
17.1 Buyer Scheduling Coordinator.	30
17.2 Notices.	31
17.3 CAISO Costs and Revenues.	31
17.4 CAISO Settlements.....	31
17.5 Terminating Buyer’s Designation as Scheduling Coordinator.	32
17.6 CAISO Sanctions.....	32
17.7 Master Data File and Resource Data Template.	32
ARTICLE 18. DISPATCH NOTICES AND OPERATING RESTRICTIONS.....	32
18.1 Availability Notice.....	32
18.2 Dispatch Notices.	32
18.3 Start-Up Notices.....	33
18.4 Operating Restrictions.	33
18.5 Daily Operating Report.....	33
18.6 Writing Requirements.....	33
18.7 Communication Protocols.....	33
ARTICLE 19. METERING, COMMUNICATIONS, and TELEMETRY	33
19.1 Electric Metering, Communication, Telemetry, and Access.	33
19.2 Retail Electric Meter.....	34
ARTICLE 20. OUTAGES	34
20.1 Scheduled Outages.....	34
20.2 No Scheduled Outages During Summer Months.....	35
20.3 Notice of Unscheduled Outages.....	35
20.4 Inspection.....	35
20.5 Reports of Outages.....	36
ARTICLE 21. FORCE MAJEURE	36
21.1 No Default for Force Majeure.....	36
21.2 Force Majeure Claim.	36
21.3 Termination for Force Majeure.....	36
ARTICLE 22. REPRESENTATIONS, WARRANTIES AND COVENANTS	37
22.1 Representations and Warranties of Both Parties.....	37
22.2 Additional Representations and Warranties of Seller.....	38
22.3 Seller’s Affirmative Covenants.....	39
22.4 Seller’s Negative Covenants.	39
22.5 Additional Representations, Warranties and Covenants of Buyer.....	40

Table Of Contents

<u>Section</u>	<u>Page</u>
ARTICLE 23. LIMITATIONS.....	40
23.1 Limitation of Remedies, Liability and Damages.	40
23.2 No Representation by Buyer.....	41
ARTICLE 24. RECORDS	41
24.1 Performance under this Agreement.	41
24.2 Sarbanes-Oxley and Securities and Exchange Commission Requirements.	42
24.3 Other Regulatory and Governmental Requirements.....	43
24.4 Audit Rights.....	43
24.5 California Climate Action Registry.	43
ARTICLE 25. DISPUTES	43
25.1 Intent of the Parties.	44
25.2 Management Negotiations.	44
25.3 Arbitration.....	44
25.4 Waiver of Jury Trial.....	46
25.5 Attorneys' Fees.	46
ARTICLE 26. INDEMNIFICATION.....	46
26.1 Indemnities.....	46
26.2 Insurance.	47
26.3 Survival.....	47
ARTICLE 27. CONFIDENTIALITY/REGULATORY DISCLOSURE.....	47
27.1 Confidentiality.	47
27.2 Ownership of Information.....	47
27.3 Enforcement.....	48
ARTICLE 28. MISCELLANEOUS	48
28.1 General.....	48
28.2 Notices.	48
28.3 Governing Law; Venue.....	49
28.4 Amendment.....	49
28.5 Assignment.	49
28.6 Further Assurances.....	49
28.7 Waiver.....	49
28.8 Obligations Surviving Termination.	49
28.9 No Third Party Beneficiaries.	49
28.10 Entire Agreement.....	49
28.11 Severability.	50
28.12 Forward Contract.	50
28.13 Mobile Sierra.	50
28.14 Independent Contractors.	50
28.15 Counterparts.....	50
28.16 Interpretation.....	50

Table Of Contents

<u>Section</u>	<u>Page</u>
APPENDIX A.....	DEFINITIONS
APPENDIX 1.1.....	OPERATING RESTRICTIONS
APPENDIX 1.1.1.....	CONTRACT CAPACITY
APPENDIX 1.3.1.....	ENERGY DELIVERY POINT
APPENDIX 6.1(a).....	MILESTONE SCHEDULE
APPENDIX 6.1(b).....	MONTHLY PROGRESS REPORT
APPENDIX 7.....	TESTING PROTOCOLS
APPENDIX 7.6.....	PERFORMANCE GUARANTEES
APPENDIX 9.2.....	MONTHLY CAPACITY PAYMENT
APPENDIX 9.3.....	VARIABLE O&M CHARGE
APPENDIX 9.4.....	START-UP CHARGE
APPENDIX 11.3.....	LETTER OF CREDIT FORM
APPENDIX 14.1.....	GAS INTERCONNECTION
APPENDIX 18.1.....	AVAILABILITY NOTICE
APPENDIX 18.2.....	DISPATCH AND UPDATED DISPATCH NOTICES
APPENDIX 18.5.....	DAILY OPERATING REPORT
APPENDIX 18.7.....	COMMUNICATION PROTOCOLS

ENERGY STORAGE SYSTEM POWER PURCHASE TOLLING AGREEMENT

This Energy Storage System Power Purchase Tolling Agreement (“Agreement”) is made and entered into as of this _____ day of _____, 2016 (“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] (“Project”), consisting of [insert number] [insert type: ”] (each an “Energy Storage System”) to be constructed on an approximately [insert number] acre parcel of land (the “Site”) located adjacent to [insert name of substation] in [enter city and state]. **[NOTE to Bidders: conforming changes needed if multiple Energy Storage Systems.] [NOTE to Bidders: for existing facilities, there will be a fixed start date and all facility construction related terms shall be removed.]**

C. Seller wishes to generate, sell and deliver to Buyer, and Buyer wishes to provide the electricity to recharge the Energy Storage System and purchase from Seller, Capacity, Energy, Resource Adequacy Benefits, Ancillary Services and other products 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, generate, deliver, and sell the Product therefrom to Buyer, and Buyer shall provide to Seller all electricity required to operate the Project and purchase and receive the Product therefrom, when and as the Project is available, subject to the terms and conditions of this Agreement, including the Operating Restrictions set forth in Appendix 1.1. Seller represents and warrants that it will deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances. Seller shall not substitute or purchase any Capacity, Energy, Ancillary Services or Resource Adequacy Benefits from any other generating resource or the market for delivery hereunder, nor shall Seller sell, assign or otherwise transfer any Product, or any portion thereof, to any third party other than to Buyer or CAISO pursuant to this Agreement.

1.1.1 Capacity. Buyer shall have the exclusive right to the Contract Capacity from the Project. As of the Effective Date, the Contract Capacity shall equal the Expected Contract Capacity of the Project, without adjustment for temperature, pressure, humidity or other adjustment factors. The actual Contract Capacity and Efficiency Rate of the Project and each Energy Storage System will be determined upon the completion of the Commercial Operation Test for the Project and each year of the Delivery Period in accordance with the testing procedures of Sections 7.2 and 7.3, as applicable. Such tests will demonstrate the Capacity and Efficiency Rate of the Project at the actual ambient conditions existing at the time of each such test and those test results will be adjusted to reflect the equivalent Capacity and Efficiency Rate that would occur at Contract Conditions, and this adjusted Capacity shall be the Contract Capacity; provided, that in no event shall the Contract Capacity of [the Project] (i) exceed P_{MAX} for [the Project/each Energy Storage System (i.e. the Contract Capacity shall be limited to P_{MAX} until such time as Seller gets P_{MAX} increased to the tested Contract Capacity), (ii) exceed the [**NOTE to bidders depending on product bid:** capacity quantities may be capped based on system RA quantity, local RA quantity and flex RA quantity] and (iii) exceed 105% of the Energy Storage System's Expected Contract Capacity as identified in Appendix 1.1.1. Upon the completion of the Commercial Operation Test or the periodic Contract Capacity Tests for the Project, as applicable, Appendix 1.1.1 shall be automatically amended to reflect the Contract Capacity as achieved by that test and adjusted to Contract Conditions, subject to the limitations in this Section. In addition, Seller shall cause the P_{MIN} for the Project to be no greater than the Minimum Operating Level. Seller agrees that each Energy Storage System is subject to the terms of the Availability Standards.

1.1.2 Energy. Except for Energy resulting from a Non-Buyer Dispatch, Seller commits to make available and sell the Energy of the Project to Buyer, and Buyer shall have the exclusive rights to purchase and receive all Energy produced by the Project, subject to the Operating Restrictions set forth in Appendix 1.1, including pursuant to a forward schedule or a Supplemental Energy instruction from CAISO. [**NOTE TO BIDDERS: STATION USE TO BE SERVED SEPERATELY.**]

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

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

1.1.4 Resource Adequacy Benefits. Seller shall maintain ownership of and demonstrable exclusive rights to the Project throughout the Term. Seller grants, pledges, assigns

and otherwise commits to Buyer the full Capacity of the Project for use by Buyer in meeting its resource adequacy obligations under any Resource Adequacy Rulings. The Parties shall cooperate and take commercially reasonable actions (including amending this Agreement, executing such documents or instruments as is reasonably necessary, and complying with all applicable Tariff provisions and applicable decisions of the CPUC and/or any other Governmental Authority that address Resource Adequacy performance obligations and penalties hereunder) to effect the use of the Resource Adequacy Benefits of the Project for Buyer’s sole benefit through the Delivery Period.**[NOTE TO BIDDERS: SDG&E to update all RA provisions to address Flex RA.]**

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

1.2 Project.

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

1.2.2 Energy Storage Systems. The following table is a description of the Energy Storage Systems:

Unit		
Site		
Unit Description		
Unit Serial Number		

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

1.2.3 Station Use. The Project will not serve Station Use.

1.3 Delivery Points.

1.3.1 Energy Delivery Point. The Energy Delivery Point shall be [the point of interconnection of the Project to the CAISO Grid at _____] (as described and set forth in the single-line diagram of grid interconnection attached hereto as Appendix 1.3.1). Title and risk of loss related to Energy shall transfer from Seller to Buyer at 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. [INSERT]

ARTICLE 2.
TERM; [CONDITIONS PRECEDENT] AND 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, 21, 22, 23, 24, 25, 26, 27 and 28, Appendix A and the other appendices referenced in the foregoing Sections.

2.3 Obligations of the Parties. The Parties shall 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 [____], (ii) use commercially reasonable efforts to pursue development of the Project in accordance with Sections 5 and 6, (iii) comply with Section 6 in achieving the applicable milestones in the Milestone Schedule that have due dates occurring prior to the CP Satisfaction Date, (iv) deliver the Monthly Progress Report in accordance with Section 6, and (v) otherwise comply with its obligations, covenants, representations, and warranties under Sections 3, 5, 6, 10-13, and 21-28. 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 amount of the Pre-Construction Security. Buyer may retain such Performance Assurances to pay such liquidated damages. Each Party agrees and acknowledges that (a) the actual damages that Buyer would incur due to an Event of Default of Seller prior to the CP Satisfaction Date would be difficult or impossible to predict with certainty, (b) the liquidated damages set forth in this section are a reasonable and appropriate approximation of such damages, and (c) the liquidated damages set forth in this section are the exclusive remedy for an Event of Default of Seller prior to the CP Satisfaction Date.

2.3.2 Buyer’s Obligations. Prior to the CP Satisfaction Date, Buyer shall (i) use commercially reasonable efforts to pursue satisfaction of the Conditions Precedent set forth in Section 2.4.1, and (ii) otherwise comply with its obligations, covenants, representations, and warranties under Sections 3, 5, 6, 10-13, and 21-28. 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 [insert date], Buyer shall have agreed to and approved of (in its sole discretion) the deliverability of the Product, the in-service interconnection date and the costs to be incurred by Buyer for any required transmission network upgrades and interconnection facilities reasonably necessary to enable the cost-effective and reliable delivery of Energy from the Project to Buyer's load consistent with FERC's then current orders and rulemakings.

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 [_____], 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.

(b) Buyer shall be the sole beneficiary of the Conditions Precedents set forth in Sections 2.4.1 and 2.4.2, 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.

(c) Seller shall be the sole beneficiary of the Conditions Precedents set forth in Section 2.4.3, and in order for a waiver of non-satisfaction of such Conditions Precedent to be effective, Seller alone must waive (in its sole discretion) non-satisfaction by the deadline date therefor.

2.5.2 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)-(b) 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 Sections 2.4.1 or 2.4.2 to be satisfied or waived by Buyer, Seller shall pay to Buyer an amount

equal to the Pre-Construction Security. Buyer may retain 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 Sections 2.4.1 or 2.4.2 to be satisfied or waived by Buyer, Buyer shall return to Seller the Pre-Construction Security.

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

2.7 Guaranteed Initial Delivery Date. The Guaranteed Initial Delivery Date for the Project is [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 [Insert Date] of the year in which the [XX] anniversary of the Initial Delivery Date occurs. The “Initial Delivery Date” shall be the date upon which all the following conditions have been satisfied:

- (a) Seller has completed, to Buyer’s satisfaction, Seller’s obligations set forth in Articles 5, 6, and 7 in order to bring the Project into full operation as contemplated by this Agreement;
- (b) The Project has achieved Commercial Operation;
- (c) Seller has received its market based rate authority from FERC to sell Product to Buyer under the terms of this Agreement, and has received all other approvals and authorizations required for Seller to perform its obligations under this Agreement;
- (d) Seller has executed the Participating Generator Agreement, Meter Service Agreement, and any other forms or agreements required by the CAISO, and [insert electric retail service contract] with respect to the Project (and delivered true and complete copies of all such forms and agreements to Buyer);
- (e) Seller has taken all actions, including executing all documents and instruments, required to authorize Buyer to act as Scheduling Coordinator;

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

(g) Seller has established a Letter of Credit or deposited with Buyer the required Performance Assurance and related documents and instruments as set forth in Article 11; and

(h) The Priority Security Interest required under Section 11.5 and the Subordinated Security Interest required under Section 11.6 shall continue to be perfected and in full force and effect.

The Parties agree that, in order for Buyer to dispatch the Energy Storage Systems for its Initial Delivery Date, the Parties may have to perform certain of their Delivery Period obligations in advance of the Initial Delivery Date, including, without limitation, Seller's delivering an Availability Notice for the Initial Delivery Date, and Buyer's delivering a Dispatch Notice and nominating and scheduling the Energy Storage System's Storage Requirements for the Initial Delivery Date, in advance of the Initial Delivery Date. The Parties shall cooperate with each other in order for Buyer to be able to dispatch each Energy Storage System for the Initial Delivery Date. Seller shall give Buyer at least [x] days Notice before the Initial Delivery Date.

2.9 Early Initial Delivery Date. If Seller satisfies the conditions precedent 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.

2.10 Delayed Initial Delivery Date.

2.10.1 Daily Delay Damages. If Seller has not satisfied the conditions precedent for the Initial Delivery Date of the Project by the applicable Guaranteed Initial Delivery Date, Seller shall owe to Buyer the applicable Daily Delay Damages for each day of delay, up to a maximum of one hundred and eighty (180) days of delay (the "Cure Period"). 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 altogether.

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

(a) Force Majeure, provided that all extensions of the Guaranteed Initial Delivery Date for the Project due to Force Majeure shall not exceed 90 calendar days in the aggregate (“Maximum Force Majeure Delay”) and any delay by Seller in excess of the Maximum Force Majeure Delay shall be subject to Daily Delay Damages in accordance with Section 2.10.1.

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

(c) Reserved.

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

ARTICLE 3. EVENTS OF DEFAULT; REMEDIES; TERMINATION

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

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

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

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

(d) Such Party becomes Bankrupt; or

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

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

(a) Seller fails to comply with any of its covenants under Section 22.4;

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

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

(d) Seller makes any material misrepresentation or omission in any report, including status and metering report, or any Milestone Schedule or Availability Notice (including without limitation the log, records and reports required under Sections 8.1.2, 8.1.3, 8.1.4, 20.1, and Appendices 6.1(a) and (b), 18.1, and 18.2) required to be made or furnished by Seller pursuant to this Agreement;

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

(f) During the Delivery Period, the Default Equivalent Availability Factor is below [ninety percent (90%)] (the “Minimum Guaranteed Availability”) [each month for twelve (12) or more consecutive months] [on average for a period of twelve (12) consecutive months];

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

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

(i) 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 28.5;

(j) Seller fails to remediate any deficiency in internal controls over financial reporting in accordance with Section 24.2;

(k) 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;

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

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

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

(iii) Guarantor becomes Bankrupt;

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

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

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

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

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

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

- (iii) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;
- (iv) such Letter of Credit fails or ceases to be in full force and effect at any time;
- (v) the issuer of such Letter of Credit becomes Bankrupt; or
- (vi) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit.

3.3 Remedies. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the “Non-Defaulting Party”) shall have the right to (a) terminate this Agreement by providing Notice of such termination to the Defaulting Party, which termination shall be effective on a day no later than 20 days after such Notice is effective (“Early Termination Date”), and the Defaulting Party shall pay the Non-Defaulting Party a Termination Payment as set forth below, (b) require immediate payment of all amounts owed but not yet paid by the Defaulting Party under this Agreement, (c) withhold any payments due to the Defaulting Party under this Agreement, (d) suspend performance, and (e) pursue any other remedies available at law or in equity, including where appropriate, specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement. If the Non-Defaulting Party elects to terminate this Agreement under clause (a), 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 determine its Gains and Losses by determining the Market Quotation Average Price for the Product from the Project. In the event the Non-Defaulting Party is not able, after commercially reasonable efforts, to obtain the Market Quotation Average Price for the Product from the Project, then 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 calculating the arithmetic mean of at least three (3) Forward Price Assessments for products substantially similar to the Product from the Project. Such Forward Price Assessments must be obtained assuming that the Party obtaining the quote will provide and obtain the same or substantially similar credit collateral terms as the credit and collateral terms in this Agreement. In the event the Non-Defaulting Party is not able, after commercially reasonable efforts, to obtain at least three (3) Forward Price Assessments for products substantially similar to the Product from the Project, then the Non-Defaulting Party shall calculate its Gains and Losses in a commercially reasonable manner by reference to information supplied to it by one or more third parties including, without limitation, index prices, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the

relevant product, information vendors and other sources of market information, provided that such third parties shall not be Affiliates of either Party. Only in the event the Non-Defaulting Party is not able, after using commercially reasonable efforts, to obtain such third party information, then the Non-Defaulting Party may calculate its Gains and Losses in a commercially reasonable manner using relevant market data it has available to it. The Termination Payment shall equal (a) in the case where Non-Defaulting Party has Losses, the aggregate Losses of the Non-Defaulting Party plus Costs of the Non-Defaulting Party plus any or all other amounts due to the Non-Defaulting Party netted into a single amount, and the Defaulting Party shall owe such Termination Payment calculated under this clause (a) to the Non-Defaulting Party; or (b) in the case where the Non-Defaulting Party has Gains, the aggregate Gains of the Non-Defaulting Party less Costs of the Non-Defaulting Party less any or all other amounts due to the Non-Defaulting Party netted into a single amount. If the net amount calculated under clause (b) is negative, the Defaulting Party shall owe the absolute value of such amount to the Non-Defaulting Party. If the net amount calculated under clause (b) is positive, the Termination Payment shall be zero (0) except in the case where the Non-Defaulting Party elects to terminate this Agreement solely as a result of an Event of Default by the Defaulting Party under Section 3.1(d) [Bankruptcy], in which case the Non-Defaulting Party shall owe the positive amount calculated under clause (b) to the Defaulting Party.

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

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

3.7 Suspension of Performance. If an Event of Default occurs and shall be continuing, the Non-Defaulting Party shall have the right to suspend performance under this Agreement upon Notice to the Defaulting Party. At any time prior to or after the receipt of such Notice by the Defaulting Party, the Non-Defaulting Party may exercise any remedies available to it at law or in equity, including without limitation the right to seek damages or injunctive relief to prevent irreparable injury to the Non-Defaulting Party.

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

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

ARTICLE 4. INSURANCE

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

4.1.1 Workers' Compensation insurance or self-insurance in accordance with the laws and regulations of the State of California, providing statutory benefits and covering loss resulting from injury, sickness, disability or death of employees of Seller.

4.1.2 Employer's liability insurance with minimum limits of \$1,000,000 per accident.

4.1.3 Commercial General Liability Insurance against claims 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, with a minimum limit of \$1,000,000 per occurrence and in the annual aggregate for combined bodily injury and property damage.

4.1.4 Commercial or Business Automobile Liability Insurance for coverage of owned, non-owned and hired vehicles, with a minimum limit of \$1,000,000 combined single limit for bodily injury and property damage.

4.1.5 Excess or Umbrella Liability Insurance over and above the insurance required above, except for Workers' Compensation coverage specified in Section 4.1.1, with a minimum limit of Twenty-Five Million Dollars (\$25,000,000.00) per occurrence/Twenty-Five Million Dollars (\$25,000,000.00) 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 Builder's Risk Insurance. 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 Operational Property Insurance. 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, and as additional insureds 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, 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 and summaries of all such insurance documents shall be sent to Buyer.

4.2.8 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 21.3 for the reasonable duration of the repair. Seller shall use commercially reasonable efforts to include in the Lenders' financing documents an obligation on the part of Seller and the Lenders to apply the proceeds of physical damage, and similar insurance obtained by Seller in connection with the Project to repair and maintain the Project in order to effectuate Seller's obligations under this Agreement. In no event shall Seller enter into an agreement with the Lenders respecting the use of insurance proceeds that is not consistent with generally accepted practices in similar financings within the electric industry.

ARTICLE 5. DESIGN AND CONSTRUCTION OF PROJECT

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

- (a) Develop, design procure, construct commission, test, own, operate and maintain the Project as required for Seller to perform its obligations under this Agreement;
- (b) Acquire and maintain all entitlements, permits, licenses and approvals necessary for the design, development, construction, installation, testing, operation, maintenance, 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.

5.2 Design Review.

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

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

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

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

ARTICLE 6. CONSTRUCTION PERIOD AND MILESTONES

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

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

ARTICLE 7. COMMISSIONING; TESTING; PERFORMANCE GUARANTEES

7.1 Testing Costs. Seller will, at times and for durations reasonably agreed to by Buyer, conduct necessary testing to ensure the Project is functioning properly and each Energy Storage System is on an individual basis able to respond to Buyer or CAISO dispatch instructions. Such tests shall include (i) the Commercial Operation Test pursuant to Section 7.2, (ii) the annual Contract Capacity, Efficiency Rate & Ancillary Services Tests pursuant to Section 7.3, and (iii) the operational readiness tests pursuant to Section 7.4. Such tests are required under this Agreement and shall be deemed Buyer instructed dispatches of the applicable Energy Storage System. Seller may also conduct other discretionary tests, at times and for durations reasonably agreed to by Buyer, that Seller deems necessary for purposes of reliably operating the

Project or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest). If such discretionary testing is conducted during a day in which Buyer has dispatched the Energy Storage System being tested (“Buyer Dispatched Test”), Seller shall not be obligated to pay for the electricity required to charge the Energy Storage System relating to such Buyer Dispatched Test of such Energy Storage System, and Energy from such Energy Storage System shall be treated as dispatched by Buyer hereunder. If discretionary testing is conducted during a day in which Buyer has not dispatched the Energy Storage System being tested (“Seller Initiated Test”), Seller shall pay for all electricity required to charge the Energy Storage System relating to such Seller Initiated Test of such Energy Storage System and Buyer shall pay to Seller, in the month following Buyer’s receipt of such CAISO revenues and otherwise in accordance with Article 10, the applicable CAISO real-time hourly average energy price (or successor price) and other revenues associated with the Energy generated and delivered from such Energy Storage System during such Seller Initiated Test. To the extent a Seller Initiated Test prevents Buyer from dispatching a Energy Storage System as it would have absent such test, then, in accordance with Article 9, such Energy Storage System will be deemed unavailable; provided, however Buyer shall not dispatch or otherwise schedule such Energy Storage System during such Seller Initiated Test. Except as otherwise provided in Sections 7.2 and 7.3 and Appendix 7, Seller shall notify Buyer of any Seller Initiated Test no later than 24 hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Accepted Electrical Practices). For purposes of clarification, any test performed before the Initial Delivery Date, other than the Commercial Operation Test pursuant to Section 7.2, is a Seller Initiated Test.

7.2 Commercial Operation Test. At least seven (7) Business Days prior to its Initial Delivery Date, Seller shall schedule and complete a Commercial Operation test for each Energy Storage System (“Commercial Operation Test”). Such Commercial Operation Test shall be scheduled and conducted in accordance with Appendix 7 hereto. Seller shall use commercially reasonable efforts to undertake such activities in sufficient time to achieve Commercial Operation by the Guaranteed Initial Delivery Date and Buyer will reasonably cooperate with Seller to meet such deadline. The Commercial Operation Test shall establish the initial level of Contract Capacity for purposes of calculating the Monthly Capacity Payment under Section 9.2 and Appendix 1.1.1 shall be automatically amended to reflect the Contract Capacity achieved during such test, subject to the limitations in Section 1.1.1.

7.3 Contract Capacity, Efficiency Rate & Ancillary Services Testing. At least once per Contract Year after the initial Contract Year, upon seven (7) days prior Notice to Buyer, Seller shall schedule and complete a Contract Capacity, Efficiency Rate & Ancillary Services Test in accordance with Appendix 7. In addition, Buyer shall have the right to require a retest of the Contract Capacity, Efficiency Rate & Ancillary Services Test at any time upon two (2) days prior written Notice to Seller if Buyer reasonably believes that the actual Contract Capacity, Efficiency Rate, or Ancillary Services has varied materially from the results of the most recent tests. Such Buyer requested test shall be deemed a Buyer Dispatched Test unless the results of such test demonstrate that the actual Contract Capacity, Efficiency Rate, or Ancillary Services has varied by more than two percent (2%) from the results of the most recent tests, in which case such Buyer requested test shall be deemed a Seller Initiated Test. Seller shall have the right to run a retest of the Contract Capacity, Efficiency Rate & Ancillary Services 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). Such Seller requested test shall be deemed a Seller Initiated Test. For all purposes of this Agreement, including Sections 1.1.1, 1.1.3, 1.2.2 and Appendices 7.6 and 9.2, the Contract Capacity and Efficiency Rate determined pursuant to a Contract Capacity, Efficiency Rate & Ancillary Services Test shall become the new Contract Capacity and Efficiency Rate at the beginning of the day following the completion of the test, subject to the limitations in Section 1.1.1.

7.4 Operational Readiness Testing. From time to time but generally no less than every six weeks if the Project has not been operated at full power within such six week period, Seller shall demonstrate operational readiness of each Energy Storage System to ensure that it is ready to respond to a Buyer or CAISO dispatch instruction. Such testing will include start-up, ramp to normal power output, stabilization, and shut down.

7.5 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.

7.6 Performance Guarantees. Seller will operate and maintain the Project so as to achieve the Minimum Guaranteed Availability, the Guaranteed Efficiency Rate, Guaranteed Start-Up Time, and Guaranteed Ramp Rate in accordance with the provisions of Appendix 7.6 (collectively, the “Performance Guarantees”). The sole remedies and consequences of any failure by Seller to fulfill its obligations under this Section 7.6 are set forth in Section 8.2, Section 9.2, Appendix 7.6 and Appendix 9.2 (except to the extent any failure to achieve the Performance Guarantees results in a separate Event of Default under this Agreement, including Sections 3.2(f), 3.2(g), or 8.2).

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 each Energy Storage System which shall include but not be limited to information on power production, electricity consumption and efficiency (if applicable), availability, 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 generators and settings or adjustments of the generator control equipment and protective devices. Information maintained pursuant to this Section 8.1.2 shall be provided to Buyer, within 15 days of Buyer's request.

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

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

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

8.1.6 Seller shall inform Buyer on a daily basis of the generation capacity of the Project for the following day and any limitations, restrictions, deratings or outages affecting the Project.

8.1.7 Seller shall, during the Term, only employ appropriately qualified (determined in Seller's reasonable opinion consistent with Accepted Electrical Practices) personnel for the purposes of operating and maintaining the Project. Seller shall at all times require such personnel to adhere to all applicable safety standards in accordance with Accepted Electrical Practices, Applicable Law and Industry Standards.

8.2 Seller's Maintenance and Repair Obligations.

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

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

ARTICLE 9.
CONTRACT CAPACITY, ASSOCIATED ENERGY AND ANCILLARY SERVICES

9.1 Compensation. Compensation to Seller shall consist of (a) a Monthly Capacity Payment calculated in accordance with Section 9.2, (b) a Variable O&M Charge calculated in accordance with Section 9.3, and [(c) a Start-Up Charge calculated in accordance with Section 9.4., if requested] The Monthly Capacity Payment, Variable O&M Charge, [and Start-Up Charge] will be paid each month, in arrears in accordance with Article 10, for each month of the Delivery Period.

9.2 Monthly Capacity Payment. Once the Project has achieved its Initial Delivery Date, Buyer shall pay Seller a monthly capacity payment (the “Monthly Capacity Payment”), except that Buyer shall not be required to pay the Monthly Capacity Payment for any month in which the Equivalent Availability Factor is less than [ninety percent (90%)]. The Monthly Capacity Payment for the Project payable each month of the Delivery Period shall be determined in accordance with the calculation set forth in Appendix 9.2. For the month in which the Initial Delivery Date occurs, the Monthly Capacity Payment will be prorated for the remaining days of that month. For the last month of the Term, the Monthly Capacity Payment will be prorated for the number of days remaining in the Term.

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

9.4 Start-Up Costs. For each Buyer or CAISO dispatch of an Energy Storage System, Buyer is required to provide electricity to recharge the Energy Storage System as provided in Appendix 9.4 [**NOTE: TO BIDDERS: Bidders to insert**] (“Start-Up Costs”). All Delivered Energy produced prior to an Energy Storage System achieving a Start-Up during the respective start-up cycle shall be for Buyer’s account. If Buyer aborts a start-up before such Energy Storage System is released to Buyer for dispatch, then Buyer shall provide any electricity needed to recharge the Energy Storage System in connection with such aborted start-up, up to [INSERT]. If an Energy Storage System is unable to generate or deliver Energy to the Energy Delivery Point after a Start-Up, but before the next scheduled shutdown of such Energy Storage System for any reason other than a Force Majeure or a Delivery Excuse, Buyer shall not be responsible for any electricity costs under this Section 9.4 for the next Start-Up.

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 Payments). As soon as practicable after the end of each month (but no later than ten (10) Business Days after the end of each month), each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month, together with all supporting documentation and calculation necessary to evidence all amounts charged thereunder.

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

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

10.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice, or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error, within 24 months of the date of invoice or adjustment. Any dispute with respect to an invoice is waived unless the other Party receives Notice under this Section 10.3 within 24 months after the invoice is rendered or any specific adjustment to the invoice is made. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with Notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Default Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Default Rate from and including the date of such overpayment 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 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 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 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, such cash shall be deposited 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 11.3.1, 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) 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 (a) for any failure to provide sufficient Performance Assurance or (b) for any amounts owing to Buyer and remaining unpaid after the application of the amounts so drawn by Buyer.

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

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

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

- (a) Exercise any of its rights and remedies with respect to all Performance Assurance, including any such rights and remedies under law then in effect;
- (b) Exercise its rights of setoff against any and all property of Seller in Buyer’s possession;
- (c) Draw on any outstanding Letter of Credit issued for its benefit; or
- (d) Liquidate all Performance Assurance then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller’s obligations under this Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to Buyer’s obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

11.5 Subordinated Security Interest and Mortgage.

11.5.1 Grant of Subordinated Security Interest. To secure Seller’s performance of its obligations under this Agreement, Seller and Buyer, as the case may be, shall no later than the CP Satisfaction Date each execute, deliver, file and, record, as appropriate, and maintain in full force and effect throughout the period from the CP Satisfaction Date until the expiration of the Term and satisfaction by Seller of all of its obligations hereunder, separate agreements,

documents, or instruments under which Seller will grant to Buyer, in a form reasonably acceptable to Buyer, fully perfected security interests and/or mortgage liens in the Project and in any and all real and personal property rights, contractual rights, or other rights that Seller requires in order to construct or operate the Project (collectively the “Subordinated Security Interest”). The Subordinated Security Interest shall be subordinate only to the security interests of Lenders except as set forth below. The Parties shall reasonably promptly execute when requested, a lien subordination agreement (the “Subordination Agreement”) by and among each Lender, (or an agent on behalf of the Lenders), Buyer and Seller relating to the Subordinated Security Interest, in form and substance reasonably requested by the Lender and reasonably acceptable to Buyer. Among other provisions, the Subordination Agreement shall include provisions whereby

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

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

11.5.2 Other Actions By Seller. All title insurance policy costs and all costs of executing, delivering, filing, and recording the Security Documents (other than state fees and taxes which shall be at Buyer’s expense) in respect of the Subordinated Security Interest shall be at Seller’s expense, which in any event shall not include any legal fees of Buyer. The Security Documents in respect of the Subordinated Security Interest shall contain financial and operating covenants (“Covenants”) reasonably necessary to preserve and maintain the value of the Subordinated Security Interest and substantially similar to those in favor of Lender in Lender’s security documents (“Lender’s Security Documents”). In addition, Seller authorizes Buyer to

file such Uniform Commercial Code financing statements and to take such further action and execute such further instruments as shall reasonably be required by Buyer to confirm and continue the validity, priority, and perfection of the Subordinated Security Interest. The granting of the Subordinated Security Interest shall not be to the exclusion of, nor be construed to limit the amount of any further claims, causes of action or other rights accruing to Buyer by reason of any Event of Default by Seller or Early Termination Date. The Subordinated Security Interest shall be discharged and released, and Buyer shall take any steps reasonably required by Seller to effect and record such discharge and release, upon the expiration of the Term and satisfaction by Seller of all of its obligations hereunder. Seller shall reimburse Buyer for its reasonable costs associated with the discharge and release of the Subordinated Security Interest.

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

ARTICLE 12. COLLATERAL ASSIGNMENT

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

ARTICLE 13. GOVERNMENTAL AND ENVIRONMENTAL CHARGES

13.1 Governmental Charges. Seller shall pay or cause to be paid all taxes, charges or fees imposed by a Government Authority (“Governmental Charges”) on or with respect to the Product prior to the Energy Delivery Point. For the avoidance of doubt, such Governmental Charges shall include ad valorem taxes of Seller that are related to the Project, and franchise or income taxes that are related to the sale of the Product to Buyer and which arise or are imposed prior to the Energy Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to Product which arise or are imposed at and from the Energy Delivery Point. In the event Seller is required by Applicable Laws to remit or pay Governmental Charges which are Buyer’s responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by Applicable Laws to remit or pay Governmental Charges which are Seller’s responsibility hereunder, Buyer may deduct the amount of any such Governmental Charge from the sum due to Seller under Article 10 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law. This Section shall not apply to CAISO charges,

penalties, costs, or revenues associated with operation of the Project or transmission of the Product allocated pursuant to Section 17.3.

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

13.3 Environmental Costs. Seller shall be solely responsible for all Environmental Costs with respect to the Project other than those encompassed in Section 13.4 which are the responsibility of Buyer.

13.4 Greenhouse Gas Emissions Charges. Notwithstanding anything to the contrary in Sections 13.1 through 13.3, inclusive and subject to the limitations and qualifications set forth below in this Section 13.4, Buyer shall reimburse Seller for any taxes, charges, or fees for Greenhouse Gas emissions (x) imposed under California Assembly Bill 32, the Global Warming Solutions Act of 2006, or (y) newly enacted after the Execution Date ("GHG Charges") and attributable to Buyer's dispatch of the Project, within forty-five (45) days of Buyer's receipt from Seller of documentation reasonably establishing: (a) that Seller is actually liable for such GHG Charges during the Delivery Period; (b) that such GHG Charge was not effective or scheduled to become effective as of the Effective Date; (c) the specific amount of such GHG Charge; (d) that such GHG Charge was imposed upon Seller by an authorized Governmental Authority in whose jurisdiction the Project is located, or which otherwise has jurisdiction over Seller or the Project; (e) that Seller has paid the agency identified under (d) the full amount of such GHG Charge for which Seller seeks reimbursement from Buyer under this Section 13.4, and (f) that Seller took all reasonable steps to mitigate the cost or amount of such GHG Charges, provided, the reasonable steps shall not be deemed to require Seller to make capital improvements to the Project. For avoidance of doubt, the phrase "newly enacted" shall include new interpretations or requirements under pre-existing law (such as the Clean Air Act).

13.4.1 If Seller has the right to obtain allowances or credits attributed to the Project to offset the GHG Charges for the Project, then Seller shall utilize such allowances or credits to mitigate any GHG Charge hereunder resulting from Buyer's dispatch of the Project. Furthermore, if allowances or credits are not allocated to or otherwise provided for specific generating units but Seller has the right to obtain allowances or credits attributed to its portfolio of generating units (all or some of the generating units owned, managed, or controlled by Seller), then Seller shall utilize a proportional amount of such allowances or credits to mitigate any GHG Charge hereunder resulting from Buyer's dispatch of each Energy Storage System. If Seller is allocated or receives revenues, whether specific to each Energy Storage System or to Seller's portfolio of generating units associated with any allowance or credit associated with Greenhouse Gas emissions attributable to Buyer's dispatch of the Project, then Seller shall remit any such revenue or, if allocated to Seller's portfolio of generating units, the proportional amount of such

revenue, to Buyer to mitigate any GHG Charge that Buyer is responsible for hereunder. For the purposes of this Section 13.4.1, the proportional amount of allowances, credits, or revenues, as applicable, shall be calculated based on the historical annual Greenhouse Gas emissions (in terms of tons of CO₂-equivalent) of each Energy Storage System under this Agreement that would be subject to GHG Charges compared to the sum of the historical annual Greenhouse Gas emissions (in terms of tons of CO₂-equivalent) of all generating units within Seller's portfolio that would be subject to GHG Charges.

13.4.2 Reserved.

13.4.3 Notwithstanding the foregoing, in no event shall Buyer be responsible for GHG Charges that exceed the GHG Limit or for GHG Charges that are attributable to any dispatch of the Project that is not a Buyer dispatch.

**ARTICLE 14.
CHARGING**

14.1 Buyer as Manager. Except as set forth in Section 14.3 or as expressly set forth in this Agreement, during the Delivery Period, Buyer shall be responsible for managing, purchasing, scheduling, and transporting all of the Charging Energy Requirements of each Energy Storage System to the Energy Delivery Point.

14.2 Seller Charging Energy Responsibilities. Seller shall take any and all action necessary to deliver the Charging Energy Requirements to the Energy Storage System(s) in order to deliver the Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy Requirements to the Energy Storage System(s).

14.3 Charging Energy Costs, Charges, and Payments. Seller shall pay the costs of purchasing, scheduling and delivering the Charging Energy Requirements to restore the State of Charge of the Energy Storage System after a Non-Buyer Dispatch and as otherwise expressly set forth in this Agreement.

14.4 Charging Notice. Buyer will have the right to charge each Energy Storage System, seven days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices to Seller electronically, and subject to the requirements and limitations set forth in this Agreement. Each Charging Notice will be effective unless and until Buyer modifies such Charging Notice by providing Seller with an updated Charging Notice. If an electronic submittal is not possible for reasons beyond Buyer's control, Buyer may provide Charging Notices by (in order or preference, unless the Parties agree to a different order) electronic mail, facsimile transmission or telephonically to Seller's personnel designated in Appendix [XX] to receive such communications.

**ARTICLE 15.
TOLLING**

15.1 Tolling. Seller's obligation to deliver any Product dispatched from the Project by Buyer or CAISO shall be contingent upon Buyer complying with its obligations as charging manager under this Agreement.

15.2 Reserved.

**ARTICLE 16.
CAISO AND NON-BUYER DISPATCHES**

16.1 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, Energy dispatches, Ancillary Services dispatches or otherwise shall be deemed to be dispatches by Buyer, and the Energy dispatched is for Buyer's benefit hereunder, and Buyer shall pay all associated costs for such CAISO dispatches (including but not limited to the required electric recharge quantities, Transport Costs, Variable O&M Charges, and Start-Up Charges) in accordance with the terms of this Agreement as if such dispatches were directed by Buyer. Buyer shall be entitled to receive and retain for its own account any and all CAISO revenue for such dispatches, including without limitation any availability payments under an RMR Contract for the Project. Charging Energy Costs shall be included in any costs recoverable from the CAISO associated with a CAISO dispatch. In no event shall a dispatch by the CAISO be considered a Non-Buyer Dispatch pursuant to this Agreement.

16.2 Non-Buyer Dispatch. During the Term, Seller shall not start-up or operate the Project other than (a) as dispatched by Buyer or CAISO or (b) pursuant to a Non-Buyer Dispatch. Seller shall, to the extent possible, notify Buyer at least 24 hours (or any shorter period reasonably acceptable to Buyer consistent with Accepted Electrical Practices) in advance of any start-up or operation pursuant to a Non-Buyer Dispatch, and shall, except as otherwise required by Applicable Law, Accepted Electrical Practices, delay such start-up or operation for a reasonable period of time if requested by Buyer. If Seller or any third party starts-up or operates any Energy Storage System other than as permitted hereunder, it shall be an Event of Default under Article 3. Seller shall hold Buyer harmless and indemnify Buyer against the actual costs or losses of Buyer resulting from a Non-Buyer Dispatch, including, without limitation, all CAISO Charges and all Charging Energy Costs incurred pursuant to such start-up or operation.

**ARTICLE 17.
SCHEDULING COORDINATOR**

17.1 Buyer Scheduling Coordinator. At least thirty (30) days prior to the beginning of testing, Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer as Seller's Scheduling Coordinator for the Project effective as of the start-up, testing and commissioning of the Project. During the Delivery Period, Seller shall not authorize or designate any other party to act as Seller's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as Seller's Scheduling

Coordinator unless agreed to by Buyer. Buyer shall submit schedules to the CAISO in accordance with Tariff protocols for Day-Ahead and Hour-Ahead Schedules and Supplemental Energy and Ancillary Service bids for each Energy Storage System, and provide such other services described in this Article. Buyer will submit bids to the CAISO that are in accordance with the Operating Restrictions of the Project as specified in Appendix 1.1. Buyer may withhold all Monthly Capacity Payments that would otherwise be due to Seller until Buyer is fully authorized as the Scheduling Coordinator for the Project. Upon Buyer's reasonable determination that it is fully authorized to act as Scheduling Coordinator for each Energy Storage System, Buyer shall pay any withheld Monthly Capacity Payments on the next applicable payment date for Monthly Capacity Payments. **[NOTE to Bidders: parties to discuss SC duties during pre-commercial operation testing.]**

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

17.3 CAISO Costs and Revenues. Except as otherwise set forth below or in this Agreement, Seller shall be responsible for all CAISO charges and penalties associated with the operation of the Project and transmission of Energy to the Energy Delivery Point, and Buyer shall be responsible for all CAISO charges and penalties associated with receiving Energy at, and transmitting Energy from, the Energy Delivery Point. Buyer shall be responsible for CAISO costs (including penalties and other charges) and receive all CAISO revenues (including credits and other payments) incurred as a result of providing Scheduling Coordinator services, including costs and revenues associated with CAISO dispatches. Seller shall be responsible for all CAISO charges or payments (in each case, net of Buyer's electricity costs or avoided electricity costs) incurred as a consequence of the Project not being available, the Seller not notifying Buyer of outages in a timely manner (as set forth in Section 20.3), or deviations from Scheduled Energy that are attributable to the operation of the Project, including, but not limited to Uninstructed Imbalance Energy charges, Uninstructed Deviation Penalties and Ancillary Services No-Pay. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges are the responsibility of the Seller and for Seller's account.

17.4 CAISO Settlements. Buyer shall be responsible for all settlement functions with the CAISO related to the Project. Buyer shall render a separate invoice to Seller for all CAISO charges or payments (in each case, net of Buyer's electricity costs or avoided electricity costs) ("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 (approximately 90 days after each month in the Delivery Period) 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.

17.5 Terminating Buyer's Designation as Scheduling Coordinator. At least 30 days prior to the earlier of the expiration of the Term or as of an Early Termination Date, regardless of which Party designated it, 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 date ("SC Replacement Date"). The necessary actions include the following: (a) Seller shall (i) submit to the CAISO a designation of a new Scheduling Coordinator for the Project to replace Buyer effective as of the SC Replacement Date and (ii) cause its newly designated Scheduling Coordinator to submit a letter to the CAISO accepting the designation; and (b) Buyer shall submit a letter to the CAISO resigning as Scheduling Coordinator for the Project effective as of the SC Replacement Date. Seller bears sole responsibility for locating, selecting and reaching agreement about terms with any replacement Scheduling Coordinator.

17.6 CAISO Sanctions. If during the Delivery Period, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Project or to Buyer as Scheduling Coordinator due to the actions or inactions of Seller, the cost of the sanctions or penalties shall be the Seller's responsibility.

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

ARTICLE 18. DISPATCH NOTICES AND OPERATING RESTRICTIONS

18.1 Availability Notice. During the Delivery Period, no later than two (2) Business Days before each schedule day for the Day-Ahead Market in accordance with WECC scheduling practices, Seller shall provide Buyer with an hourly schedule of the Available Capacity (for both Energy and Ancillary Services) that each 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 Capacity of any Energy Storage System 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 18.1 by (in order of preference) electronic mail, facsimile transmission or, telephonically to Buyer personnel designated to receive such communications.

18.2 Dispatch Notices. Buyer will have the right to dispatch the Energy Storage System seven days per week and 24 hours per day (including holidays), by providing Dispatch Notices and Updated Dispatch Notices to Seller electronically (in the forms attached to this Agreement in Appendix 18.2) or as directed by CAISO via ADS, and subject to the requirements and limitations set forth in this Agreement. Subject to Section 18.4, 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 control, Buyer 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. 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 as specified in the Tariff.

18.3 Start-Up Notices. If a Dispatch Notice or Updated Dispatch Notice includes a Start-Up, Seller shall notify Buyer's real time contact in Appendix 18.7 by telephone when each applicable Energy Storage System is synchronized. When a Dispatch Notice requires a Start-Up or shutdown, Seller will be responsible for coordinating all required switchyard switching with the Buyer Grid Control Center or the Grid Control Center, if applicable.

18.4 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. In providing a Dispatch Notice or an Updated Dispatch Notice, Buyer shall use reasonable efforts to comply with the applicable Operating Restrictions. 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.

18.5 Daily Operating Report. Seller shall provide Buyer the Daily Operating Report, as attached in Appendix 18.5, the day immediately after each operating day, for all Energy Storage Systems.

18.6 Writing Requirements. In documenting and confirming Dispatch Notices and Updated 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.

18.7 Communication Protocols. Parties shall agree to the communication protocols outlined in Appendix 18.7 to facilitate exchange of information between the parties.

ARTICLE 19. METERING, COMMUNICATIONS, AND TELEMETRY

19.1 Electric Metering, Communication, Telemetry, and Access. Seller shall install, activate and maintain metering, communication and telemetry equipment as required by the Tariff and Seller's [Large/Small] Generator Interconnection Agreement, including without limitation, the installation of separate CAISO revenue meters for each Energy Storage System to ensure a separate resource ID with the CAISO for each such Energy Storage System, separate communication equipment for each Energy Storage System, and other requirements as may be necessary to permit separate dispatch and identification of costs for each Energy Storage System.

Communication equipment must be capable at a minimum of supporting the Communication Protocols in Appendix 18.7. Seller shall provide Buyer access to the information provided to CAISO under the Tariff.

19.1.1 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.

19.1.2 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.

19.1.3 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 10.3.

19.2 Retail Electric Meter. [To be inserted]

ARTICLE 20. OUTAGES

20.1 Scheduled Outages.

20.1.1 No later than January 15, April 15, July 15 and October 15 of each Contract Year during the Delivery Period, and at least sixty (60) days prior to the Guaranteed Initial Delivery Date, Seller shall submit to Buyer Seller's schedule of proposed Scheduled Outages ("Outage Schedule") for the following twelve (12)-month period in a the form reasonably agreed to by Buyer. Within twenty (20) Business Days after its receipt of an Outage Schedule, Buyer shall notify Seller in writing of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Industry Standards, accommodate Buyer's requests regarding the timing of any Scheduled Outage. Seller may propose changes to any

previously scheduled outage 15 days prior to such scheduled outage. Buyer shall review each such change and shall advise Seller within three (3) days of Buyer's receipt thereof, in Buyer's sole discretion but consistent with Industry Standards and Accepted Electrical Practices, whether such change is acceptable or Buyer may propose alternate dates for the requested scheduled maintenance. Seller shall cooperate with Buyer to arrange and coordinate all Scheduled Outages with the CAISO. Seller will communicate to Buyer all changes to a Scheduled Outage and estimated time of return of each Energy Storage System as soon as practicable after the condition causing the change becomes known to Seller. The total amount of Scheduled Outages pursuant to this Section 20.1.1 for each Contract Year shall not exceed (i) for any Contract Years in which routine maintenance is scheduled in accordance with Accepted Electrical Practices, [] (or a prorated amount in the case of the first Contract Year), and (ii) for any Contract Years in which non-routine or major maintenance is scheduled in accordance with Accepted Electrical Practices, an additional [] hours (or a prorated amount in the case of the first Contract Year) per Contract Year for a maximum aggregate amount under clauses (i) and (ii) of [] hours for a Contract Year in which routine maintenance is scheduled in accordance with Accepted Electrical Practices and non-routine or major maintenance is scheduled in accordance with Accepted Electrical Practices.

20.1.2 If reasonably required in accordance with Accepted Electrical Practices, Seller may perform maintenance at a different time than, maintenance scheduled pursuant to Section 20.1.1. Seller shall provide Notice to Buyer within the time period determined by the CAISO for the Energy Storage System, 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 20.1.2 to periods when Buyer does not reasonably believe the Project will be dispatched. Unless otherwise agreed to by the Parties, the total amount of Scheduled Outages scheduled pursuant to this Section 20.1.2 shall count against the hours permitted in Section 20.1.1 and shall not exceed the caps listed in Section 20.1.1.

20.2 No Scheduled Outages During Summer Months. Except as scheduled by the Parties under Section 20.1.2, no outages shall be scheduled or planned from each June 1 through October 31 during 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.

20.3 Notice of Unscheduled Outages. Seller shall notify Buyer by telephoning Buyer's Generation Operations Center no later than ten (10) minutes following the occurrence of an Unscheduled Outage, or if Seller has knowledge that an Unscheduled Outage will occur, within twenty (20) minutes of determining that such Unscheduled Outage will occur. Seller shall relay outage information to Buyer as required by the Tariff within twenty (20) minutes of the Unscheduled Outage. Seller will communicate to Buyer the estimated time of return of each Energy Storage System as soon as practical after Seller has knowledge thereof.

20.4 Inspection. In the event of an Unscheduled Outage, Buyer shall have the option to inspect any Energy Storage System 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.

20.5 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 21. FORCE MAJEURE

21.1 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.

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

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

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

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

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

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

21.3 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 21.2(a), then, unless such Force Majeure event was caused by the Event of Default of the other Party or other delay or failure of the other Party in performing a

material obligation under this Agreement, such other Party may, at any time following the end of such six (6)-month period, terminate this Agreement upon thirty (30) days prior written Notice to the Claiming Party, without further obligation by the terminating Party, except as to the payment of any costs and liabilities incurred prior to the effective date of such termination. Except to the extent Buyer may be entitled to Daily Delay Damages under Section 2.10.1, if this Agreement is terminated by Buyer under this Section 21.3, then within five (5) days following such termination, Buyer shall return to Seller any and all Letters of Credit, cash deposit, or any other forms of security or credit support previously provided by Seller and held at that time by Buyer.

ARTICLE 22. REPRESENTATIONS, WARRANTIES AND COVENANTS

22.1 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:

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

22.1.2 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;

22.1.3 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 (excluding any Governmental Authority approvals or consents or any Required Permits, which items are covered in Section 22.1.2);

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

22.1.5 It is not Bankrupt and there are not proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

22.1.6 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;

22.1.7 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;

22.1.8 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;

22.1.9 It is a “forward contract merchant” within the meaning of the United States Bankruptcy Code;

22.1.10 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.

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

22.2.1 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;

22.2.2 To the best of Seller’s knowledge, each specification and description of the Project and the Product in Article 1 is true and correct. Seller covenants that, throughout the Term, Seller will promptly provide Buyer with Notice of any change in any material respect in any of the specifications or descriptions set forth in Article 1;

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

22.2.4 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;

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

22.2.6 Seller has obtained, or will obtain, all necessary Emissions Reductions Credits and/or Marketable Emission Trading Credits required for the Project to operate in

conformance with this Agreement and in accordance with Applicable Laws, including any applicable environmental laws, rules, regulations, and permits.

22.3 Seller's Affirmative Covenants.

22.3.1 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.

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

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

22.4 Seller's Negative Covenants.

22.4.1 Seller shall not create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable for, contingently or otherwise, any Seller's Debt, or issue any disqualified stock, in each case, other than Seller's Debt incurred, issued, assumed or guaranteed, or disqualified stock issued, in connection with the financing or refinancing of the development, construction, ownership or operation of the Project.

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

22.4.2 On and after the CP Satisfaction Date, Seller shall not permit the amount of Seller's Debt, to exceed the amount designated in Appendix 22.4.3 as applicable to each period described therein.

22.4.3 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.

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

22.4.5 During any period during which a Seller is a Defaulting Party, Seller shall not (i) declare or pay any dividend, or make any other distribution or payment, on account of any equity interest in Seller or (ii) otherwise make any distribution or payment to any Affiliate of Seller (excluding payments to such Affiliates for reasonable expenses related to the operation, maintenance and management of the Project).

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

22.4.7 Seller shall not permit any Lenders that are Affiliates of Seller to have a security interest senior to Buyer's Subordinated Security Interest unless all of the Lenders are Affiliates of Seller.

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

22.5.1 Buyer shall cooperate with Seller to obtain approval(s) from any applicable Governmental Authorities with respect to governmental approvals needed by Seller.

22.5.2 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).

22.5.3 Buyer shall not schedule, or allow the CAISO or any third party to schedule, the Project in violation of the Operating Restrictions or as otherwise permitted in this Agreement.

22.5.4 Buyer, in its role as Scheduling Coordinator and electricity recharge manager for the Project, shall not violate the Tariff or Industry Standards, or any combination of the foregoing.

ARTICLE 23. LIMITATIONS

23.1 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.

23.2 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 24. RECORDS

24.1 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.

24.2 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 24.2(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 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. **[NOTE: Updates to be provided by SDG&E]**

24.3 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 24.1 and 24.2, in order to comply with all Applicable Laws.

24.4 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 24.4 shall survive the termination of this Agreement for a period of 2 years.

24.5 California Climate Action Registry. In accordance with CPUC OIR 06-04-009, upon modification of the protocols of the California Climate Action Registry to allow generation

facility-specific registration, Seller shall promptly (a) register with the California Climate Action Registry and (b) send Buyer Notice of such registration and (c) remain a member of the California Climate Action Registry thereafter during the Delivery Period.

ARTICLE 25. DISPUTES

25.1 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 25. 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 25.

25.2 Management Negotiations.

25.2.1 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.

25.2.2 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.

25.2.3 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.

25.2.4 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 25.2.1 above, refuses or does not meet within the ten (10) Business Day period specified in Section 25.2.1 above, either Party may initiate arbitration of the controversy or claim by providing Notice of a demand for binding arbitration at any time thereafter.

25.3 Arbitration. Any dispute that cannot be resolved by management negotiations as set forth in Section 25.2 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").

25.3.1 Any arbitrator shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. The Parties shall cooperate with one another in selecting the arbitrator within sixty (60) days after Notice of the demand for arbitration. If, notwithstanding their good faith efforts, the Parties are unable to agree upon a mutually-acceptable arbitrator, the arbitrator shall be appointed as provided for in AAA's Commercial Arbitration Rules.

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

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

25.3.4 The arbitrator shall prepare in writing and provide to the Parties an award including factual findings and the reasons on which their decision is based.

25.3.5 The arbitrator's award shall be made within nine (9) months of the filing of the Notice of intention to arbitrate (demand) and the arbitrator shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the arbitrator, if necessary.

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

25.3.7 The prevailing Party in this dispute resolution process is entitled to recover its costs. Until such award is made, however, the Parties shall share equally in paying the costs of the Arbitration.

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

25.3.9 The arbitrator shall not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected on appeal to a court of competent jurisdiction for any such error.

25.3.10 The existence, content, and results of any Arbitration hereunder is confidential information that is subject to the provisions of Section 27.1.

25.4 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.

25.5 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 26. INDEMNIFICATION

26.1 Indemnities

(a) Indemnity by Seller. Seller shall release, indemnify, defend, and hold harmless Buyer, its Affiliates, and its and their directors, officers, employees, agents, and representatives against and from any and all actions, suits, losses, costs, damages, injuries, liabilities, claims, demands, penalties and interest, including reasonable costs and attorneys' fees ("Claims") resulting from, or arising out of or in any way connected with (i) any event, circumstance, act, or incident relating to the Product delivered by Seller under this Agreement up to the Energy Delivery Point or electricity received by Seller under this Agreement after the Electric Retail 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 (subject to Buyer complying with its obligations as Scheduling Coordinator under Section 17), (iv) a breach of its covenants, representations, or warranties under this Agreement, (v) any Governmental Charges for which Seller is responsible hereunder, or (vi) any liens, security interests, encumbrances, or other adverse claims against the Product delivered hereunder made by, under, or through Seller, in all cases including, without limitation, any Claim for or on account of injury, bodily or otherwise, to or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such Claim to the extent caused by the willful misconduct or gross negligence of Buyer, its Affiliates, and its and their directors, officers, employees, agents, and representatives.

(b) Indemnity by Buyer. Buyer shall release, indemnify, defend, and hold harmless Seller, its Affiliates, and its and their directors, officers, employees, agents, and representatives against and from any and all Claims resulting from, or arising out of or in any way connected with (i) any event, circumstance, act, or incident relating to the Product received by Buyer under this Agreement after the Energy Delivery Point or electricity delivered by Buyer under this Agreement up to the Electric Retail 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.

26.2 Insurance. The provisions of this Article 26 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.

26.3 Survival. All indemnity rights shall survive the termination of this Agreement.

ARTICLE 27. CONFIDENTIALITY/REGULATORY DISCLOSURE

27.1 Confidentiality.

27.1.1 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 27.1.2 of this Agreement; (v) in order to comply with any Applicable Law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in clause (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 27.1.1 ("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.

27.1.2 Specific Terms. Notwithstanding Section 27.1.1 of this Agreement, at any time on or after the date on which the Buyer makes its filing seeking CPUC Approval of this Agreement, either Party shall be permitted to disclose the following terms with respect to this Agreement: Party names, resource type, Delivery Period, Project location, Contract Capacity, Guaranteed Initial Delivery Date and Energy Delivery Point.

27.1.3 Publicity. Except as otherwise agreed to in this Section 27.1 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.

27.2 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.

27.3 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 Section 27 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 28.
MISCELLANEOUS**

28.1 General. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. All references to time shall be in PPT unless stated otherwise. The headings used herein are for convenience and reference purposes only. This Agreement shall be binding on each Party’s successors and permitted assigns. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect its obligations under the Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.

28.2 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 28.2.

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:

28.3 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.

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

28.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld. For purposes hereof, the transfer of at least fifty percent (50%) of the equity ownership or voting interest of Seller (or any parent entity holding directly or indirectly at least fifty percent (50%) of the equity ownership or voting interest of Seller if such interest constitutes more than twenty percent (20%) of the value of such parent entity) to a person that is not an Affiliate of Seller shall also constitute an assignment of this Agreement requiring Buyer's prior written consent. Notwithstanding the foregoing, 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.

28.6 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.

28.7 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.

28.8 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.

28.9 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).

28.10 Entire Agreement. Except for the Security Documents, [the electric retail service and electrical interconnection agreements between the Parties,][insert any others] this

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

28.11 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.

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

28.13 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).

28.14 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.

28.15 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.

28.16 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 this Appendix A, unless otherwise specified. Unless otherwise specified herein, references in the singular shall include references in the plural and vice versa, pronouns having masculine or feminine gender will be deemed to include the other, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal personality). Other grammatical forms of defined words or phrases have corresponding meanings. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. References to a particular article, section, subsection, paragraph, subparagraph, appendix or attachment shall, unless specified otherwise, be a reference to that article, section, subsection, paragraph, subparagraph, appendix or attachment in or to this Agreement. Any reference in this Agreement to any natural person, Governmental Authority, corporation, partnership or other legal entity includes its permitted successors and assigns or to any natural person, Governmental Authority, corporation, partnership or other legal entity succeeding to its functions. All references to dollars are to U.S. dollars.

(Signature page follows)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

[INSERT SELLER NAME]

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

SAN DIEGO GAS & ELECTRIC COMPANY

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

APPENDIX A DEFINITIONS

“AAA” means the American Arbitration Association.

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

“ADS” means CAISO’s Automatic Dispatching System.

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

“Agreement” means this Power Purchase Tolling Agreement between Buyer and Seller.

“Ancillary Service Capacity” or “A/S Capacity” means Capacity associated with Ancillary Services available to Buyer within the scope of operations allowed Buyer under Section 1.1.3 of this Agreement.

“Ancillary Services” means spinning, non-spinning, regulation up, regulation down, black start, voltage support, and any other ancillary services that the Project is capable of providing 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.]**

“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 25.3.

“Associated Ancillary Services Energy” means the Energy expressed in megawatt-hours (“MWh”) expressly associated with the Ancillary Service Capacity made available from any Energy Storage System at the instruction of the CAISO.

“Associated Energy” means the Energy expressed in megawatt-hours (“MWh”) or kilowatt-hours (“KWh”), expressly associated with Capacity dispatched under this Agreement.

“Availability Incentive Payments” shall mean Availability Incentive Payments as defined in the Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the Tariff.

“Availability Notice” means an hourly schedule of the amounts of Available Capacity that each Energy Storage System is expected to be available during each hour of the day to which the Availability Notice pertains, pursuant to Section 18.1.

“Availability Standards” shall mean Availability Standards as defined in the Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the Tariff.

“Available Capacity” means the amount of Contract Capacity that is available to Buyer under this Agreement from the Project providing Contract Capacity on average during an hour.

“Bankrupt” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes, or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

“Billing Meter” means a revenue quality meter accepted by the electricity retail service provider.

“Business Day” means any day except a Saturday, Sunday, the Friday immediately following the United States Thanksgiving holiday, or a Federal Reserve Bank holiday.

“CAISO” means the California Independent System Operator, a state chartered, nonprofit, public benefit corporation that controls certain transmission facilities of all Participating Transmission Owners and dispatches certain electric generation units and loads, or any successor entity performing the same functions. “CAISO Charges Invoice” has the meaning set forth in Section 17.4.

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

“California Energy Commission” or “CEC” means the State Energy Resources Conservation and Development Commission as defined and used in Section 25104 in the California Public Resources Code, Division 15, Energy Conservation and Development (Sections 25000, et seq).

“Capacity” means the maximum dependable operating capability of any generating resource to produce or generate Energy, and shall include, without limitation, Unit Contingent Capacity, Ancillary Services Capacity, Resource Adequacy Benefits, and any other products that

may be developed or evolve from time to time during the Term that relate to the capability of the Project to produce or generate Energy.

“Charging Energy Requirements” means all of the Project’s electricity requirements, including electricity for any Non-Buyer Dispatch and any other purpose, whether operational or otherwise.

“Claiming Party” means the Party claiming a Force Majeure under Article 21.

“Claims” has the meaning set forth in Section 26.1.

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

“Commercial Operation” means that (a) the Project has been completed in accordance with the Agreement and is ready for commercial operation in compliance with all Applicable Laws, Required Permits, and Accepted Electrical Practices, and (b) the Project shall have successfully passed all Commercial Operation Tests at a level that demonstrates satisfaction of at least 100%% of the Expected Contract Capacity and at most [insert efficiency]], and complete test reports have been submitted to Buyer, as set forth in a written Notice from Seller to Buyer specifying the date on which the requirements described in clauses (a) and (b) were satisfied, as confirmed in each case by Buyer and/or Buyer’s engineer; provided, however, that such confirmation must be made within twenty-one (21) days after receipt of complete test reports from Seller required pursuant to clause (b) and, if not made within such twenty-one (21) day period shall be deemed to have been given unless Buyer or Buyer’s engineer shall have provided the reasons for why such requirements have not been satisfied within such twenty-one (21) day period; provided, further, that upon such confirmation, Commercial Operation shall be deemed to have been achieved as of the date set forth in such Notice from Seller to Buyer that the requirements described in clauses (a) and (b) were satisfied.

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

“Conditions Precedent” has the meaning set forth in Section 2.4.

“Confidential Information” means any and all non-public proprietary written information, data, analyses, documents, and materials furnished or made available by a Party or its Representatives to the other Party or its Representatives in connection with this Agreement, and any and all analyses, compilations, studies, documents, or other material prepared by the receiving Party or its Representatives to the extent containing or based upon such information, data, analyses, documents, and materials, but does not include information, data, analyses, documents, or materials that (i) are when furnished or thereafter become available to the public other than as a result of a disclosure by the receiving Party or its Representatives in violation of this Agreement, or (ii) are already in the possession of or become available to the receiving Party or its Representatives on a nonconfidential basis from a source other than the disclosing Party or its Representatives, provided that, to the best knowledge of the receiving Party or its Representatives, as the case may be, such source is not and was not bound by an obligation of confidentiality to the disclosing Party or its Representatives, or (iii) the receiving Party or its Representatives can demonstrate has been independently developed without a violation of this Agreement.

“Construction Period Security” has the meaning set forth in Section 11.2.2.

“Contract Capacity” has the meaning as set forth in Section 1.1.1.

“Contract Capacity, Efficiency Rate & Ancillary Services Tests” has the meaning as set forth in Section 7.3 and further described in Appendix 7.

“Contract Conditions” means [XX] degrees Fahrenheit, [XX]% relative humidity and [XX] psi barometric pressure. **[NOTE to bidders: insert conditions which are averages for the site location of the project.]**

“Contract Year” means the months within each calendar year during the Delivery Period. The initial Contract Year would be from the Initial Delivery Date until December 31st of such year. Contract Year #2 would be from January 1st through December 31st of the calendar year immediately following the initial Contract Year. The final Contract Year will be January 1st through the last day of the Delivery Period.

“Costs” means with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by the Non-Defaulting Party either in terminating any arrangement pursuant to which it has hedged its obligations under the Agreement or entering into new arrangements which replace the Product, including any costs or penalties imposed upon the Non-Defaulting Party for the loss of Resource Adequacy Benefits or for replacing those Resource Adequacy Benefits.

“CP Satisfaction Date” means the date on which all of the Conditions Precedent have been satisfied (or waived in writing by the applicable Party(ies) described in Section 2.5.1).

“CPUC” means the California Public Utilities Commission or any successor thereto.

“CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which approves this Agreement in its entirety, including payments to be made by the Buyer and such other matters as may be requested by Buyer in its application to the CPUC for approval, subject to CPUC review of the Buyer’s administration of the Agreement.

“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 in the months of June, July, August and September

and \$[XX,XXX] per day for each day of delay in the other months of the year. **[NOTE to Bidders: this is the total security required during development divided by the number of days in the Cure Period]**

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

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

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

“Default Equivalent Availability Factor” means the percentage calculated according to the formula below:

$$\text{DEAF} = [(\text{PH} - (\text{DEDH} - \text{DEEDH})) / \text{PH}]$$

Where:

PH is the number of period hours;

DEDH is the number of equivalent derate hours (for the DEAF) 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 Expected Contract Capacity divided by the Expected Contract Capacity for the month. For the purposes of this calculation, a derate includes all outages for any reason, including without limitation, Unscheduled Outages, Force Majeure events, Delivery Excuse, forced derates, shortages relative to the Guaranteed Start-Up Time, shortages relative the Guaranteed Ramp Rates, Scheduled Outages, other times when any portion of the Expected Contract Capacity is not available, and when the Delivered Energy of the Project is less than the amount of energy dispatched by Buyer.

DEEDH is the number of equivalent excused derate hours (for the DEAF) solely due to either a Force Majeure event, Scheduled Outage or a Delivery Excuse (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 Expected Contract Capacity, divided by the Expected Contract Capacity for the month.

“Default Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the bank prime lending rate as may from time to time be published by the Federal Reserve in their H.15 Statistical Release, Selected Interest Rates (daily) or any successor publication as published by the Board of Governors of the Federal Reserve System, on such date (or if not published on such day on the most recent preceding day on which published), plus two percent (2 percent), and (b) the maximum rate permitted by Applicable Law. The Federal Reserve H.15 Statistical Release, Selected Interest Rates (daily) may be found at the following address: www.federalreserve.gov/releases/H15/update.

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

“Delivered Energy” means, in respect of a Energy Storage System, for a period of time, the amount of Energy generated by such Energy Storage System and delivered for Buyer’s account during the period at the Energy Delivery Point for such Energy Storage System as measured by the Energy Metering Equipment., Station Use will be served separately.

“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 electricity 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 such provider 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); [(vii) Capacity derates that are consistent with Accepted Electrical Practices that are the result of ambient conditions differing from Contract Conditions, excluding therefrom any derates due to icing of inlet air to any of the Energy Storage Systems].

“Delivery Period” has the meaning set forth in Section 2.3.

“Delivery Period Security” has the meaning set forth in Section 11.2.3.

“Dispatch Notice” means the operating instruction, and any subsequent updates (an “Updated Dispatch Notice”), given by Buyer to Seller, directing the applicable Energy Storage System to operate at a specified megawatt output. Dispatch Notices may be communicated electronically (i.e. through ADS or e-mail), via FAX, telephonically or other verbal means, in the case of Dispatch Notices from Buyer, in accordance with the procedures set forth in Section 18.2. Telephonic or other verbal communications shall be documented (either recorded by tape, electronically or in writing) and such recordings shall be made available to both Buyer and Seller upon request for settlement purposes.

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

“Effective Date” is as set forth in the introductory paragraph of this Agreement.

“Efficiency Rate” means the rate of conversion of the [SDG&E to insert] into Energy.

“Electric Retail Delivery Point” has the meaning set forth in Section 1.3.2.

“Emission Reduction Credits” 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 a 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, or any similar federal, state or local Applicable Laws of like effect.

“Energy” means all electrical energy produced, flowing or supplied by a generating resource, measured in kilowatt-hours or multiple units thereof. Energy shall include without limitation, Unit Contingent Energy, Associated Energy, Associated Ancillary Services Energy, Supplemental Energy, reactive power, and any other electrical energy products that may be developed or evolve from time to time during the Term.

“Energy Delivery Point” means the point specified in Section 1.3.1.

“Energy Metering Equipment” means, for each Energy Storage System, the meters and measuring equipment recognized by the CAISO at the Energy Delivery Point for such Energy Storage System, and which provides the Delivered Energy delivered by such Energy Storage System to the Energy Delivery Point.

“Energy Storage System” means the generating unit(s) specified in Recital B and more specifically described Section 1.2.2 and Appendix 1.1.

“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 the costs of all Emission Reduction Credits or Marketable Emission Trading Credits 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 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 entity 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 25.2.1.

“Expected Contract Capacity” means the expected Capacity of the Project, as measured in megawatts (MW) at the location of the applicable Energy Delivery Point, as shown in Appendix 1.1.1.

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

“Force Majeure” means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under this Agreement but only to the extent (1) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (2) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party’s ability to perform its obligations under this Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (3) such event is not the direct or indirect result of the fault or negligence of the Party seeking to have its performance obligations excused thereby.

(a) Subject to the foregoing, events that could qualify as Force Majeure include, but are not limited to the following:

(i) acts of God, flooding, lightning, landslide, earthquake, fire, drought, explosion, epidemic, quarantine, storm, hurricane, tornado, volcano, other natural disaster or unusual or extreme adverse weather-related events;

(ii) war (declared or undeclared), riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockade, insurrection, revolution, expropriation or confiscation; or

(iii) except as set forth in subpart (b)(vi) below, strikes, work stoppage or other labor disputes (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable).

(b) Force Majeure shall not be based on:

(i) Buyer’s inability economically to use or resell the Product purchased hereunder;

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

(iii) Seller’s inability to obtain governmental approvals or other approvals of any type for the construction, operation, or maintenance of the Project;

(iv) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Project, except to the extent Seller’s inability to obtain sufficient labor, equipment, materials, or other resources is caused by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iii) above;

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

(vi) a strike, work stoppage or labor dispute that is directed specifically at Seller, Seller's Affiliates, or the Project; or

(vii) any equipment failure except to the extent such equipment failure is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iii) above.

"Forced Outage" has the meaning set forth in the Tariff.

"Forward Price Assessment" means quotations solicited or obtained in good faith from regularly published and widely-distributed forward price assessments from a broker that is not an Affiliate of either Party and who is actively participating in markets for the relevant products.

"GAAP" has the meaning set forth in Section 24.2.

"Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to such Party, if any (exclusive of Costs), resulting from the termination and liquidation of the Agreement, determined in a commercially reasonable manner.

"Generation Management System" or "GMS" means the automated system employed by Buyer real time operations to remotely monitor and dispatch each Energy Storage System.

"Generation Operations Center" or "GOC" means the location of Buyer's real time operations personnel.

"GHG Charges" has the meaning set forth in Section 13.4 of this Agreement.

"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.

"Greenhouse Gas" means emissions into the atmosphere of gases that are regulated by one or more Governmental Authorities as a result of their contribution to the greenhouse effect heating of the surface of the earth. Greenhouse gases include carbon dioxide (CO₂), nitrous oxide (N₂O) and methane (CH₄), which are produced as the result of combustion or transport of fossil fuels. Other greenhouse gases may include hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF₆), which are generated in a variety of industrial processes.

Greenhouse gases may be defined, or expressed, in terms of a ton of CO₂-equivalent, in order to allow comparison between the different effects of gases on the environment.

“Grid Control Center” or “applicable Grid Control Center” means the location of the personnel responsible for operating the transmission grid and/or coordinating same with the CAISO.

“Guaranteed Efficiency Rate” means the Guaranteed Efficiency Rate as set forth with Appendix 7.6.

“Guaranteed Initial Delivery Date” is the date set forth in Section 2.7 for the Project.

“Guaranteed Ramp Rate” means the Guaranteed Ramp Rate as set forth with Appendix 7.6.

“Guaranteed Start-Up Time” means the Guaranteed Start-Up Time as set forth with Appendix 7.6.

“Guarantor” the entity identified as provided in Section 11.4.

“Guaranty Agreement” means, if a Guarantor has been identified as provided in Section 11.4, the guaranty agreement from the Guarantor in a form reasonably acceptable to Buyer.

“Hour-Ahead” has the meaning set forth in the Tariff.

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

“Industry Standards” has the meaning set forth in Section 8.1.1.

“Initial Negotiation End Date” has the meaning set forth in Section 25.2.1.

“Initial Delivery Date” has the meaning set forth in Section 2.3.

“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 and Associated Energy, including, without limitation, connection, transformation, switching, metering, communications, control, and safety equipment, such as equipment required to protect (a) the Participating Transmission Owner’s electric system (or other system to which the Participating Transmission Owner’s electric system is connection, including the CAISO Grid) and Buyer’s customers from faults occurring at the Project, and (b) the Project from faults occurring on the Participating Transmission Owner’s electric system or on the systems of others to which the Participating Transmission Owner’s electric system is directly or indirectly connected. Interconnection Facilities also include any necessary additions and reinforcements to the Participating Transmission Owner’s electric system or CAISO Grid required as a result of the interconnection of the Project to the Buyer electric system, the CAISO Grid or electric systems of others to which the Buyer electric system is directly or indirectly connected.

“Interest Rate” means for any date the rate per annum equal to the Commercial Paper (prime, 3 months) rate as published the prior month in the Federal Reserve Statistical Release, H.15. Should publication of the interest rate on Commercial Paper (prime, 3 months) be discontinued, then the interest rate on commercial paper, which most closely approximates the discontinued rate, published the prior month in the Federal Reserve Statistical Release, H.15, or its successor publication.

“Lender” means any bank, financial institution or other entity (or any agent thereof) that provides development, bridge, construction, permanent debt, tax equity or other financing or refinancing for the Project to Seller consistent with Section 22.4.3 (subject to the Subordination Agreement and the Collateral Assignment Agreement).

“Letter of Credit” means an irrevocable, nontransferable standby letter of credit issued by a U.S. commercial bank or a U.S. branch of a foreign bank with such bank having a Credit Rating of at least “A-” from S&P and “A3” from Moody’s, substantially in the form of Appendix 11.3 and reasonably acceptable to Buyer.

“Losses” means with respect to either Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination and liquidation of the Agreement, determined in a commercially reasonable manner.

“Manager” has the meaning set forth in Section 25.2.1.

“Market Quotation Average Price” means ‘the arithmetic mean of the quotations solicited in good faith at a specific point in time from not less than three Reference Market-Makers; *provided, however,* that the Party obtaining the quotes shall use reasonable efforts to obtain good faith, then-current quotations from at least five Reference Market-Makers and, if at least five such quotations are obtained, the Market Quotation Average Price shall be determined by disregarding the highest and lowest quotations and taking the arithmetic mean of the remaining quotations. The quotations shall be based on the midpoint (average) of firm and transactable offers to sell and bids to buy, which offers and bids are substantially similar to this Agreement. The quotations must be obtained assuming that the Party obtaining them will provide sufficient credit support for the proposed transaction.’

“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, 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)), or any similar federal, state or local Applicable Laws of like effect.

“Maximum Force Majeure Delay” has the meaning set forth in Section 2.10.2.

“Meter Service Agreement” or “MSA” has the meaning set forth in the Tariff.

“Milestone Schedule” means the schedule in the form of Appendix 6.1(a), setting forth Seller’s development, design, procurement, construction, commissioning and testing milestones, as set forth in Section 6.1.

“Minimum Guaranteed Availability” has the meaning set forth in Section 3.2(f).

“Minimum Operating Level” means the minimum operating level of a Energy Storage System as specified in Appendix 1.1.

“Monthly Capacity Payment” has the meaning set forth in Section 9.2.

“Monthly Progress Report” means a monthly progress report, sent by Seller to Buyer no later than the tenth day of each month while the Project has not yet met its Initial Delivery Date, and within five (5) days of Buyer’s request, substantially in the form set forth in Appendix 6.1(b) and describing Seller’s compliance with the Milestone Schedule, including projected time to complete any milestones, for the Project, as set forth in Section 6.1.

“Moody’s” means Moody’s Investor Services, Inc. or its successor.

“MW” means mega-watt or mega-watts.

“NERC” means the North American Electric Reliability Council, or any successor thereto.

“NERC Holidays” means “Additional Off-peak Days” as defined by NERC on the NERC website at <http://www.nerc.com>.

“Non-Availability Charges” shall mean Non-Availability Charges as defined in the Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the Tariff.

“Non-Buyer Dispatch” means a dispatch by Seller pursuant to a Seller Initiated Test (as defined in Section 7.1).

“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).

“Off-Peak Period” means any hour that is not an On-Peak Period.

“On-Peak Period” means the time from hour ending 07:00 PPT through hour ending 22:00 PPT in any day.

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

“Pacific Prevailing Time” or “PPT” means Pacific Daylight Time when California observes Daylight Savings Time and Pacific Standard Time otherwise.

“Participating Generator Agreement” or “PGA” has the meaning set forth in the Tariff.

“Participating Transmission Owner” means the transmission owner that has released to the CAISO operational control of its transmission facilities to which the Project is interconnected. As of the Effective Date, the Participating Transmission Owner is [San Diego Gas & Electric Company.] **[NOTE to Bidders: to be modified if project is not connected directly to SDG&E’s service territory.]**

“Performance Assurance” means collateral in the form of cash, Letter of Credit, Guaranty Agreement or other security acceptable to Buyer in its sole discretion required to be provided to Buyer under Section 11.2.

“Performance Guarantees” has the meaning set forth in Section 7.6.

“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; limitations on any specified operating constraint, requirements for acquisition and provision of any Emission Reduction Credit or Marketable Emission Trading Credit; or any other operational restriction or specification related to compliance with any laws or regulations applicable to the Project.

“Permitted Liens” means liens and encumbrances (a) imposed by the Priority Security Interest and the Subordinated Security Interest (including pursuant to any Security Document) or (b) imposed by any Lender.

“PMAX” means the applicable CAISO-certified maximum operating level of a Energy Storage System.

“PMIN” means the applicable CAISO-certified minimum operating level of a Energy Storage System, provided.

“Pre-Construction Security” has the meaning set forth in Section 11.2.1.

“PRG” has the meaning set forth in Section 27.2.

“Priority Security Interest” has the meaning set forth in Section 11.5.

“Product” means the Capacity, Energy, Ancillary Services, and Resource Adequacy Benefits of each of the Energy Storage Systems at the Project and all other ancillary products, services or attributes similar to the foregoing which are or can be produced by or associated with the Project in accordance with the terms hereof.

“Project” has the meaning set forth in the Recitals.

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

“Reference Market-Maker” means a leading dealer in the relevant market that is not an Affiliate of either Party and that is selected by a Party in good faith among dealers of the highest

credit standing which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit. Such dealer may be represented by a broker.

“Referral Date” has the meaning set forth in Section 25.2.1.

“Reliability Must-Run Contract” or “RMR Contract” means a Must-Run Service Agreement between the owner of an RMR Unit (or the output therefrom) and the CAISO.

“Representatives” means the officers, directors, members, employees, legal counsel, accountants, lenders, advisors, or ratings agencies and other agents or representatives of a Party or of its Affiliates and in the case of Buyer, includes any Independent Evaluator (as such term is used in CPUC Decision 04-12-048) used by Buyer in connection with the Request for Offers from which this Agreement arose.

“Required Permits” has the meaning set forth in Section 5.1(b).

“Resource Adequacy Benefits” means the rights and privileges attached to any generating resource that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings.

“Resource Adequacy Rulings” means CPUC Decisions D.04-10-035, D.05-10-042 and D.06-06-0064 and CPUC Resource Adequacy Rulemakings (R.)04-04-003 and (R.)05-12-013 and any subsequent CPUC ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, as such Decisions, rulings, laws, rules or regulations may be amended or modified from time to time during the Term. **[NOTE TO BIDDERS: to be updated for flexible RA rulings.]**

“S&P” means Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

“Scheduled Energy” means the Energy from a Energy Storage System expected to be delivered to the Energy Delivery Point pursuant to (a) the latest Buyer 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 any Energy Storage System is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 20.1.

“Scheduling Coordinator” or “SC” means an entity certified by the CAISO for the purposes of undertaking the functions specified in Article 17.

“SEC” means the Securities and Exchange Commission.

“Security Documents” means those agreements, documents, instruments, or certifications in a form reasonably acceptable to Buyer that grant and perfect Buyer’s Priority Security Interest and/or Subordinated Security Interest.

“Seller’s Debt” means, without duplication, each of the following: (i) all indebtedness of Seller for borrowed money; (ii) all obligations of Seller for the deferred purchase price of property or service, which purchase price is due more than six (6) months after the date of placing such property in service or taking delivery or title thereto or the completion of such services (other than trade payables not overdue by more than ninety (90) days incurred in the ordinary course of Seller’s business); (iii) all obligations of Seller evidenced by notes, bonds, debentures, disqualified stock or other similar instruments; (iv) all obligations of Seller created or arising under any conditional sale or other title retention agreement with respect to property acquired by Seller (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property); (v) all monetary obligations of Seller under (a) a lease of any property (whether real, personal, or mixed) by Seller as lessee that, in conformity with GAAP, is accounted for as a capital lease on the balance sheet of Seller, (b) a so-called synthetic, off-balance sheet or tax retention lease, or (c) an agreement for the use or possession of property creating obligations which do not appear on the balance sheet of Seller but which, upon the insolvency or bankruptcy of Seller, would be characterized as indebtedness of Seller (without regard to accounting treatment); (vi) all obligations, contingent or otherwise, of Seller under acceptance, letter of guaranty, letter of credit or similar facilities; (vii) all obligations of Seller with respect to any redeemable equity interests in Seller, including in the case of preferred stock, at the greater of the voluntary or involuntary liquidation preference plus accrued and unpaid dividends; (viii) all Swap Obligations of Seller; (ix) all indebtedness of others referred to in clauses (i) through (viii) above guaranteed by Seller, or in effect guaranteed by Seller through an agreement (a) to pay or purchase such indebtedness or to advance or supply funds for the payment or purchase of such indebtedness, (b) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such indebtedness or to assure the holder of such indebtedness against loss; (c) to supply funds to or invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered), or (d) otherwise to assure a creditor against loss; and (x) without duplication of the foregoing, all indebtedness referred to in clauses (i) through (ix) above secured by any lien on property (including amounts and contract rights) owned by Seller. The outstanding amount of indebtedness as described above at any date shall be the outstanding balance at such date of all unconditional obligations as described above and, with respect to contingent obligations as described above, the maximum liability upon the occurrence of the contingency giving rise to the obligation. Notwithstanding the foregoing, the term “Seller’s Debt” as used herein shall not include Seller’s obligations under this Agreement or the lease of the Site (provided, such Site lease does not constitute an obligation of Seller described in clause (v) of the first sentence of this definition).

“Seller Initiated Test” has the meaning set forth in Section 7.1.

“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.

“Start-Up” means the action of bringing a Energy Storage System from shutdown to synchronization at its minimum load and the unconditional release of such Energy Storage System for ramping to the Scheduled Energy.

“Station Use” means Energy produced by the Project that is used to operate the Project’s auxiliary equipment or is lost in transmission losses, transformational losses, or other electrical losses prior to the Energy Delivery Point. The auxiliary equipment includes, but is not limited, to forced and induced draft fans, cooling towers, boiler feed pumps, lubricating oil systems, plant lighting, control systems and sump pumps. [Station Use to be served separately]

“Subordinated Security Interest” has the meaning set forth in Section 11.6.1.

“Subordination Agreement” has the meaning set forth in Section 11.6.1.

“Supplemental Energy” is the Energy from Projects which have uncommitted capacity following finalization of the Hour-Ahead Schedules and which Energy shall be available to CAISO during the Real Time Market.

“Swap Obligations” means obligations in respect of any swaps, caps or collar agreements or similar arrangements to hedge against fluctuations in interest rates or currency exchange rates or the exchange of nominal interest obligations, either generally or under specific contingencies, in each case, valued at the aggregate net mark-to-market value.

“Tariff” means the tariff and protocol provisions, as amended or supplemented from time to time, of the CAISO.

“Term” has the meaning set forth in Section 2.1.

“Termination Payment” has the meaning set forth in Section 3.4.

“Transmission Owners Tariff” means the tariff setting out a Participating Transmission Owner’s rates and charges for transmission access to the CAISO Grid, filed with the CPUC, as it may be amended or superseded and accepted by the CPUC from time to time, or any successor tariff.

“Uninstructed Deviation Penalty” has the meaning set forth in the Tariff.

“Uninstructed Imbalance Energy” has the meaning set forth in the Tariff.

“Unit Contingent Capacity” means electrical capacity that is dependent upon the availability and operation of a Energy Storage System.

“Unit Contingent Energy” means Energy produced by a Energy Storage System that is dependent upon the availability and operation of that Energy Storage System.

“Unscheduled Outage” means a period during which a Energy Storage System is not capable of providing service due to the need to maintain or repair a component thereof, which period has not been scheduled in advance in accordance with Section 20.1.

“Variable O&M Charge” means a variable operations and maintenance charge calculated in accordance with Appendix 9.3.

“Waiver Denial Periods” has the meaning set forth in the Tariff.

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

APPENDIX 1.1
OPERATING RESTRICTIONS

**APPENDIX 1.1.1
CONTRACT CAPACITY**

Energy Storage System	Expected Contract Capacity	Contract Capacity
Unit 1	[xxx]MW	To be determined by Commercial Operation Test and periodic Contract Capacity Tests and corrected to Contract Conditions, subject to the limitations in Section 1.1.1.
Unit 2		
Project		

APPENDIX 1.3.1
ENERGY DELIVERY POINT

Single-line diagram depicting grid interconnection and contract Energy Delivery Point

APPENDIX 6.1(a)
MILESTONE SCHEDULE

Milestone

Milestone Date

Receipt of Air Quality Permit [or equivalent depending on technology]

Execution of [Large/Small] Generator
Interconnection Agreement

Commencement of Construction
Activities

Completion of
Foundation(s)
Completion of Setting [insert technologies] on Foundation(s)

Synchronization of all Energy Storage Systems
to CAISO Transmission System

Achievement of Initial Delivery Date

[Note to bidders: may include additional milestones based on project]

APPENDIX 6.1(b)
MONTHLY PROGRESS REPORT

Monthly Progress Report
of
[INSERT SELLER'S NAME]
provided to
San Diego Gas & Electric Company

[Date]

Instructions.

All capitalized terms used in this report shall have the meanings set forth below and any capitalized terms used in this report which are not defined below shall have the meanings ascribed thereto in the Power Purchase Tolling 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 any 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 any Energy Storage System by the Initial Delivery Date ;
- (iii) The status of any matter or issue identified as outstanding in any prior Monthly Progress Report and any material change in the Seller's proposed actions to remedy or overcome such matter or issue.

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

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

Please provide a brief summary of the Major¹ activities to be performed for each of the following aspects of the Project during the current calendar month:

¹ For Purposes of this Report, "Major" shall mean any activity, event, or occurrence which may have a material adverse impact on the construction of the Project or completion of the Project on a timely basis if such activity, event, or occurrence occurs or if such activity, event, or occurrence fails to occur as anticipated or scheduled, which material

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

adverse impact includes, but is not limited to, Seller's inability to achieve a Milestone Date.

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 and CONTRACT CAPACITY & ANCILLARY SERVICE TESTS

This Appendix 7 sets forth the protocols for (i) the Commercial Operation Test that the Project must successfully complete in order to achieve Commercial Operation and which sets the level of Contract Capacity for the Project, and (ii) the Contract Capacity & Ancillary Services Test. The Commercial Operation Test and the Contract Capacity & Ancillary Services Tests are sometimes referred to in this Appendix individually as a “Test” and jointly as the “Tests.”

PART I. GENERAL.

The Commercial Operation Test and each Contract Capacity & Ancillary Service Test will be conducted in accordance with Prudent Electrical Practices and the provisions of [*TBD based on storage process technology*].

PART II. REQUIREMENTS APPLICABLE TO ALL TESTS.

- A. Test Elements. The Test shall include the following test elements (unless Buyer otherwise agrees in writing in its sole discretion):
- Measurement of the Projects electrical output at PMAX;
 - Measurement of the Projects ’s electrical output at PMIN;
 - Determine the Project’s ability to meet its proposed Regulation Up, Regulation Down Ramp Rates and Spin and Non-Spin amounts;
 - Time required to go from off-line to both PMAX and PMIN;
 - Time and energy required to go from 0% State of Charge to 100% State of Charge;
 - Amount of energy delivered, at PMAX, from 100% State of Charge to 0% State of Charge, beginning immediately after reaching 100% State of Charge;
 - Amount of energy delivered, at PMAX, from 100% State of Charge to 0% State of Charge after 24 hours of static storage time at 100% State of Charge;
 - Amount of energy delivered, at PMIN, from 100% State of Charge to 0% State of Charge, beginning immediately after reaching 100% State of Charge;

- Amount of energy delivered, at PMIN, from 100% State of Charge to 0% State of Charge after 24 hours of static storage time at 100% State of Charge; and

The test elements shall be used to determine the output, efficiency and any other calculated parameters required by Buyer.

B. Parameters. During any Test, at a minimum, the following parameters shall be measured and recorded simultaneously for the Project at least every five (5) minutes:

- (1) instantaneous ambient relative humidity;
- (2) instantaneous ambient barometric pressure (inches Hg) with transmitters located near the horizontal centerline of the Project;
- (3) instantaneous ambient temperature (°F);
- (4) net electrical energy output to the Energy Delivery Point (kWh);
- (5) charging electrical energy input from the Energy Receipt Point (kWh);
- (6) emissions data required by air permit (if applicable);

Upon mutual agreement of the Parties, additional parameters may be measured and recorded simultaneously with the required parameters.

C. Test Showing. During each Test, Seller must demonstrate to Buyer's reasonable satisfaction, that the Project:

- (1) successfully started in less than one (1) second;
- (2) operated for at least four (4) hours at PMAX;
- (3) shut down at least once without resorting to unusual practices or procedures to ensure that such Project keeps operating;
- (4) operated for at least four (4) at its maximum [Design Charging Energy as set forth in [INSERT with degradation];
- (5) has a Contract Capacity of an amount that is, at least, equal to the [Maximum Storage Level];

At least once per Test, the Project shall also demonstrate its ability to run at PMIN level for one (1) hour and the ability to ramp both upwards and downwards at the rates set forth in Appendix 1.1.

Buyer in its sole discretion may elect to shorten the run periods or waive a particular portion of a Test at any time. Such election or waiver during one Test does not shorten any run period or waive any portion of any subsequent Test.

All test results at ambient conditions will be corrected to Contract Conditions.

- E. Final Test Plan. At all times during a Test, the Project, including all auxillary equipment, shall be operated in compliance with the Final Test Plan, Prudent Electrical Practices and all operating protocols recommended, required or established by the manufacturer for operation at PMAX.
- F. Test Conditions. At all times during a Test, the Project shall not be operated with abnormal operating conditions such as (i) unstable load conditions; (ii) operation outside of manufacturers recommendations; or (iii) operation outside of regulatory restrictions.

If abnormal operating conditions occur during a Test, Buyer may postpone or reschedule all or part of such Test in its reasonable discretion in accordance with PART II.J. below.

- H. Emissions. All emissions permit conditions shall be met during any Test. The Project's validated continuous emission monitoring system, if applicable, must be used according to permit conditions for emissions monitoring required by the applicable Air Pollution Control District as stipulated on the Project's permit to construct or permit to operate.
- I. Test Records. Seller shall provide all records associated with PART II.A. through C. no later than four (4) Business Days following completion of a Test. The records shall include copies of the raw data taken during the Test. Collectively, the records and data provided under this section shall be "Test Records".
- J. Incomplete Test. If any Test is not completed in accordance herewith, 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 an Commerical Operation Test); (ii) require that the portion of the Test not completed, be completed within a reasonable specified time period; or (iii) require that the Test be entirely repeated. Notwithstanding the above, if Seller is unable to complete a Test due to a Seller's Force Majeure or the actions or inactions of Buyer or the CAISO, Seller shall be permitted to reconduct such Test as a Seller Initiated Test under Section 7.1 on dates and at times reasonably acceptable to Buyer.
- K. Reserved.
- L. Final Report. Within fifteen (15) Business Days after the completion of a Test (including a Retest), Seller shall prepare and submit to Buyer a written report of the Test. At a minimum, the report shall include:

- (1) a description of the Final Test Plan;

- (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) documentation of the satisfactory completion of the Start-Up and stabilization period;
- (4) a record of any unusual or abnormal conditions or events that occurred during the Test and any actions taken in response thereto;
- (5) the measured Test data;
- (6) The level of Contract Capacity determined by the Test, including supporting calculations; and
- (7) 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 rejects the results of any Test or Retest, or Seller rejects the results of the first Commercial Operation Test, such Test shall be repeated.

- M. Operating Personnel. During any Test, the same operating personnel shall operate the Project that Seller contemplates will operate the Project during the Delivery Period.
- N. 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 plant is being controlled (e.g., plant 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 III. COMMERCIAL OPERATION TEST.

- A. 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 in PART II of 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 develop the 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.

- B. 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 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 Commercial Operation for monitoring and controlling the operation of the Project shall be used for the Commercial Operation Test. Seller shall calibrate or cause to be calibrated all such instrumentation, metering and data collection equipment no more than three (3) months prior to the date of the Commercial Operation Test. All electrical metering equipment shall utilize the Project's installed CAISO metering equipment calibrated to CAISO standards. Copies of all calibration sheets shall be provided to BUYER at least five (5) Business Days prior to the Commercial Operation Test.

Permanently installed instruments shall include but not be limited to revenue metering devices located in the switchyard where the Project is located. Whenever possible, data will be accessed through the Project's DCS. In addition, Seller shall provide a temporary Data Acquisition System ("DAS") to monitor all temporary instruments if not recorded in the Project's DCS.

- C. Test Duration. The Commercial Operation Test shall take place on three (3) consecutive days unless BUYER determines in its sole discretion that more or less time is needed.
- D. Test Dates. Seller shall provide BUYER with seven (7) Business Days' Notice of Seller's proposed dates for the Commercial Operation Test. BUYER shall confirm the dates in writing prior to the first date of the Test.

Seller may, but is not required to, schedule the Commercial Operation Test to occur during any test performed by or for the EPC Contractor.

- E. Reserved.

- F. Determination of Contract Capacity. The net kW output (including net of parasitic load) at the Energy Delivery Point shall be calculated for each of the sixteen (16) consecutive fifteen (15) minute intervals comprising the Test. The average of the sixteen average net kW values is the final Contract Capacity for each Project under Appendix 1.01 as adjusted for Contract Conditions.

PART IV. CONTRACT CAPACITY & ANCILLARY SERVICES TEST

- A. Test Plan. The Final Test Plan, and in accordance with the CAISO certification protocols, from the Commercial Operation Test shall be used for any Contract Capacity & Ancillary Services Test, unless the Parties agree otherwise in writing.
- B. Instrumentation and Metering. The Parties shall use the same instrumentation and metering as was used in the Commercial Operation Test, unless they otherwise agree in writing.
- C. Test Duration. Each Contract Capacity & Ancillary Services Test shall take place on three (3) consecutive days unless BUYER determines in its sole discretion that more or less time is needed.
- D. Test Dates. Seller is responsible for scheduling each Contract Capacity & Ancillary Service Test on three (3) consecutive days (unless BUYER determines in its sole discretion that more or less time is needed) that are acceptable to BUYER and that fall between June 15 and September 30 of the Contract Year in which the Test is requested. The date of any such Test shall be confirmed in writing by BUYER to Seller prior to the date of the Test. The Parties should attempt but are not required to schedule such Test on days that BUYER will or is likely to dispatch the Project.
- E. Costs. Responsibility for costs and allocation of income for a Contract Capacity & Ancillary Service Test is as set forth in Section 7.1.

**APPENDIX 7.6
PERFORMANCE GUARANTEES**

1. Guaranteed Efficiency Adjustment. The Guaranteed Efficiency Adjustment (“GEA”) will be applied in calculating the Monthly Capacity Payment. The Guaranteed Efficiency of the Project is 85%. The Actual Efficiency calculation is described below. For each month of the Delivery Term, the GEA, measured as a three-place decimal, shall be determined as follows:

If Actual Efficiency for such month is greater than or equal to the Guaranteed Efficiency, then

$$\text{GEA} = 0.00;$$

If Actual Efficiency for such month is less than Guaranteed Efficiency, then

$$\text{GEA} = \text{Guaranteed Efficiency} - \text{Actual Efficiency for such month}$$

2. Guaranteed Start-Up Time.

Each Energy Storage System shall be brought to full capacity from a cold start within [] minutes. For a failure to achieve the Guaranteed Start-Up Time (except to the extent caused by a Delivery Excuse), Seller shall reimburse Buyer for imbalance charges, other charges, or penalties imposed by the CAISO upon Buyer as a result thereof.

3. Guaranteed Ramp Rate.[To be discussed with bidders.]

The ramp rate at specific energy outputs of each Energy Storage System shall be as set forth in the following table: [DISCUSS]

Load	Ramp Rate for each Energy Storage System individually	Ramp Rate for Project as a whole

For a failure to achieve the Guaranteed Ramp Rate (except to the extent caused by a Delivery Excuse), Seller shall reimburse Buyer for imbalance charges, other charges, or penalties imposed by the CAISO upon Buyer as a result thereof and for any costs associated with replacing any Ancillary Services.

APPENDIX 9.2
MONTHLY CAPACITY PAYMENT

The Monthly Capacity Payment for each month of the Delivery Period shall be determined as follows:

$$MCP = (CC \times CR \times SF) \times (AAF - GEA_m) - RRA$$

Where:

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

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

CR is the Capacity Rate expressed in Dollars per kW-year,

$$CR = \$[XXX]/kW\text{-yr}$$

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 $EAF / 0.99$.

GEA_m is the Guaranteed Efficiency Adjustment for such month, determined pursuant to Appendix 7.6.

RRA is the Reliability Reduction Adjustment, which equals [\$XXX] for each minute a Energy Storage System is late in synchronizing to the CAISO Grid beyond the time when such Energy Storage System was scheduled to be delivering Energy as set forth in the Dispatch Notice; provided, however, that this *RRA* shall only apply to start-ups dispatched by Buyer in the Day-Ahead Market.

The Equivalent Availability Factor (EAF), which shall be computed monthly, is the equivalent availability factor computed 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, Unscheduled Outages, Force Majeure events, Delivery Excuse, forced derates, shortages relative to the Guaranteed Start-Up Time, shortages relative the Guaranteed Ramp Rates, Scheduled Outages, 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.

EEDH is the number of equivalent excused derate hours solely due to either a Scheduled Outage or a Delivery Excuse (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.

APPENDIX 9.3
VARIABLE O&M CHARGE

The Variable O&M Charge for each month of the Delivery Period pursuant to a Dispatch Notice shall be calculated as follows:

$$\text{VOMP} = \text{RATE} \times \text{Delivered Energy}$$

Where:

$$\text{RATE} = \$[\text{XX}]/\text{MWH}$$

APPENDIX 9.4 START-UP CHARGE

The Start-Up Costs for each Buyer or CAISO dispatch of a Energy Storage System shall not exceed [XXX].

The Start-Up Charge for each Buyer or CAISO dispatch of a Energy Storage System shall be calculated as follows:

$$SUC = RATE \times NSU$$

Where:

SUC is the Start-Up Charge payment to be determined for such month.

RATE = \$[XXX] per start-up

NSU is the number of Start-Ups of such Energy Storage System in such month.

**APPENDIX 11.3
LETTER OF CREDIT FORM**

IRREVOCABLE NONTRANSFERABLE STANDBY
LETTER OF CREDIT

Reference Number: _____

Transaction Date: _____

BENEFICIARY:

San Diego Gas & Electric Company

Ladies and Gentlemen:

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

This Letter of Credit shall be of no further force or effect upon the close of business on _____ or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day, unless extended in accordance with the terms of this Letter of Credit. For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in San Diego, California.

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

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

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at _____ or such other number as specified from time to time by the Bank. The facsimile transmittal shall be

deemed delivered when received. It is understood that drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

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

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

Banking charges shall be the sole responsibility of the Applicant.

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

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

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

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

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

AUTHORIZED SIGNATURE for Bank

By:

Title: _____

ATTACHMENT A TO APPENDIX 11.3
DRAWING CERTIFICATE
TO [ISSUING BANK NAME]
IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT

Reference Number. _____
(Sample Text)

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Nontransferable Standby Letter of Credit

Reference Number: _____

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

1. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to \$_____, for the following reason(s) [check applicable provision]:
 - []A. An Event of Default, as defined in the Power Purchase Tolling 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.
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 14.1
ELECTRIC RETAIL SERVICE INTERCONNECTION

Drawing depicting interconnection

[to be determined]

**APPENDIX 18.1
AVAILABILITY NOTICE**

Availability Notice

Trading Day: _____

Station: _____

Issued By: _____

Unit: _____

Issued At: _____

Unit 100% Available No Restrictions: _____

Hour Ending	Available Capacity	Minimum Output	Comments
	(MW)	(MW)	
1:00			
2:00			
3:00			
4:00			
5:00			
6:00			
7:00			
8:00			
9:00			
10:00			
11:00			
12:00			
13:00			
14:00			
15:00			
16:00			
17:00			
18:00			
19:00			
20:00			
21:00			
22:00			
23:00			
0:00			

Comments: _____

**APPENDIX 18.2
DISPATCH AND UPDATED DISPATCH NOTICES**

Dispatch Notice

Trading Day: _____

Station: _____

Issued By: _____

Unit: _____

Issued At: _____

Hour Ending	Scheduled Energy	Spinning Reserve	Non-Spinning Reserve	Comments
	(MW)	(MW)	(MW)	
1:00				
2:00				
3:00				
4:00				
5:00				
6:00				
7:00				
8:00				
9:00				
10:00				
11:00				
12:00				
13:00				
14:00				
15:00				
16:00				
17:00				
18:00				
19:00				
20:00				
21:00				
22:00				
23:00				
0:00				

Comments: _____

Updated Dispatch Notice

Trading Day: _____

Station: _____

Issued By: _____

Unit: _____

Issued At: _____

Changes from Scheduled Delivery are highlighted.

Comments: _____

Hour Ending	Scheduled Energy	Spinning Reserve	Non-Spinning Reserves	Comments
	(MW)	(MW)	(MW)	
1:00				
2:00				
3:00				
4:00				
5:00				
6:00				
7:00				
8:00				
9:00				
10:00				
11:00				
12:00				
13:00				
14:00				
15:00				
16:00				
17:00				
18:00				
19:00				
20:00				
21:00				
22:00				
23:00				
0:00				

**APPENDIX 18.5
DAILY OPERATING REPORT**

Daily Operating Report

for MM/DD/YY

Availability – Capacity - Generation

Plant Status at 0600 Hours:

Unit 1	Unit 2	Unit 3
<input type="checkbox"/> Operating <input type="checkbox"/> Available <input type="checkbox"/> Not Available See significant events	<input type="checkbox"/> Operating <input type="checkbox"/> Available <input type="checkbox"/> Not Available See significant events	<input type="checkbox"/> Operating <input type="checkbox"/> Available <input type="checkbox"/> Not Available See significant events

Previous 24 Hours:

Unit 1	Unit 2	Unit 3
Operating Hours: <u>0:00</u> Hrs:Min (0001 – 2400 Total On Line Hours)	Operating Hours: <u>0:00</u> Hrs:Min (0001 – 2400 Total On Line Hours)	Operating Hours: <u>0:00</u> Hrs:Min (0001 – 2400 Total On Line Hours)
Net Generation: <u>0.0</u> MWhr (0001 – 2400 Total Net Generation)	Net Generation: <u>0.0</u> MWhr (0001 – 2400 Total Net Generation)	Net Generation: <u>0.0</u> MWhr (0001 – 2400 Total Net Generation)

Project

Total Availability: 100 %
 ((On Line Hr + Off Line Available Hr)/24)

Total Capacity: 100 %
 ((MW Generated/MW Scheduled) x 100)

Total Generation: 0 MWhr
 (CTG + HP STG + LP STG)

Period Availability:

Unit 1	Unit 2	Unit 3
M(onth)TD Availability <u>100.00</u> % (MTD On Ln Hr + MTD Off Ln Avl Hr)/MTD Hr	M(onth)TD Availability <u>100.00</u> % (MTD On Ln Hr + MTD Off Ln Avl Hr)/MTD Hr	M(onth)TD Availability <u>100.00</u> % (MTD On Ln Hr + MTD Off Ln Avl Hr)/MTD Hr
P(eak)TD Availability <u>100.00</u> % (PTD On Ln Hr + PTD Off Ln Avl Hr)/PTD Hr	P(eak)TD Availability <u>100.00</u> % (PTD On Ln Hr + PTD Off Ln Avl Hr)/PTD Hr	P(eak)TD Availability <u>100.00</u> % (PTD On Ln Hr + PTD Off Ln Avl Hr)/PTD Hr

Significant Events

No significant events, generation losses, major equipment out of service, accidents, injuries or operating anomalies.

Losses of Generation: (Include Date/Time Off Line; Date/Time On Line; Brief Narrative Description of Event.)

List Major Equipment Out of Service; Briefly Describe any Accidents or Injuries; Describe any Operating Anomalies

Number of additional pages: _____ 0 _____ Submitted by: _____

APPENDIX 18.7 COMMUNICATIONS PROTOCOLS

Communication Protocols

Dated as of _____

These Communication Protocols have been drafted to assist in the operation of the Power Purchase Tolling 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 Operating Procedures 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 Operating Procedures 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, and shall be provided telephonically to the applicable Party.

If to Seller, such notices and communications shall be provided to the following contact, in order of priority, (1) Dispatch Desk, (2) Plant Manager. If to Buyer, such notices and communications shall be provided to the following contact, in order of priority, Real Time. Each Party shall confirm all Intra-day Communication either electronically or via fax as soon as practicable.

2.2 Communication Failure: In the event of a failure of the primary communication link between Seller and Buyer, both Parties will try all available means to communicate, including cell phones or additional communication devices as installed.

2.3 System Emergency: Buyer and Seller shall communicate as soon as possible all changes to the schedule requested by the CAISO as a result of a system emergency.

During Transmission System Emergencies, Seller's operations staff shall communicate with Buyer's Grid Operations Department via established communications devices. Buyer's Grid Operations Department will periodically test the communications devices to be utilized during system emergencies.

2.4 Verbal Communication: Each Party shall provide confirmation (either electronically or via facsimile) of any telephonic operating notice or communication provided to the other Party as soon as practicable. All telephonic communication shall be subject to recording.

2.5 Confidentiality: Confidential communications between the Parties in discharging their rights and obligations under the Agreements and these Communication Protocols will be subject to the applicable restrictions set forth in the Agreement.

2.6 Staffing: Parties will have available 24 hours a day, seven days a week, personnel available to communicate regarding the implementation of these Communication Protocols.

Contact Information Table

Contacts and Authorized Representatives for Buyer

Outlined below is the contact and communication information for the relevant contact groups. This list may be amended by Buyer with timely Notice to Seller.

Contact	Primary Phone	Secondary Phone	Fax	Email
Real Time	858-650-6160	619-517-5661	858-650-6191	tsched@semprautilities.com
Day-Ahead Scheduling	858-650-6178	858-650-6160	858-650-6191	presched@semprautilities.com
Day-Ahead Trading	858-650-6137	858-650-6160	858-650-6191	rmiller3@semprautilities.com jpasquito@semprautilities.com
Settlements – Power	TBD before IDD	TBD before IDD	TBD before IDD	TBD before IDD
Contract Administration	TBD before IDD	TBD before IDD	TBD before IDD	TBD before IDD
Outage Scheduling	TBD before IDD	TBD before IDD	TBD before IDD	TBD before IDD
Transmission System Emergencies	TBD before IDD	TBD before IDD	TBD before IDD	TBD before IDD

Contacts and Authorized Representatives for Seller

Outlined below is the contact and communication information for the relevant Seller employees. This list may be amended by Seller with timely Notice to Buyer.

Contact:	Primary Phone	Secondary Phone	Fax	Email
Dispatch Desk (Day Ahead)				
Dispatch Desk (Real Time)				
Outage Desk				
Plant Manager				
Contract Administration				
Settlements				
Operations Manager				
Operations Supervisor				

**APPENDIX 22.4.3
CAP ON SELLER'S DEBT**

<u>CONTRACT YEAR</u>	<u>AMOUNT</u>
1 and before	\$[]
2	\$[]
3	\$[]
4	\$[]
5	\$[]
6	\$[]
7	\$[]
8	\$[]
9	\$[]
10	\$[]
11	\$[]
12	\$[]
13	\$[]
14	\$[]
15	\$[]
16	\$[]
17	\$[]
18	\$[]
19	\$[]
20	\$[]

BIORAM POWER PURCHASE AGREEMENT

Between

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

and

(as “Seller”)

BIORAM POWER PURCHASE AGREEMENT

TABLE OF CONTENTS

COVER SHEET.....	1
GENERAL TERMS AND CONDITIONS	3
ARTICLE ONE: GENERAL DEFINITIONS.....	3
1.1 General.....	3
1.2 Interpretation.....	19
ARTICLE TWO: EFFECTIVENESS OF AGREEMENT; CONDITIONS PRECEDENT	20
2.1 Effectiveness of Agreement Prior to CP Satisfaction Date.	20
2.2 Obligations of the Parties.....	20
2.3 Conditions Precedent.	21
2.4 Failure to Meet The Conditions Precedent.	22
2.5 Effectiveness of Agreement on and after CP Satisfaction Date.	22
ARTICLE THREE: OBLIGATIONS AND DELIVERIES	22
3.1 Transaction.....	22
3.2 Transmission.	26
3.3 Scheduling.....	27
3.4 Dispatch Notices.	31
3.5 Standards of Care.....	33
3.6 Metering.....	33
3.7 Outage Notification.....	34
3.8 Operations Logs and Access Rights.	35
3.9 <i>[For existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement delete Section 3.9 and replace with “Reserved”]</i> New Generation Facility.....	35
3.10 Operating Procedures.....	38
ARTICLE FOUR: COMPENSATION; MONTHLY PAYMENTS	38
4.1 Energy Payment.	38
4.2 Imbalance Energy.	43
4.3 Additional Compensation.	44
4.4 <i>[Delete and replace with “Reserved” for existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement:</i> Energy Sales Prior to Commercial Operation Date.....	44
ARTICLE FIVE: EVENTS OF DEFAULT; FORCE MAJEURE.....	44
5.1 Events of Default.	44
5.2 Remedies; Declaration of Early Termination Date.....	46
5.3 Termination Payment.....	46
5.4 Notice of Payment of Termination Payment.	47

5.5	Disputes With Respect to Termination Payment.....	47
5.6	Rights And Remedies Are Cumulative.....	47
5.7	Mitigation.....	47
5.8	Force Majeure.....	47
ARTICLE SIX: PAYMENT.....		48
6.1	Billing and Payment.....	48
6.2	Disputes and Adjustments of Invoices.....	48
6.3	Netting of Payments.....	48
ARTICLE SEVEN: LIMITATIONS.....		49
7.1	Limitation of Remedies, Liability and Damages.....	49
ARTICLE EIGHT: INSURANCE/ CREDIT AND COLLATERAL REQUIREMENTS.....		49
8.1	Insurance.....	49
8.2	Grant of Security Interest/Remedies.....	49
8.3	Performance Assurance.....	50
8.4	Interest on Cash.....	50
8.5	Costs of Letter of Credit.....	51
ARTICLE NINE: GOVERNMENTAL CHARGES.....		51
9.1	Cooperation.....	51
9.2	Governmental Charges.....	51
ARTICLE TEN: REPRESENTATIONS AND WARRANTIES; COVENANTS.....		51
10.1	General Representations and Warranties.....	51
10.2	Seller Representations and Warranties.....	52
10.3	Covenants.....	53
ARTICLE ELEVEN: TITLE, RISK OF LOSS, INDEMNITIES.....		53
11.1	Title and Risk of Loss.....	53
11.2	Indemnities.....	53
ARTICLE TWELVE: DISPUTE RESOLUTION.....		54
12.1	Intent of the Parties.....	54
12.2	Management Negotiations.....	54
12.3	Arbitration.....	55
ARTICLE THIRTEEN: MISCELLANEOUS.....		56
13.1	Confidentiality.....	56
13.2	Assignment.....	57
13.3	Audit.....	57
13.4	Sarbanes-Oxley and SEC Requirements.....	57
13.5	Entire Agreement.....	59
13.6	Recording.....	59
13.7	Forward Contract.....	59
13.8	Governing Law.....	59
13.9	Attorneys' Fees.....	60

13.10	General.....	60
13.11	Severability.....	60
13.12	Counterparts.....	60
13.13	Notices.....	60
13.14	Mobile Sierra.....	61
EXHIBIT A PROJECT DESCRIPTION INCLUDING DESCRIPTION OF SITE.....		A-1
EXHIBIT B [DELETE AND REPLACE WITH “RESERVED” FOR EXISTING PROJECT IN OPERATION FOR WHICH CPUC APPROVAL IS ALL THAT IS NEEDED FOR EFFECTIVENESS OF THE AGREEMENT.] MILESTONE SCHEDULE.....		B-1
EXHIBIT C FORM OF LETTER OF CREDIT.....		C-1
EXHIBIT D [DELETE AND REPLACE WITH “RESERVED” FOR EXISTING PROJECT IN OPERATION FOR WHICH CPUC APPROVAL IS ALL THAT IS NEEDED FOR EFFECTIVENESS OF THE AGREEMENT] COMMERCIAL OPERATION CERTIFICATED-1		
EXHIBIT E INSURANCE.....		E-1
EXHIBIT F CONSENT AND AGREEMENT.....		F-1
EXHIBIT G FORM OF QUARTERLY PROGRESS REPORT.....		G-1
EXHIBIT H OUTAGE NOTIFICATION FORM.....		H-1
EXHIBIT I PROJECT OPERATING RESTRICTIONS.....		I-1

COVER SHEET

This BioRAM Power Purchase Agreement is made as of the following date: [_____]. This BioRAM 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
Attn.: Major Markets, Credit and Collections

Phone: _____
Facsimile: _____

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

Attn: _____
Phone: _____
Facsimile: _____

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” means the American Arbitration Association.

“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.

“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 bioenergy feedstock 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.

“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.

“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.

“Bundled Green Energy” means Energy and Green Attributes, 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) Contract Energy and (ii) Green Attributes that are delivered to Buyer. For example, if the quantity of Renewable Energy Credits that are delivered to Buyer is less than the quantity of the Contract 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.

[For FCDS bids and for Projects located outside of the CAISO: “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.]

"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).

[Delete for existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement: "Commercial Operation" means that (a) the Project is operating and able to produce and deliver Energy 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 D; (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;]

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

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

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

"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 Parties 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 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;

(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.

“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.

“Day-Ahead Forecast” has the meaning set forth in Section 3.3(d).

“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 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.

“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.

“Deliverability Value” means the amount stated in Section 4.1(c).

“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 8.3(a)(ii) 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 8.3(a)(i) 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 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.

“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.

“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 that allow Seller to interconnect and deliver Energy from the Project to and at the Delivery Point and Buyer 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, and Interconnection Facilities [***For Projects located outside of the CAISO:*** , and other network upgrades, distribution upgrades, or interconnection facilities on the Native Balancing Authority’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,] or other affected system owner, as applicable, to physically and electrically interconnect the Project to [***For Projects located outside of the CAISO:*** the 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 and at 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(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.

“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).

“FCDS” has the meaning set forth in Section 4.1(c).

“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) through (a)(iii) above.

"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:* , the 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

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.

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.

[Delete this definition for existing Project in operation for which CPUC Approval is all that is needed for effectiveness of this Agreement. "Guaranteed Commercial Operation Date" or "GCOD" is the date that is twenty four (24) months after the date of satisfaction or waiver of the Condition Precedent in Section 2.3(a), as may be extended pursuant to Section 3.9(c)(ii).]

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

"Imbalance Energy" means the amount of Energy, in any given settlement interval, 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.

[As applicable:] “[Large/Small/Rule 21/Native Balancing Authority] Generator Interconnection Agreement” has the meaning set forth in the [CAISO/Wholesale Open Access Distribution/Rule 21/Native Balancing Authority’s] 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.

“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).

[Delete this definition for existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement “Milestones” has the meaning set forth in Section 3.9(b)(i).]

“Monthly Energy Payment” has the meaning set forth in Section 4.1([b/c]).

“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 (4th) 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 in the form attached hereto as Exhibit H. Buyer reserves the right to reasonably revise or change the form upon Notice to Seller.

“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 *[insert name]*.

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

“Performance Assurance” means collateral provided by Seller to Buyer to secure Seller’s obligations hereunder and includes Development Period Security and Delivery Term Security.

“Performance Measurement Period” has the meaning set forth in Section 3.1(e).

“Performance Tolerance Band” for each CAISO settlement interval means 5% of the Contract Capacity divided by the number of CAISO settlement intervals per hour.

“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 bioenergy feedstock 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)(ii).

“Quarterly Progress Report” means the report similar in form and content attached hereto as Exhibit G, 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).

[Delete this definition for existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement “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 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.

[For FCDS bids: "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 [*For Projects located outside of the CAISO:* , Native Balancing Authority,] 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 [*For Excess Sales bids*: and electric energy produced by the Project that is used to service onsite load which is subtracted from the CAISO revenue meter/].

“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; [or] (d) curtailment in accordance with Seller's obligations under its interconnection agreement with the Participating Transmission Owner or distribution operator; *[For Projects located outside of the CAISO:* or Native Balancing Authority; or (e) curtailment ordered by the Native Balancing Authority or another Transmission Provider of Seller provided, that Seller has contracted for firm transmission or equivalent arrangements with the Native Balancing Authority or such Transmission Provider for the Product to be delivered from the Project to and at the Delivery Point and such curtailment is due to any reason similar to those for which curtailment might be ordered or directed by the CAISO or a Participating Transmission Owner under clauses (a) through (c) above;] 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.

"TOD Delivery Cap" has the meaning set forth in Section 4.1(d)(iii).

"TOD Factors" has the meaning set forth in Section 4.1(b).

"TOD Period" has the meaning set forth in Section 4.1(b).

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

"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 TWO: 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 Section 2.3(a) [and 2.3(b), (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),] [~~Delete for existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement~~] and (v) otherwise comply with its obligations, covenants, representations, and warranties under Articles 7-13. 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 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 Condition Precedent set forth in Section 2.3(a), and (ii) otherwise comply with its obligations, covenants, representations, and warranties under Articles 7-13. Upon an Event of Default of Buyer 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 the following conditions precedent ("Conditions Precedent") by the deadline date set forth below for each Condition Precedent without extension for Force Majeure or any other reason:

(a) CPUC Approval. No later than three (3) months after the Execution Date, 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 thirty (30) days, no agreement is reached, either Party may terminate this Agreement upon delivery of Notice to the other Party.

(b) *[Delete for existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement]* [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/Wholesale Distribution Access/Rule 21]) of no later than [_____] months after Seller provides the [CAISO/Participating Transmission Owner/distribution system owner/Native Balancing Authority/or any other affected transmission provider] 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], and

(ii) a refundable cost for reliability (and not deliverability) “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 \$[_____] (unless otherwise agreed to in writing by the Parties).

2.4 Failure to Meet The Conditions Precedent.

(a) Beneficiary Party. Both of the Parties are the beneficiaries of the Conditions Precedent set forth in Section 2.3(a) [*Delete for existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement:* and Section 2.3(b)], 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.

(b) Termination. If any Condition Precedent is not satisfied or waived in writing by the beneficiary Parties thereto on or before the applicable deadline date therefor, then this Agreement shall automatically terminate with no further obligation to either Party (other than as set forth below in this clause (b) and any payment obligations which are accrued and payable at the time of termination). Upon a termination of this Agreement as a result of the failure of the Condition Precedent set forth in Section 2.3(a) to be satisfied (or waived by both Parties), Buyer shall return to Seller the Development Period Security. [*Delete for existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement:* Upon a termination of this Agreement as a result of the failure of any of the Conditions Precedent set forth in Section 2.3(b) to be satisfied (or waived by both Parties), Seller shall forfeit to Buyer an amount equal to the Development Period Security. Buyer may retain the Development Period Security to pay such amount.]

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 Development 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 THREE: 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 As-Available Energy, *[Delete for Energy Only Bids, except for Projects located outside of the CAISO: 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.

(c) Delivery Term. The Parties agree that the period of Product delivery is *[insert: “ten (10)”, “fifteen (15), or “twenty (20)”]*. 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. *[For Project with transmission level interconnection, insert: “The Delivery Point shall be the point of interconnection of the Project to the CAISO Grid (and, for payment purposes, the corresponding PNode for the Project).”]* *[For Project with distribution level interconnection, insert: “The Delivery Point shall be the point on the CAISO Grid where the Participating Transmission Owner’s distribution system interconnects to the CAISO Grid as set forth in their Meter Services Agreement, as may be acceptable to Buyer in its reasonable discretion (and, for payment purposes, the corresponding PNode for the Project).”]* *[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).”]*

(e) 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) 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 ninety percent (90%) of the weighted average of the Contract Quantity for such Performance Measurement Period. 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.

(f) Contract Capacity. The "Contract Capacity" is the full generation capacity of the Project net of all Station Service which shall be [___MWac] and [___MWdc]. Throughout the Delivery Term, Seller shall sell and Schedule all Product associated with the Contract Capacity of the Project [*For FCDS bids and for Projects located outside of the CAISO insert: ",including Capacity Attributes,"*] solely to Buyer, except in the case of an Event of Default of Buyer.

(g) Project. All Product provided by Seller pursuant to this Agreement shall be supplied from the Project only. 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 "As-Available". 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 (i) the Energy Price [*For FCDS bids for Projects located in the CAISO: (or for each month during which Seller has not achieved FCDS as determined by the CAISO, the Energy Price minus the Deliverability Value)*] times (ii) the weighted average TOD Factor for such period of Product deficiency times (iii) the Product deficiency, from (B) the product of (i) the Replacement Price times (ii) the Product deficiency. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

(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 (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 (i) the Sales Price times (ii) the Product deficiency from (Z) the product of (i) the Energy Price [*For FCDS bids for Projects located in the CAISO: (or, for each month during which Seller has not achieved FCDS as determined by the CAISO, the Energy Price minus the Deliverability Value)*] times (ii) the weighted average TOD Factor for such period of Product deficiency times (iii) 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.

(j) ***[Delete and replace with “Reserved” for Energy Only Bids, except for Projects located outside of the CAISO: 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 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. ***[For all Projects other than Projects located outside of the CAISO: If the [For Transmission Level interconnections add: Phase II Interconnection Study Report][For Distribution Level Interconnections add: interconnection facilities study report or equivalent final study report]*** determines that there are deliverability Network Upgrades, Buyer can request that Seller elect to fund or elect not to fund all deliverability Network Upgrades. However, if Seller elects to fund all 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 and Seller elects to fund, but the Project does not obtain Full Capacity Deliverability Status on or before January 1, 2026, 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.] ***[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 and distribution losses, and any transmission or distribution level 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 or equivalent arrangements 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 or equivalent arrangements 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.] the 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 all Projects other than Projects located outside of 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 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) *Reserved.*

(b) Scheduling Coordinator.

[NOTE TO BIDDERS: See RFO details relating to Seller's election of SC services][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. In all cases, 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 and for Projects located outside of the CAISO, 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. In all cases, 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, in Section 3.4(c)(ii), and elsewhere in this Agreement, Buyer (as Seller's SC) 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, 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. Seller shall be responsible for all CAISO costs and penalties and other charges (and not revenues, credits or payment) in connection with Imbalance Energy during any CAISO settlement interval in which the Performance Tolerance Band has been exceeded for any reason, other than Buyer's failure to perform. 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.

(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 binding forecast of the expected Delivered Energy for each hour of the immediately succeeding day ("Day-Ahead Forecast") [*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, 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 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 Projects located outside of CAISO: Scheduling with the Native Balancing Authority]. Seller shall be responsible for all communications of generation scheduling for the Project, if any are required, with the Native Balancing Authority.]

3.4 Dispatch Notices.

(a) General. Seller shall reduce delivery amounts as directed by the CAISO, the Participating Transmission Owner, Buyer, [For Projects located outside of CAISO: the Native Balancing Authority,] 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 3.4(c)(ii) 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) Economic Dispatch Down. [*For Projects where SDG&E purchases Test Energy:* Before or after the Commercial Operation Date,] 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 I. 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. [*For Projects where SDG&E purchases Test Energy:* On and after the Commercial Operation Date], 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 the weighted average TOD Factor for such period of Economic Dispatch Down, times the amount of Deemed Bundled Green Energy resulting from such Economic Dispatch Down [*For Projects receiving PTCs:* plus the product of the after tax value of any lost PTC benefits (in dollars per megawatt hour) that Seller has not been able to mitigate after use of reasonable efforts, times the amount of Deemed Bundled Green Energy resulting from such Economic Dispatch Down], 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, [*For Projects located outside of CAISO:* the Native Balancing Authority,] 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 [*For Projects located outside of CAISO:* and the Native Balancing Authority], (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 [*For Projects located outside of CAISO:* and the Native Balancing Authority].

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.

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.

(d) *[For Projects located outside of CAISO: Coordination with the Native Balancing Authority*. Seller shall be responsible for all outage coordination communications with the Native Balancing Authority.]

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 *[For existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement delete Section 3.9 and replace with "Reserved"]*
New Generation Facility.

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

(i) Design and construct the Project.

(ii) Perform all studies, [*For FCDS bids, insert:* “including [For Transmission Level Interconnections: “Phase II Interconnection Study Report”] [or for Distribution Level Interconnections: “interconnection facilities study report or equivalent final study report”] pay all fees, obtain all necessary approvals and execute all necessary agreements with the CAISO [*For Projects located outside of CAISO:* , the Native Balancing Authority,] and the Participating Transmission Owner for the Electrical Interconnection Upgrades to Schedule and deliver the Product from the Project [*For FCDS bids, insert:* “under “Full Capacity Deliverability Status” (as defined in the CAISO Tariff), except when construction of deliverability Network Upgrades is not required under Section 3.1(j).”] [*For Projects located outside of CAISO:* “in a manner that enables 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.”] 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 or the distribution system operator 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.

(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.

(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 end of the Project Cure Period; 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) Guaranteed Commercial Operation.

(i) COD. Seller shall cause the Project to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date, unless extended in accordance with Section 3.9(c)(ii). The Commercial Operation Date shall not occur earlier than six (6) months prior to the Guaranteed Commercial Operation Date.

(ii) Extensions. The Guaranteed Commercial Operation Date may be extended one time for no more than a six (6) month period (the “Project Cure Period”) for cumulative delays if Seller demonstrates to Buyer’s reasonable satisfaction after giving written notice as soon as reasonably possible but at least at sixty (60) days prior to the original Guaranteed Commercial Operation Date, which includes a feasible remedial action plan, if any of the following have occurred:

(A) Seller has used commercially reasonable efforts (including but not limited to Seller’s timely filing of required documents and payment of all applicable fees) to obtain permits necessary for the construction and operation of the Project, but is unable to obtain such permits due to delays beyond Seller’s reasonable control;

(B) *[For all Projects other than Projects located outside of CAISO:* Seller has used commercially reasonable efforts (including but not limited to Seller’s timely filing of required documents and payment of all applicable fees) to have the Project physically interconnected to the CAISO Grid, or to the Participating Transmission Owner’s distribution system, as applicable, and to complete all Electrical Interconnection Upgrades

needed, if any, in order to interconnect the Project, as required herein, to the CAISO Grid, but fails to secure any necessary commitments from CAISO or the Participating Transmission Owner for such interconnection and upgrades due to delays beyond Seller’s reasonable control; or] ***[For Projects located outside of CAISO:*** Seller has used commercially reasonable efforts (including but not limited to Seller’s timely filing of required documents and payment of all applicable fees) to have the Project physically interconnected to the Native Balancing Authority’s transmission system and to complete all Electrical Interconnection Upgrades needed, if any, in order to interconnect, as required herein, the Project to the Native Balancing Authority’s transmission system and the Native Balancing Authority’s transmission system to the CAISO Grid, and to commence firm transmission service from the Project to the Delivery Point under the firm transmission service agreement with the applicable Transmission Provider, but Seller has been unable to secure any necessary commitments from the Native Balancing Authority, the CAISO, the Participating Transmission Owner, or the Transmission Provider for such interconnection and upgrades due to delays beyond Seller’s reasonable control; or]

(C) an event of Force Majeure has occurred; provided that Seller works diligently to resolve the effect of the Force Majeure and provides evidence of its efforts promptly to Buyer upon Buyer’s written request.

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 FOUR: COMPENSATION; MONTHLY PAYMENTS

4.1 Energy Payment.

(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”):

<u>Contract Year</u>	<u>Energy Price (\$/MWh)</u>
1	
2	
3	
4	
5	
6	

7	
8	
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10	
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provided, however, that:

(i) if Seller delivers Bundled Green Energy in the aggregate for any hour in excess of one hundred ten percent (110%) of the product of the Contract Capacity times one hour, then the Energy Price for such excess Bundled Green Energy in such hour shall be reduced to zero dollars (\$0);

(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 (115%) 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 seventy five percent (75%) of the applicable Energy Price (except for any hour in which the Energy Price is reduced by clause (i) above);

(iii) if Seller delivers Bundled Green Energy in the aggregate for any TOD Period during the Delivery Term in excess of one hundred fifteen percent (115%) of the TOD Delivery Cap listed in the table below for that TOD Period (“TOD Delivery Cap”), then the Energy Price for such excess Bundled Green Energy in such TOD Period shall be reduced to seventy five percent (75%) of the applicable Energy Price (except for any hour in which the Energy Price is reduced by clause (i) or (ii) above):

TOD Period	TOD Delivery Cap
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Winter On-Peak	[Insert number which is derived from multiplying annual Contract Quantity times the TOD delivery profile ratio contained in bid form]
Winter Semi-Peak	[Insert number which is derived from multiplying annual Contract Quantity times the TOD delivery profile ratio contained in bid form]
Winter Off-Peak	[Insert number which is derived from multiplying annual Contract Quantity times the TOD delivery profile ratio contained in bid form]
Summer On-Peak	[Insert number which is derived from multiplying annual Contract Quantity times the TOD delivery profile ratio contained in bid form]
Summer Semi-Peak	[Insert number which is derived from multiplying annual Contract Quantity times the TOD delivery profile ratio contained in bid form]
Summer Off-Peak	[Insert number which is derived from multiplying annual Contract Quantity times the TOD delivery profile ratio contained in bid form]

(b) TOD Factors and TOD Periods. In accordance with all other terms of this Article 4, the Energy Price shall be adjusted by the following Time of Delivery Factors (“TOD Factors”) for each of the specified Time of Delivery Periods listed in the first column (“TOD Periods”) in which Energy is delivered.

[For FCDS bids only with Projects Located in the CAISO Providing Local Resource Adequacy:

TOD Period	Period Days and Hours	TOD Factor
Winter On-Peak	Nov 1 - Jun 30 (696 Hours) Weekdays 5 pm to 9 pm PPT (HE 18 to HE 21)	1.495
Winter Semi-Peak	Nov 1 - Jun 30 (2262 Hours) Weekdays 6 am to 10 pm PPT (HE 7 to HE 22) excluding Winter On-Peak Hours	0.866

Winter Off-Peak	Nov 1 - Jun 30 (2874 Hours) All Weekend Hours NERC Holiday Hours and Weekday Hours not already considered Winter On-Peak or Winter Semi-Peak	0.746
Summer On-Peak	Jul 1 - Oct 31 (616 Hours) Weekdays 2 pm to 9 pm PPT (HE 15 to HE 21)	2.304
Summer Semi-Peak	Jul 1 - Oct 31 (792 Hours) Weekdays 6 am to 10 pm PPT (HE 7 to HE 22) excluding Summer On-Peak Hours	1.204
Summer Off-Peak	Jul 1 - Oct 31 (1544 Hours) All Weekend Hours, NERC Holiday Hours and Weekday Hours not already considered Summer On-Peak or Summer Semi-Peak	0.853

[For FCDS bids only with Projects Located in the CAISO Providing System Resource Adequacy:

TOD Period	Period Days and Hours	TOD Factor
Winter On-Peak	Nov 1 - Jun 30 (696 Hours) Weekdays 5 pm to 9 pm PPT (HE 18 to HE 21)	1.464
Winter Semi-Peak	Nov 1 - Jun 30 (2262 Hours) Weekdays 6 am to 10 pm PPT (HE 7 to HE 22) excluding Winter On-Peak Hours	0.948
Winter Off-Peak	Nov 1 - Jun 30 (2874 Hours) All Weekend Hours NERC Holiday Hours and Weekday Hours not already considered Winter On-Peak or Winter Semi-Peak	0.827
Summer On-Peak	Jul 1 - Oct 31 (616 Hours) Weekdays 2 pm to 9 pm PPT (HE 15 to HE 21)	1.927
Summer Semi-Peak	Jul 1 - Oct 31 (792 Hours) Weekdays 6 am to 10 pm PPT (HE 7 to HE 22) excluding Summer On-Peak Hours	0.958
Summer Off-Peak	Jul 1 - Oct 31 (1544 Hours) All Weekend Hours, NERC Holiday Hours and Weekday Hours not already considered Summer On-Peak or Summer Semi-Peak	0.869

[For Energy Only bids and for Projects located outside of the CAISO:

TOD Period	Period Days and Hours	TOD Factor
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Winter On-Peak	Nov 1 - Jun 30 (696 Hours) Weekdays 5 pm to 9 pm PPT (HE 18 to HE 21)	1.509
Winter Semi-Peak	Nov 1 - Jun 30 (2262 Hours) Weekdays 6 am to 10 pm PPT (HE 7 to HE 22) excluding Winter On-Peak Hours	0.977
Winter Off-Peak	Nov 1 - Jun 30 (2874 Hours) All Weekend Hours NERC Holiday Hours and Weekday Hours not already considered Winter On- Peak or Winter Semi-Peak	0.853
Summer On-Peak	Jul 1 - Oct 31 (616 Hours) Weekdays 2 pm to 9 pm PPT (HE 15 to HE 21)	1.581
Summer Semi-Peak	Jul 1 - Oct 31 (792 Hours) Weekdays 6 am to 10 pm PPT (HE 7 to HE 22) excluding Summer On-Peak Hours	0.957
Summer Off-Peak	Jul 1 - Oct 31 (1544 Hours) All Weekend Hours, NERC Holiday Hours and Weekday Hours not already considered Summer On- Peak or Summer Semi-Peak	0.896

(c) ***[For FCDS bids (excluding Projects located outside of the CAISO):*** Monthly Energy Payment. For each month during which Seller has achieved “Full Capacity Deliverability Status”, as defined in the CAISO Tariff (“FCDS”) as determined by the CAISO, 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 TOD Factor for the applicable TOD Period times the Bundled Green Energy in each hour (“Monthly Energy Payment”). For each month during which Seller has not achieved FCDS as determined by the CAISO, Buyer shall pay Seller for the Product an amount equal to the sum for each hour in the month of the product of (i) the Energy Price minus *[insert the \$/MWh equal to the Deliverability Value as defined in the RAM RFO document]* (“Deliverability Value”) times (ii) the TOD Factor for the applicable TOD Period times (iii) the Bundled Green Energy (together, the “Monthly Energy Payment”).

[When the Project has achieved FCDS: Monthly Energy Payment for months that Seller has obtained FCDS = \sum Energy Price x TOD Factor x Bundled Green Energy]

[When the Project has not achieved FCDS: Monthly Energy Payment for months that Seller has not obtained FCDS = \sum ([Energy Price – Deliverability Value] x TOD Factor x Bundled Green Energy)]

[For Energy Only bids and Projects located outside of the CAISO: 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 TOD Factor for the applicable TOD Period times the Bundled Green Energy in each hour (“Monthly Energy Payment”).

$$\text{Monthly Energy Payment} = \sum \text{Energy Price} \times \text{TOD Factor} \times \text{Bundled Green Energy}$$

4.2 **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.” 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.

(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 under Section 4.1 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. ***[When Seller is SC for the Project:*** 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.] ***[When SDG&E is the SC for the Project:*** Buyer shall be entitled to all payments or credits from the CAISO in respect of any Positive Imbalance Energy and Buyer shall make all payments to the CAISO in connection with Positive Imbalance Energy during any CAISO settlement interval in which the Performance Tolerance Band has not been exceeded for any reason, other than Seller’s failure to perform. Seller shall make all payments to the CAISO in connection with Positive Imbalance Energy during any CAISO settlement interval in which the Performance Tolerance Band has been exceeded for any reason, other than Buyer’s failure to perform.]

(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 under Section 4.1 in respect of the Negative Imbalance Energy. ***[When Seller is SC for the Project:*** 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.] ***[When SDG&E is the SC for the Project:*** Buyer shall be entitled to all payments or credits from the CAISO in respect of any Negative Imbalance Energy and Buyer shall make all payments to the CAISO in connection with Negative Imbalance Energy during any CAISO settlement interval in which the Performance Tolerance Band has not been exceeded for any reason, other than Seller’s failure to perform. Seller shall make all payments to the CAISO in connection with

Negative Imbalance Energy during any CAISO settlement interval in which the Performance Tolerance Band has been exceeded for any reason, other than Buyer's failure to perform.]]

4.3 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 *[For FCDS bids: 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.

4.4 *[Delete and replace with "Reserved" for existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement: Energy Sales Prior to Commercial Operation Date*. Prior to Commercial Operation and Seller obtaining certification for the Project as a Participating Intermittent Resource under the VER Forecasting Program, Buyer shall pay Seller an amount equal to the sum for each hour of the product of 50% of the Energy Price in Contract Year 1 multiplied by the TOD Factor multiplied by the test energy delivered by Seller and received by Buyer in each hour at the Delivery Point, so long as such amount is 1MW or more; provided, however, that Seller shall not deliver test energy prior to nine (9) months before the Guaranteed Commercial Operation Date.]

ARTICLE FIVE: 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;

(ii) the failure by Seller to achieve the Commercial Operation Date *[For existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement, delete: no later than the end of the Project Cure Period;]*

(iii) 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;

(iv) the failure by Seller to deliver a Remedial Action Plan that reasonably demonstrates in detail how Seller will achieve the Commercial Operation Date [within the Project Cure Period, if such failure is not remedied within ten (10) days after Notice; *[For existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement, delete and replace with “Reserved.”]*

(v) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.2 or 8.3 of this Agreement; or

(vi) 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.

ARTICLE SIX: PAYMENT

6.1 Billing and Payment. On or about the tenth (10th) day of each month beginning with the second month of the first Contract Year and every month thereafter, and continuing through and including the first month following the end of the Delivery Term, *[Where Seller is the SC:* Seller shall provide to Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Project for any CAISO settlement time interval during the preceding months, (b) access to any records, including invoices or settlement data from CAISO, necessary to verify the invoice; and (c) an invoice, in a format reasonably specified by Buyer,] **[Where Buyer is the SC:** Buyer shall provide to Seller an invoice] 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 SEVEN: 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 EIGHT: INSURANCE/ CREDIT AND COLLATERAL REQUIREMENTS

8.1 Insurance. In connection with Seller's performance of its duties and obligations under this Agreement, Producer shall maintain, from the CP Satisfaction date until the end of the term of this Agreement, insurance in accordance with Exhibit E.

8.2 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.

8.3 Performance Assurance.

(a) Development Period Security and 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) Development Period Security in the amount of [INSERT amount which is: \$90/kW] in the form of cash or a Letter of Credit from the Execution Date of this Agreement until the return date specified in Section 8.3(b)(i) below; and

(ii) Delivery Term Security in the amount of [*Insert amount which is 5% of expected total project revenues over the Delivery Term*] in the form of cash or a Letter of Credit from the commencement of the Delivery Term until the return date specified in Section 8.3(b)[(i)/(ii)] below.

Except as set forth in Section 2.2 as it pertains to the Development Period Security, any such Performance Assurance shall not be deemed a limitation of damages.

(b) Return of Performance Assurance.

(i) 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 Delivery Term Security, and (B) termination of the Agreement under the circumstances described in Section 2.4(b) in which the Delivery Term Security is required to be returned.

(ii) 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).

8.4 Interest on Cash. If Seller provides Performance Assurance in the form of cash, Buyer shall pay interest on such cash held as Development 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.

8.5 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 NINE: 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 TEN: 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) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that the Project qualifies as a Green-e® Energy Certified product.

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.

ARTICLE ELEVEN: 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 TWELVE: 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 panel conducted in San Diego, California, administered by and in accordance with AAA’s Commercial Arbitration Rules (“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.

(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 THIRTEEN: 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 (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 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 Execution Date, 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, *[For existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement, delete: progress of each Milestone]*, 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, 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 substantially the same form as Exhibit F.

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 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 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 [_____]

SAN DIEGO GAS & ELECTRIC COMPANY
a California corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Exhibit A

PROJECT DESCRIPTION INCLUDING DESCRIPTION OF SITE

PROJECT DESCRIPTION [Project shall have no shared facilities, including interconnections, generation interties, or meters, with any other projects.]

Project name: _____

Project Site name: _____

Project physical address: _____

Longitude: _____ **Latitude:** _____

Total number of electric generating units at the Project (all must be committed to Buyer): _____

Technology Type: _____

Point of Interconnection of the Project (Substation and PNode): _____

The term “Site” as defined in the Agreement means the following parcel description upon which the Project is located:

[INSERT MAP]

The nameplate capacity of the Project is: _____.

[For Excess Sales bids: include details on onsite load estimates and meter configuration (if CAISO meter reflects subtraction of customer onsite load from Project output.)]

[Insert additional Project specifications, as applicable] The electric generating units utilized as generation assets as part of the Project are described below:

Project Specifications	
<u>Project Size (MWdc)</u>	
<u>Number of Generation Units</u>	
<u>Generation Unit Model(s)</u>	
<u>Inverter model</u>	
<u>Inverter size (kW)</u>	
<u>Number of inverters</u>	
<u>Medium voltage transformer (M.V.T.) size</u>	
<u>Number of M.V.T.s</u>	
<u>Step-up transformer (S.T.) size</u>	
<u>Number of S.T.s</u>	

Exhibit B

[Delete and replace with “Reserved” for existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement.]

MILESTONE SCHEDULE

<i>No.</i>	<i>Date</i>	<i>Project Name</i>
1.		Obtains control of all lands and rights-of-way comprising the Site.
2.		Files a CEC Pre-Certification and Verification application.
3.		Received a completed Phase II Interconnection Study Report] [interconnection system impact study]
4.		Completes a comprehensive resource assessment.
5.		Files permitting application with appropriate agency(ies).
6.		Executes interconnection agreement and/or transmission agreement.
7.		Receives permitting approval(s)
8.		Receives FERC acceptance of interconnection agreement and transmission agreement(s).
9.		Executes a supply contract.
10.		Executes an Engineering, Procurement and Construction (“EPC”) contract.
11.		Completes financing.
12.		Delivers full NTP under EPC contract and begins construction of the Project.
13.		<i>[For all Projects other than Projects located outside of 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.]</i>
14.		Achieves initial operation.
15.		Receives all Governmental Approvals necessary to achieve Commercial Operation.
16.		Receives CEC Certification and Verification.

Exhibit C

FORM OF LETTER OF CREDIT

[DATE]

To: [Name and Address of Secured Party]

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

Gentlemen:

We hereby open our irrevocable standby Letter of Credit Number _____ in favor of [name of Secured Party] (“Secured Party”), by order and for account of [name of Account Party] (“Account Party”), [address of Account Party], 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 Secured Party stating that: “San Diego Gas & Electric Company (“Secured Party”) is entitled to draw under this Letter of Credit under the terms of the BioRAM Power Purchase Agreement between Secured Party and [insert name] (“Account Party”) dated _____, as may be amended (the “PPA”) or Account Party is in default under the terms of the PPA (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 Secured Party and Account Party, or otherwise). The amount due to Secured Party is U.S. \$ _____.”

or

2- Statement signed by a person purported to be an authorized representative of Secured Party stating that: “[name of Account Party] (“Account Party”) has forfeited all or part of its Development Period Security as set forth and defined in the BioRAM Power Purchase Agreement between Secured Party and Account Party dated _____. The amount due to Secured Party, whether or not a default has occurred, is U.S. \$ _____.”

or

3- Statement signed by a person purported to be an authorized representative of Secured Party 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 Secured Party, 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 Account Party.
- Partial and multiple drawings are permitted.
- Fax of Document 1, 2, or 3 above acceptable.

This Letter of Credit expires on _____ at our counters.

We hereby engage with Secured Party 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

[Delete and replace with “Reserved” for existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement]

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 RAM 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 ___, 20__

**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 E

INSURANCE

In connection with Seller's performance of its duties and obligations under this Agreement, Seller shall maintain, from the CP Satisfaction Date until the end of the term of this Agreement, general liability insurance with a combined single limit of not less than Two million dollars (\$2,000,000) for each occurrence.

Such general liability insurance shall include coverage for "Premises-Operations, Owners and Contractors Protective, Products/Completed Operations Hazard, Explosion, Collapse, Underground, Contractual Liability, and Broad Form Property Damage including Completed Operations."

The general liability insurance required herein shall, by endorsement to the policy or policies, (a) include Buyer as an additional insured; (b) contain a severability of interest clause or cross-liability clause; (c) provide that Buyer shall not by reason of its inclusion as an additional insured incur liability to the insurance carrier for payment of premium for such insurance; and (d) provide for thirty (30) calendar days' written notice to Buyer prior to cancellation, termination, alteration, or material change of such insurance.

Evidence of the insurance required herein shall state that coverage provided is primary and is not in excess to or contributing with any insurance or self-insurance maintained by Buyer.

Seller agrees to furnish the required certificates and endorsements to Buyer prior to initial deliveries of test energy. Buyer shall have the right to inspect or obtain a copy of the original policy or policies of insurance.

If Seller is self-insured with an established record of self-insurance, Seller may comply with the following in lieu of the third party insurance if:

- (a) Seller shall provide to Buyer, at least thirty (30) calendar days prior to the date of initial deliveries of test energy, evidence of an acceptable plan to self-insure to a level of coverage equivalent to that required by third party insurance providers as stated herein.
- (b) If Seller ceases to self-insure to the level required hereunder, or if Seller is unable to provide continuing evidence of Seller's ability to self-insure, Seller agrees to immediately obtain the third party insurance coverage required hereunder.

All insurance certificates, statements of selfinsurance, endorsements, cancellations, terminations, alterations, and material changes of such insurance shall be issued, clearly labeled with agreement ID number and submitted to the following:

San Diego Gas & Electric Company
Attention: Director, Procurement and Portfolio Design
Address: 8315 Century Park Court, CP21D
City: San Diego, CA 92123

Exhibit F

CONSENT AND AGREEMENT

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

RECITALS

WHEREAS, pursuant to the BioRAM Power Purchase Agreement made as of [Date] (the “Assigned Agreement”), between the Assignor and SDG&E, SDG&E has agreed to purchase output from the Assignor’s [_____] MW [_____] electric generating facility] (the “Project”) as further specified in therein;

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

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

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

Section 2. Consent to Assignment.

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

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

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

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

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

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

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

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

Section 4. Consent and Agreement.

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

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

(b) Notices of Default and Right to Cure.

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

the right to declare an Early Termination Date in accordance with Article 5 of the Assigned Agreement.

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

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

[name and details for account designated by the Assignee]

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

Section 5. Damages Limitation.

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

Section 6. Miscellaneous.

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

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

(c) This Consent shall be governed by, and construed under, the laws of the State of California applicable to contracts made and to be performed in such State and without reference to conflicts of laws. The parties hereto agree that any legal action or proceeding arising out of this Consent may be brought in the courts of the State of California, in and for the County of San Diego, or of the United States of America for the Southern District of California. By execution and delivery of this Consent, the parties hereto accept, for themselves and in respect of their property, generally and unconditionally, the jurisdiction of the aforesaid courts.

The parties hereto irrevocably consent to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified airmail, postage prepaid, to the Assignee, SDG&E and the Assignor, as the case may be, at their respective addresses for notices as specified herein and that such service shall be effective five (5) business days after such mailing. Nothing herein shall affect the right to serve process in any other manner permitted by law or the right of the Assignee or SDG&E to bring legal action or proceedings in any other competent jurisdiction. The parties hereto hereby waive any right to stay or dismiss any action or proceeding under or in connection with any or all of this Consent or the transactions contemplated hereby brought before the foregoing courts on the basis of *forum non-conveniens*.

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

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

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

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

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

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

SAN DIEGO GAS & ELECTRIC
COMPANY

By: _____
Name:
Title:

[Address for Notices:]

[ASSIGNOR]

By: _____
Name:
Title:

[Address for Notices:]

[ASSIGNEE]

By: _____
Name:
Title:

[Address for Notices:]

Exhibit G

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 RAM 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 Major² 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 H

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@SemptraUtilities.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 I

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 I 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

RIDER AND AMENDMENT

To the

BIORAM RENEWABLE AUCTION MECHANISM

POWER PURCHASE AGREEMENT

Between

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

and

The Parties concurrently enter into the BIORAM Renewable Auction Mechanism Power Purchase Agreement (“BioRAM PPA”), dated *[insert]*, and hereby agree to the following modifications to the BioRAM PPA with this Rider and Amendment to the BioRAM PPA (“BioRAM Rider”; and together, the “Agreement”). Buyer and Seller are hereinafter sometimes referred to individually as a “Party” and jointly as the “Parties”. Capitalized terms used herein and not otherwise defined in this BioRAM Rider shall have the meanings ascribed to such terms in this BioRAM PPA.

1. The following changes are made to Section 1.1:
 - a. The definition of Commercial Operation Date is amended to include the phrase “the first calendar day of the month following” after the word “means”.
 - b. The following definition is inserted immediately after the definition of “Contract Quantity”:

“Contract Quarter” means each period of three (3) consecutive months, commencing for the first quarter on the Commercial Operation Date and continues throughout the Delivery Term.
 - c. The following definition is inserted immediately after the definition of “Deemed Bundled Green Energy”:

“Default Energy Price” means the lesser of (i) the High-Hazard Zone Fuel Energy Price set forth in Section 4.1(a), and (ii) \$89.23/MWh.
 - d. The following definition is inserted immediately after the definition of “Governmental Charges”:

“Governor’s Emergency Proclamation” means the emergency proclamation issued on October 30, 2015, to protect public safety and property from falling dead trees and wildfire, specifically due to bark beetle-caused tree mortality and the hazards such tree mortality creates for the State of California, among other things, wildfires and tree falls that endanger thoroughfares, electric power lines, and public and private structures.¹

- e. The “Guaranteed Commercial Operation Date” definition is modified by replacing the phrase “twenty four (24)” with “thirty-six (36)” before the word “months”.
- f. The following definition is inserted immediately after the definition of “Guaranteed Energy Production”:

“High-Hazard Zone Fuel” means bioenergy feedstock, measured in bone dry tons (BDT), from sources designated by the Responsible Agency as Tier 1 or Tier 2 high hazard zones for wildfire and falling trees, pursuant to the Governor’s Emergency Proclamation, and which meet such designation at the time such fuel is procured for the purpose of generating Bundled Green Energy from the Project.

- g. The following definition is inserted immediately after the definition of “High-Hazard Zone Fuel”:

“High-Hazard Zone Fuel Energy Price” means the price as set forth in Section 4.1(a).

- h. The following definition is inserted immediately after the definition of “Manager”:

“Minimum High Hazard Zone Fuel Requirement” means the minimum annual percentage of High Hazard Zone Fuel used to generate all Bundled Green Energy from the Project in each Contract Year, based on the amounts stated by Seller in the four (4) Quarterly Fuel Attestations during the Contract Year.

- i. The following definition is inserted immediately after the definition of “Project Cure Period”:

“Quarterly Fuel Attestation” has the meaning set forth in Section 3.3(g)(ii).

- j. The following phrase is inserted in the third parenthetical of the first sentence in the definition of “Replacement Price,” after the phrase “including its associated Green Attributes”:

“and value associated with the High-Hazard Zone Fuel used by the Project.”

- k. The following definition is inserted immediately following the definition of “Replacement Price”:

¹ https://www.gov.ca.gov/docs/10.30.15_Tree_Mortality_State_of_Emergency.pdf

“Responsible Agency” or “Responsible Agencies” means the agency responsible for designating sources of high hazard fuel pursuant to the Proclamation, including the Department of Forestry and Fire Protection (Cal-Fire), the California Natural Resources Agency, Caltrans, and the California Energy Commission or successor agency or agencies.

1. The following definition is inserted immediately following the definition of “Seller”:

“Seller’s Annual Fuel Supply Plan” has the meaning set forth in Section 3.3(g)(i).

2. The heading of Section 3.1(a) is amended by adding the phrase ”; Minimum High Hazard Zone Fuel Requirement” and the following is inserted immediately following the last sentence of the Section:

“Seller shall use commercially reasonable efforts to meet the Minimum High Hazard Zone Fuel Requirement in each Contract Year, which shall be equal to the percentage listed below corresponding to calendar year in which the any deliveries occur: forty percent (40%) for 2016, fifty percent (50%) for 2017, sixty percent (60%) for 2018, and eighty percent (80%) for each subsequent calendar year. If the Contract Year does not start on January 1st of each calendar year, the weighted average of the Minimum High Hazard Zone Fuel Requirement will be calculated for the Contract Year. Failure to meet such requirements shall either result in (i) a one-time Seller termination in accordance with Section 3.1(c), or (ii) a lower Energy Price in accordance with Section 4.1(a).”

3. Section 3.1(c) is deleted and replaced with the following:

“3.1(c) Delivery Term; Seller’s Termination Right”. The Parties agree that the period of Product delivery is *[for Existing facilities, insert as applicable: “five (5) Contract Years; provided that Buyer shall have the option, exercisable in Buyer’s sole discretion, to extend the Delivery Term for consecutive one (1) year periods, up to an additional five (5) consecutive years, by providing Notice to Seller no later than sixty (60) days prior to the then current end date of the Delivery Term”, “ten (10) Contract Years”, “fifteen (15) Contract Years”, or “twenty (20) Contract Years”]; For new facilities, insert as applicable: “ten (10) Contract Years”, “fifteen (15) Contract Years”, or “twenty (20) Contract Years”]*. [NOTE: SDG&E is seeking clarification from the California Public Utility Commission’s General Counsel as to Resolution E-4770 (BioRAM Resolution) and reserves the right to modify its BioRAM solicitation as to contract term length based upon the General Counsel’s review.] Notwithstanding the foregoing, Seller shall have one time right to terminate this Agreement with no further obligation of either Party (except for the payment of amounts already paid or payable, including any true-up payment due to Buyer under Section 4.5) before the end of the Delivery Term within thirty (30) days of the first time that Seller fails to meet the applicable Minimum High Hazard Zone Fuel Requirement in any Contract Year. 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.”

4. Section 3.3(h) is inserted immediately following Section 3.3(f), as follows:

“(h) Fuel Reporting Requirements.

(i) Seller’s Annual Fuel Supply Plan: thirty (30) days prior to the start of each Contract Year, Seller shall provide Buyer with Seller’s Fuel Supply Plan in the form of Exhibit J-2, as may be modified by Buyer from time to time in Buyer’s sole discretion, signed showing, among other things: (1) Seller’s proximity to the High Hazard Zones on a map; (2) a non-binding good faith estimate of Seller’s anticipated fuel consumption over the next twelve month period; (3) identifying the source(s) and volume(s) (in bone dry ton (BDT) and British Thermal Units (MMBtu)) of High Hazard Zone Fuel that Seller reasonably expects to procure to meet its Minimum High Hazard Zone Fuel Requirement over the next twelve month period; (4) a proposed delivery schedule, including volumes, for the High Hazard Zone Fuel it expects to procure over the next twelve month period; and (5) the expected conversion of fuel to electricity (MMBtu to MWh).

(ii) Quarterly Fuel Attestation: No later than thirty (30) days after the end of each Contract Quarter during the Delivery Term, Seller shall provide to Buyer the Quarterly Fuel Attestation in the form of Exhibit J-1 of this Agreement, as may be modified by Buyer from time to time in Buyer’s sole discretion, signed by an officer or , managing member of Seller specifying, among other things, the amount of High Hazard Zone Fuel and other biofuel feedstock used to generate all Energy during the previous quarter, an attestation from Responsible Agency(ies) of the location of such High Hazard Zones where such fuel was sourced, documentation from Seller’s contractors regarding the location and transportation of such High-Hazard Zone Fuel used to generate Energy during the previous quarter.”

5. The first sentence in Section 4.1(a) is deleted and replaced with the following:

(a) Energy Price. The price for the Bundled Green Energy that is delivered to Buyer in each Contract Year, or partial calendar year as stated in Section 4.6 herein, shall be the: (i) High-Hazard Zone Fuel Energy Price if the Project meets or exceeds the Minimum High Hazard Zone Fuel Requirement, or (ii) Default Energy Price if the Project does not meet the Minimum High Hazard Zone Fuel Requirement (in either case, as applicable, the “Energy Price”) in accordance with the chart below. If the Project does not meet the Minimum High Hazard Zone Fuel Requirement in any Contract Year, the Default Energy Price shall be applicable for the remainder of the Delivery Period, regardless of whether the Project meets future High Hazard Zone Fuel Requirements in subsequent Contract Years of the Delivery Term.

High-Hazard Zone Fuel Energy Price (\$/MWh)
tbd

6. The new Section 4.5 is inserted immediately following Section 4.4 as follows:

4.5 True-Up. For any Contract Year that Buyer paid Seller the High-Hazard Zone Fuel Energy Price when the Project did not meet the Minimum High Hazard Zone Fuel Requirement, Seller shall owe Buyer a true-up payment within thirty (30) days of receipt of

an invoice for the overpayment amount, or Buyer may elect to set off future payments until such true-up payment has been recovered.

7. Section 4.6 is inserted immediately following Section 4.5 as follows:

4.6 High-Hazard Zone Fuel Energy Price Change. If Seller reasonably believes that the Project is incapable of meeting the Minimum High Hazard Zone Fuel Requirement or Seller otherwise elects not to meet Minimum High Hazard Zone Fuel Requirement for any reason, Seller shall promptly notify Buyer in writing, and the Default Energy Price shall apply to Seller's monthly invoices for the remainder of the Delivery Term.

8. The following phrase is inserted at the end of Section 5.1(b)(i):

“or fails to deliver any Quarterly Fuel Attestation and such failure is not cured within thirty (30) days”

9. The fifth sentence of Section 5.3 is deleted and replaced with the following:

“The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages; provided, however, that any lost Capacity Attributes, Green Attributes, and value associated with the High Hazard Zone Fuel shall be deemed direct damages covered by this Agreement.”

10. Section 8.3(a)(ii) is deleted entirely and replaced with the following:

(ii) Delivery Term Security in the amount of *[Insert amount which is the higher of 5% of expected total project revenues over the Delivery Term or Default Energy Price times the expected Contract Quantity from Section 3.1(e)]* in the form of cash or a Letter of Credit from the commencement of the Delivery Term until the return date specified in Section 8.3(b)[(i)/(ii)] below.

11. Section 10.2(c) is deleted entirely and replaced with the following:

(c) Seller and, if applicable, its successors, represents and warrants that fuel used to meet the Minimum High Hazard Zone Fuel Requirement is High Hazard Zone Fuel.

12. The following phrase is inserted in Section 11.3(b)(iii) after the reference to Section 10.2:

“or any information contained in Quarterly Fuel Attestation(s)”

13. The following Section 11.3(b)(iv) is inserted immediately after of Section 11.3(b)(iii):

(iv) Seller covenants that no later than thirty (30) days after the last day of each Contract Quarter of each Contract Year during the Delivery Term, Seller shall provide to Buyer its Quarterly Fuel Attestation, along with all appropriate supporting documentation reasonably necessary, as determined by Buyer in its sole discretion, to support the Project's compliance with the Minimum High Hazard Zone Fuel Requirement for such Contract Year,

in the form provided in the Form of Quarterly Fuel Attestation in Appendix J-1, as may be modified by Buyer from time to time in Buyer's sole discretion.

14. The following phrase is inserted at the end of the first sentence in Section 13.3:

“and any documentation kept by Seller or its agents or third-party contractors regarding information contained in Seller's Quarterly Fuel Attestations or related to meeting the Minimum High Hazard Zone Fuel Requirement”

15. Miscellaneous

- a. Reservation of Rights. Each of the Parties expressly reserves all of its respective rights and remedies under the Agreement.
- b. Legal Effect. Except as expressly modified as set forth herein, the Agreement remains unchanged and, as so modified, the Agreement shall remain in full force and effect. Each of the Parties hereby represents and warrants that the representations contained in the Agreement are true on and as of the date hereof as if made by the Party on and as of said date.
- c. Governing Law. THIS BIORAM RIDER 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 BIORAM RIDER.
- d. Successors and Assigns. This BioRAM Rider and Amendment shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.
- e. Authorized Signatures; Notices. Each Party represents and warrants that the person who signs below on behalf of that Party has authority to execute this BioRAM Rider on behalf of such Party and to bind such Party to this BioRAM Rider. Any written notice required to be given under the terms of this BioRAM Rider shall be given in accordance with the terms of the Agreement.
- f. Effective Date. This BioRAM Rider shall be deemed effective as of the Execution Date.
- g. Further Agreements. This BioRAM Rider shall not be amended, changed, modified, abrogated or superseded by a subsequent agreement unless such subsequent agreement is in the form of a written instrument signed by the Parties.
- h. Counterparts; Electronic Signatures. This BioRAM Rider may be executed in one or more counterparts, each of which will be deemed to be an original of this BioRAM Rider and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this BioRAM Rider and of signature pages by

facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this BioRAM Rider as to the Parties and may be used in lieu of the original BioRAM Rider for all purposes.

[Remainder of Page Left Intentionally Blank.]

IN WITNESS WHEREOF, the Parties have caused this BioRAM Rider to be duly executed as of the date of the Agreement.

[_____]

SAN DIEGO GAS & ELECTRIC COMPANY

a [_____]

a California corporation

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Exhibit J-1

FORM OF SELLER'S QUARTERLY FUEL ATTESTATION

I. Name and Address of Facility ("Project")

Name:

Street:

City: State: Zip Code:

Generation Nameplate (kW):

II. Reporting Period:

From: [MONTH DAY, YEAR]

To: [MONTH DAY, YEAR]

III. Quarterly Operating Results:

Month	High-Hazard Zone Fuel Volume ⁽¹⁾ (BDT)	High-Hazard Zone Fuel Input ⁽²⁾ (MMBtu)	Supplemental Fuel Source Volume ⁽¹⁾ (BDT)	Supplemental Fuel Source Input ⁽²⁾ (MMBtu)
1				
2				
3				

(1) Fuel Volume measured in bone dry tons (BDT).

(2) Estimated energy content (in MMBtu) of fuel input used

IV. Source(s) of Fuel: Provide a demonstration of and all supporting documentation for the fuel sourced and used by the Project to generate Bundled Green Energy during the reporting period.

V. Transportation Used to Deliver Fuel: Provide documentation from shipper/transporter regarding transportation of all such fuel inputs used at the Project to generate Delivered Energy during the reporting period.

VI. Other Information Relevant to Quarterly Fuel Use: Provide any additional information necessary regarding Seller's operation and fuel use during the reporting period as related to this Quarterly Fuel Attestation.

Signed

Printed Name

Title

Dated

Exhibit J-2

FORM OF ANNUAL FUEL SUPPLY PLAN

I. Name and Address of Facility (“Project”):

Name:

Street:

City: State: Zip Code:

Generation Nameplate (kW):

II. Reporting Period:

Year:

III. Source(s) of Fuel to be Used: Provide Seller’s plan to procure the High-Hazard Zone Fuel for the next Contract Year, including any available documentation, reasonably sufficient to demonstrate Seller’s compliance with the Minimum High Hazard Zone Fuel Requirement set forth in the Emergency Proclamation.

a. **High Hazard Zone Fuel:**

b. **All Other Sources of Biofuel:**

IV. Transportation to be Used to Delivery Fuel: Provide Seller’s plan and any documentation from contractor(s) regarding transportation of all fuel, including High Hazard Zone Fuel, to be used to generate electricity during the next Contract Year.

V. Other Information Relevant to Annual Fuel Supply Plan: Provide any additional information regarding Seller’s operation or its plan to source fuel during the next Contract Year in compliance with the Minimum High Hazard Zone Fuel Requirement set forth in the Emergency Proclamation.

Signed

Printed Name

Title

Dated



**ENHANCED COMMUNITY RENEWABLES RAM PROGRAM
ADVICE LETTER 2906-E**

**SUMMER 2016
ENHANCED COMMUNITY RENEWABLES
RAM POWER PURCHASE AGREEMENT**

**ENHANCED COMMUNITY RENEWABLES (ECR)
RAM POWER PURCHASE AGREEMENT**

Between

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

and

(as "Seller")

ECR RAM POWER PURCHASE AGREEMENT

TABLE OF CONTENTS

COVER SHEET.....1

GENERAL TERMS AND CONDITIONS3

ARTICLE ONE: GENERAL DEFINITIONS.....3

 1.1 General.....3

 1.2 Interpretation.....20

ARTICLE TWO: EFFECTIVENESS OF AGREEMENT; CONDITIONS PRECEDENT21

 2.1 Effectiveness of Agreement Prior to CP Satisfaction Date.21

 2.2 Obligations of the Parties.....21

 2.3 Conditions Precedent.22

 2.4 Failure to Meet The Conditions Precedent.23

 2.5 Effectiveness of Agreement on and after CP Satisfaction Date.24

ARTICLE THREE: OBLIGATIONS AND DELIVERIES24

 3.1 Transaction.....24

 3.2 Transmission.29

 3.3 Scheduling.....31

 3.4 Dispatch Notices.37

 3.5 Standards of Care.....39

 3.6 Metering.....39

 3.7 Outage Notification.....41

 3.8 Operations Logs and Access Rights.42

 3.9 New Generation Facility.43

 3.10 Operating Procedures.....46

ARTICLE FOUR: COMPENSATION; MONTHLY PAYMENTS.....47

 4.1 Energy Payment.....47

 4.2 Imbalance Energy.51

 4.3 Additional Compensation.52

 4.4 Energy Sales Prior to Commercial Operation Date.52

ARTICLE FIVE: EVENTS OF DEFAULT; FORCE MAJEURE.....53

 5.1 Events of Default.53

 5.2 Remedies; Declaration of Early Termination Date.....55

 5.3 Termination Payment.....55

 5.4 Notice of Payment of Termination Payment.56

 5.5 Disputes With Respect to Termination Payment.....56

 5.6 Rights And Remedies Are Cumulative.....56

 5.7 Mitigation.....56

 5.8 Force Majeure.56

ARTICLE SIX: PAYMENT.....	57
6.1 Billing and Payment.....	57
6.2 Disputes and Adjustments of Invoices.....	57
6.3 Netting of Payments.....	58
ARTICLE SEVEN: LIMITATIONS.....	58
7.1 Limitation of Remedies, Liability and Damages.....	58
ARTICLE EIGHT: INSURANCE/ CREDIT AND COLLATERAL REQUIREMENTS	58
8.1 Insurance.....	58
8.2 Grant of Security Interest/Remedies.....	58
8.3 Performance Assurance.....	59
8.4 Interest on Cash.....	60
8.5 Costs of Letter of Credit.....	60
ARTICLE NINE: GOVERNMENTAL CHARGES	60
9.1 Cooperation.....	60
9.2 Governmental Charges.....	60
ARTICLE TEN: REPRESENTATIONS AND WARRANTIES; COVENANTS	61
10.1 General Representations and Warranties.....	61
10.2 Seller Representations and Warranties.....	62
10.3 Covenants.....	62
ARTICLE ELEVEN: TITLE, RISK OF LOSS, INDEMNITIES	63
11.1 Title and Risk of Loss.....	63
11.2 Indemnities.....	63
ARTICLE TWELVE: DISPUTE RESOLUTION.....	64
12.1 Intent of the Parties.....	64
12.2 Management Negotiations.....	64
12.3 Arbitration.....	65
ARTICLE THIRTEEN: MISCELLANEOUS.....	66
13.1 Confidentiality.....	66
13.2 Assignment.....	67
13.3 Audit.....	67
13.4 Sarbanes-Oxley and SEC Requirements.....	68
13.5 Entire Agreement.....	70
13.6 Recording.....	70
13.7 Forward Contract.....	70
13.8 Governing Law.....	70
13.9 Attorneys’ Fees.....	70
13.10 General.....	70
13.11 Severability.....	70
13.12 Counterparts.....	71
13.13 Notices.....	71

13.14 Mobile Sierra71

EXHIBIT A PROJECT DESCRIPTION INCLUDING DESCRIPTION OF SITE A-1

EXHIBIT B [DELETE AND REPLACE WITH “RESERVED” FOR EXISTING PROJECT IN
OPERATION FOR WHICH CPUC APPROVAL IS ALL THAT IS NEEDED FOR
EFFECTIVENESS OF THE AGREEMENT.] MILESTONE SCHEDULEB-1

EXHIBIT C FORM OF LETTER OF CREDITC-1

EXHIBIT D COMMERCIAL OPERATION CERTIFICATE D-1

EXHIBIT E INSURANCEE-1

EXHIBIT F CONSENT AND AGREEMENT..... F-1

EXHIBIT G FORM OF QUARTERLY PROGRESS REPORT G-1

EXHIBIT H OUTAGE NOTIFICATION FORM..... H-1

EXHIBIT I PROJECT OPERATING RESTRICTIONSI-1

COVER SHEET

This ECR RAM Power Purchase Agreement is made as of the following date: [_____]. This ECR RAM 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
Attn.: Major Markets, Credit and Collections

Phone: _____
Facsimile: _____

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

Attn: _____
Phone: _____
Facsimile: _____

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” means the American Arbitration Association.

“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.

“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.]

“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.

“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.

“Bundled Green Energy” means Energy and Green Attributes, 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 SDG&E 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*] and (ii) Green Attributes that are delivered to Buyer. 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 SDG&E 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.

[For FCDS bids and for ECR Projects located in the Imperial Valley: “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.]

“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).

[Delete for existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement: “Commercial Operation” means that (a) the Project is operating and able to produce and deliver Energy 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 D; (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;]

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

“Conditions Precedent” has the meaning set forth in Section 2.3.

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

[When Seller is SC for the Project or when SDG&E 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 Parties 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 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.

“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.

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

“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 been determined based on clause (ii) 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.]

“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.

“Deliverability Value” means the amount stated in Section 4.1(c).

“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 8.3(a)(ii) 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 8.3(a)(i) 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 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.

“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 ECR Projects located in Imperial Valley: “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.

“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 that allow Seller to interconnect and deliver Energy from the Project to and at the Delivery Point and Buyer to transmit Energy from the Delivery Point and the facilities that protect the Participating Transmission Owner’s, Transmission Provider’s, distribution operator’s, ***[For ECR Projects located in Imperial Valley: 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 ECR Projects located in Imperial Valley: 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 ECR Projects located in Imperial Valley: 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, and Interconnection Facilities ***[For ECR Projects located in Imperial Valley: , and other network upgrades, distribution upgrades, or interconnection facilities on the Native Balancing Authority’s electrical system]*** that are determined to be necessary by the CAISO, Participating Transmission Owner, ***[For ECR Projects located in Imperial Valley: Native Balancing Authority,]*** or other affected system owner, as applicable, to physically and electrically interconnect the Project to ***[For ECR Projects located in Imperial Valley: the 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 and at 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(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.

“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).

“FCDS” has the meaning set forth in Section 4.1(c).

“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) through (a)(iii) above.

"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 ECR Projects located in Imperial Valley:* , the 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

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.

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.

[Delete this definition for existing Project in operation for which CPUC Approval is all that is needed for effectiveness of this Agreement. "Guaranteed Commercial Operation Date" or "GCOD" is the date that is thirty-six (36) months after the date of satisfaction or waiver of the Condition Precedent in Section 2.3(a), as may be extended pursuant to Section 3.9(c)(ii).]

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

"Imbalance Energy" means the amount of Energy, in any given settlement interval, 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 ECR Projects located in Imperial Valley: "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/Rule 21/Native Balancing Authority] Generator Interconnection Agreement” has the meaning set forth in the [CAISO/Wholesale Open Access Distribution/Rule 21/Native Balancing Authority’s] 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.

“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).

[Delete this definition for existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement “Milestones” has the meaning set forth in Section 3.9(b)(i).]

“Monthly Energy Payment” has the meaning set forth in Section 4.1([b/c]).

“Moody’s” means Moody’s Investor Services, Inc., or its successor.

“MWh” means megawatt-hour.

[For ECR Projects located in Imperial Valley: “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 ECR Projects located in Imperial Valley: “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 (4th) 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 in the form attached hereto as Exhibit H. 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 *[insert name]*.

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

“Performance Assurance” means collateral provided by Seller to Buyer to secure Seller’s obligations hereunder and includes Development Period Security and Delivery Term Security.

“Performance Measurement Period” has the meaning set forth in Section 3.1(e).

“Performance Tolerance Band” for each CAISO settlement interval means 5% of the Contract Capacity divided by the number of CAISO settlement intervals per hour.

“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)(ii).

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

[For ECR Projects located in Imperial Valley: “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 ECR Projects located in Imperial Valley: “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).

[Delete this definition for existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement “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)] [or, for solar projects: 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 ECR Projects located in Imperial Valley:*** , 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.

[For FCDS bids: "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 ECR Projects located in Imperial Valley:*** and the Native Balancing Authority,] to Schedule and deliver the Product into the CAISO System [***For ECR Projects located in Imperial Valley:*** 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 [***For ECR Projects located in Imperial Valley:*** , Native Balancing Authority,] 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 [*For Excess Sales bids*: and electric energy produced by the Project that is used to service onsite load which is subtracted from the CAISO revenue meter].

“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 overgeneration 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; [or] (d) curtailment in accordance with Seller's obligations under its interconnection agreement with the Participating Transmission Owner or distribution operator; ***[For ECR Projects located in Imperial Valley:*** or Native Balancing Authority; or (e) curtailment ordered by the Native Balancing Authority or another Transmission Provider of Seller provided, that Seller has contracted for firm transmission or equivalent arrangements with the Native Balancing Authority or such Transmission Provider for the Product to be delivered from the Project to and at the Delivery Point and such curtailment is due to any reason similar to those for which curtailment might be ordered or directed by the CAISO or a Participating Transmission Owner under clauses (a) through (c) above;] 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.

"TOD Delivery Cap" has the meaning set forth in Section 4.1(d)(iii).

"TOD Factors" has the meaning set forth in Section 4.1(b).

"TOD Period" has the meaning set forth in Section 4.1(b).

"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 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 TWO: 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 Section 2.3(a) [and 2.3(b), (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),] [~~*Delete for existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement*~~] and (v) otherwise comply with its obligations, covenants, representations, and warranties under Articles 7-13. 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 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 Condition Precedent set forth in Section 2.3(a), and (ii) otherwise comply with its obligations, covenants, representations, and warranties under Articles 7-13. Upon an Event of Default of Buyer 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 the following conditions precedent ("Conditions Precedent") by the deadline date set forth below for each Condition Precedent without extension for Force Majeure or any other reason:

- (a) CPUC Approval. No later than three (3) months after the Execution Date, 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 thirty (30) days, no agreement is reached,

either Party may terminate this Agreement upon delivery of Notice to the other Party.

- (b) ***[Delete for existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement] [Electrical Interconnection.*** No later than [_____], Seller shall have entered into a [Large/Small/Rule 21/Native Balancing Authority] Generator Interconnection Agreement ***[For ECR SunRate Projects located in Imperial Valley 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/Wholesale Distribution Access/Rule 21]) of no later than [_____] months after Seller provides the [CAISO/Participating Transmission Owner/distribution system owner/Native Balancing Authority/or any other affected transmission provider] 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 ECR Projects located in Imperial Valley:*** and its supplemental arrangements with the CAISO as an affected system owner], and
 - (ii) a refundable cost for reliability (and not deliverability) “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 \$[_____] (unless otherwise agreed to in writing by the Parties).

2.4 Failure to Meet The Conditions Precedent.

- (a) Beneficiary Party. Both of the Parties are the beneficiaries of the Conditions Precedent set forth in Section 2.3(a) ***[[Delete for existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement:*** and Section 2.3(b)], 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.

- (b) Termination. If any Condition Precedent is not satisfied or waived in writing by the beneficiary Parties thereto on or before the applicable deadline date therefor, then this Agreement shall automatically terminate with no further obligation to either Party (other than as set forth below in this clause (b) and any payment obligations which are accrued and payable at the time of termination). Upon a termination of this Agreement as a result of the failure of the Condition Precedent set forth in Section 2.3(a) to be satisfied (or waived by both Parties), Buyer shall return to Seller the Development Period Security. ***[Delete for existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement:*** Upon a termination of this Agreement as a result of the failure of any of the Conditions Precedent set forth in Section 2.3(b) to be satisfied (or waived by both Parties), Seller shall forfeit to Buyer an amount equal to the Development Period Security. Buyer may retain the Development Period Security to pay such amount.]

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 Development 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 THREE: 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 As-Available Energy, ***[Delete for Energy Only Bids, except for ECR Projects located in Imperial Valley:*** 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.

- (c) Delivery Term. The Parties agree that the period of Product delivery is [*insert: “ten (10)”, “fifteen (15), or “twenty (20)”*] 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. [*For Project with transmission level interconnection, insert: “The Delivery Point shall be the point of interconnection of the Project to the CAISO Grid (and, for payment purposes, the corresponding PNode for the Project).”*] [*For Project with distribution level interconnection, insert: “The Delivery Point shall be the point on the CAISO Grid where the Participating Transmission Owner’s distribution system interconnects to the CAISO Grid as set forth in their Meter Services Agreement, as may be acceptable to Buyer in its reasonable discretion (and, for payment purposes, the corresponding PNode for the Project).”*] [*For ECR Projects located in Imperial Valley, 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).”*]
- (e) 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 [*For solar facilities, insert: to be degraded each Contract Year by [insert manufacturer’s degradation factor] (“Contract Quantity”).*] [*For all facilities other than hydro facilities, insert: Throughout the Delivery Term, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production (as defined below) in any [For baseload facilities insert: “twelve (12)”] [For all facilities other than baseload facilities insert: “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 [For wind facilities, insert “one hundred and forty percent (140%)”, [for solar facilities, insert “one hundred and sixty percent (160%)”] [for baseload facilities, insert “ninety percent (90%)”] of the weighted average of the Contract Quantity for such Performance Measurement Period. 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.

- (f) Contract Capacity. The "Contract Capacity" is the full generation capacity of the Project net of all Station Service which shall be [__MWac] and [__MWdc]. Throughout the Delivery Term, Seller shall sell and Schedule all Product associated with the Contract Capacity of the Project [*For FCDS bids and for ECR Projects located in the Imperial Valley, insert: "including Capacity Attributes,"*] solely to Buyer, except in the case of an Event of Default of Buyer.
- (g) Project. All Product provided by Seller pursuant to this Agreement shall be supplied from the Project only. 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 "As-Available". 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 (i) the Energy Price [*For FCDS bids for Projects located in the SDG&E service territory: (or for each month during which Seller has not achieved FCDS as determined by the CAISO, the Energy Price minus the Deliverability Value)*] times (ii) the weighted average TOD Factor for such period of Product deficiency times (iii) the Product deficiency, from (B) the product of (i) the Replacement Price times (ii) the Product deficiency. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

- (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 (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 (i) the Sales Price times (ii) the Product deficiency from (Z) the product of (i) the Energy Price [*For FCDS bids for Projects located in the SDG&E service territory*: (or, for each month during which Seller has not achieved FCDS as determined by the CAISO, the Energy Price minus the Deliverability Value)] times (ii) the weighted average TOD Factor for such period of Product deficiency times (iii) 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. During the Delivery Term, Seller shall register, provide and maintain a Green-e Energy Renewable Generator Registration Form and Attestation. 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) ***[Delete and replace with “Reserved” for Energy Only Bids, except for ECR projects located in the Imperial Valley: 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 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. ***[For all Projects other than ECR Projects located in the Imperial Valley: If the [For Transmission Level interconnections add: Phase II Interconnection Study Report][For Distribution Level Interconnections add: interconnection facilities study report or equivalent final study report] determines that there are deliverability Network Upgrades, Buyer can request that Seller elect to fund or elect not to fund all deliverability Network Upgrades. However, if Seller elects to fund all 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 and Seller elects to fund, but the Project does not obtain Full Capacity Deliverability Status on or before January 1, 2026, 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.] [For ECR Projects located in the Imperial Valley 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 and distribution losses, and any transmission or distribution level outages or curtailment, except as provided otherwise in this Agreement in respect of Dispatch Down Periods. *[For ECR Projects located in Imperial Valley:*

Seller shall obtain and maintain during the Delivery Term firm transmission service or equivalent arrangements 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 or equivalent arrangements and any amendments thereto.] Seller shall fulfill all contractual, metering and applicable interconnection requirements, including those set forth in ***[For ECR Projects located in Imperial Valley: the Native Balancing Authority's applicable tariffs,]*** the 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 ECR Projects located in Imperial Valley: (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 all Projects other than ECR Projects located in Imperial Valley: Seller shall arrange for any interconnection agreement with the CAISO (or the Participating Transmission Owner, for distribution level interconnections).]*** ***[For ECR Projects located in Imperial Valley: 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 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.

[NOTE TO BIDDERS: See RFO details relating to Seller’s election of SC services][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, 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 and for ECR Projects located in Imperial Valley, 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, 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, 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 As-Available Product non-VER Forecasting Program Participants and baseload Projects only:* Seller shall be responsible for all CAISO costs and penalties and other charges (and not revenues, credits or payment) in connection with Imbalance Energy during any CAISO settlement interval in which the Performance Tolerance Band has been exceeded for any reason, other than Buyer's failure to perform.] 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.
- (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, 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 ECR Projects located in Imperial Valley: Scheduling with the Native Balancing Authority.*** Seller shall be responsible for all communications of generation scheduling for the Project, if any are required, with the Native Balancing Authority.]

3.4 Dispatch Notices.

- (a) General. Seller shall reduce delivery amounts as directed by the CAISO, the Participating Transmission Owner, Buyer, ***[For ECR Projects located in Imperial Valley: the Native Balancing Authority,]*** 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 3.4(c)(ii) 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) Economic Dispatch Down. [*For Projects where SDG&E purchases Test Energy:* Before or after the Commercial Operation Date,] 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 I. 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. [*For Projects where SDG&E purchases Test Energy:* On and after the Commercial Operation Date], 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 the weighted average TOD Factor for such period of Economic Dispatch Down, times the

amount of Deemed Bundled Green Energy resulting from such Economic Dispatch Down [*For Projects receiving PTCs:* plus the product of the after tax value of any lost PTC benefits (in dollars per megawatt hour) that Seller has not been able to mitigate after use of reasonable efforts, times the amount of Deemed Bundled Green Energy resulting from such Economic Dispatch Down], 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, [*For ECR Projects located in Imperial Valley:* the Native Balancing Authority,] 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 [*For ECR Projects located in Imperial Valley:* and the Native Balancing Authority], (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 [*For ECR Projects located in Imperial Valley:* and the Native Balancing Authority].

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 VER Forecasting Program Participants]*** 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.
- (d) [*For ECR Projects located in Imperial Valley:* Coordination with the Native Balancing Authority. Seller shall be responsible for all outage coordination communications with the Native Balancing Authority.]

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 [For existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement delete Section 3.9 and replace with "Reserved"]
New Generation Facility.**

- (a) Project Development. Seller, at no cost to Buyer, shall:
 - (i) Design and construct the Project.
 - (ii) Perform all studies, [*For FCDS bids, insert: "including [For Transmission Level Interconnections: "Phase II Interconnection Study Report"] [or for Distribution Level Interconnections: "interconnection facilities study report or equivalent final study report"]* pay all fees, obtain all necessary approvals and execute all necessary agreements with the CAISO [*For ECR Projects located in Imperial Valley: , the Native Balancing Authority,*] and the Participating Transmission Owner for the Electrical Interconnection Upgrades to Schedule and deliver the Product from the Project [*For FCDS bids, insert: "under "Full Capacity Deliverability Status" (as defined in the CAISO Tariff), except when construction of deliverability Network Upgrades is not required under Section 3.1(j)."*] [*For ECR Projects located in Imperial Valley: "in a manner that enables 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."*] 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 or the distribution system operator 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.

(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.

(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 end of the Project Cure Period; 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) Guaranteed Commercial Operation.

(i) COD. Seller shall cause the Project to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date, unless extended in accordance with Section 3.9(c)(ii). The Commercial Operation Date shall not occur earlier than six (6) months prior to the Guaranteed Commercial Operation Date.

(ii) Extensions. The Guaranteed Commercial Operation Date may be extended one time for no more than a six (6) month period (the “Project Cure Period”) for cumulative delays if Seller demonstrates to Buyer’s reasonable satisfaction after giving written notice as soon as reasonably possible but at least at sixty (60) days prior to the original Guaranteed Commercial Operation Date, which includes a feasible remedial action plan, if any of the following have occurred:

(A) Seller has used commercially reasonable efforts (including but not limited to Seller’s timely filing of required documents and payment of all applicable fees) to obtain permits necessary for the construction and operation of the Project, but is unable to obtain such permits due to delays beyond Seller’s reasonable control;

(B) *[For ECR Projects located in Imperial Valley:]* Seller has used commercially reasonable efforts (including but not limited to Seller’s timely filing of required documents and payment of all applicable fees) to have the Project

physically interconnected to the CAISO Grid, or to the Participating Transmission Owner's distribution system, as applicable, and to complete all Electrical Interconnection Upgrades needed, if any, in order to interconnect the Project, as required herein, to the CAISO Grid, but fails to secure any necessary commitments from CAISO or the Participating Transmission Owner for such interconnection and upgrades due to delays beyond Seller's reasonable control; or] ***[For ECR Projects located in Imperial Valley:*** Seller has used commercially reasonable efforts (including but not limited to Seller's timely filing of required documents and payment of all applicable fees) to have the Project physically interconnected to the Native Balancing Authority's transmission system and to complete all Electrical Interconnection Upgrades needed, if any, in order to interconnect, as required herein, the Project to the Native Balancing Authority's transmission system and the Native Balancing Authority's transmission system to the CAISO Grid, and to commence firm transmission service from the Project to the Delivery Point under the firm transmission service agreement with the applicable Transmission Provider, but Seller has been unable to secure any necessary commitments from the Native Balancing Authority, the CAISO, the Participating Transmission Owner, or the Transmission Provider for such interconnection and upgrades due to delays beyond Seller's reasonable control; or]

- (C) an event of Force Majeure has occurred; provided that Seller works diligently to resolve the effect of the Force Majeure and provides evidence of its efforts promptly to Buyer upon Buyer's written request.

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.

- (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 (115%) 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 seventy five percent (75%) of the applicable Energy Price (except for any hour in which the Energy Price is reduced by clause (i) above);
- (iii) if Seller delivers Bundled Green Energy in the aggregate for any TOD Period during the Delivery Term in excess of one hundred fifteen percent (115%) of the TOD Delivery Cap listed in the table below for that TOD Period (“TOD Delivery Cap”), then the Energy Price for such excess Bundled Green Energy in such TOD Period shall be reduced to seventy five percent (75%) of the applicable Energy Price (except for any hour in which the Energy Price is reduced by clause (i) or (ii) above):

TOD Period	TOD Delivery Cap
Winter On-Peak	[Insert number which is derived from multiplying annual Contract Quantity times the TOD delivery profile ratio contained in bid form]
Winter Semi-Peak	[Insert number which is derived from multiplying annual Contract Quantity times the TOD delivery profile ratio contained in bid form]
Winter Off-Peak	[Insert number which is derived from multiplying annual Contract Quantity times the TOD delivery profile ratio contained in bid form]

Summer On-Peak	[Insert number which is derived from multiplying annual Contract Quantity times the TOD delivery profile ratio contained in bid form]
Summer Semi-Peak	[Insert number which is derived from multiplying annual Contract Quantity times the TOD delivery profile ratio contained in bid form]
Summer Off-Peak	[Insert number which is derived from multiplying annual Contract Quantity times the TOD delivery profile ratio contained in bid form]

- (b) TOD Factors and TOD Periods. In accordance with all other terms of this Article 4, the Energy Price shall be adjusted by the following Time of Delivery Factors (“TOD Factors”) for each of the specified Time of Delivery Periods listed in the first column (“TOD Periods”) in which Energy is delivered.

[For FCDS bids only with Projects Located in the SDG&E service territory Providing Local Resource Adequacy:

TOD Period	Period Days and Hours	TOD Factor
Winter On-Peak	Nov 1 - Jun 30 (696 Hours) Weekdays 5 pm to 9 pm PPT (HE 18 to HE 21)	1.495
Winter Semi-Peak	Nov 1 - Jun 30 (2262 Hours) Weekdays 6 am to 10 pm PPT (HE 7 to HE 22) excluding Winter On-Peak Hours	0.866
Winter Off-Peak	Nov 1 - Jun 30 (2874 Hours) All Weekend Hours NERC Holiday Hours and Weekday Hours not already considered Winter On-Peak or Winter Semi-Peak	0.746
Summer On-Peak	Jul 1 - Oct 31 (616 Hours) Weekdays 2 pm to 9 pm PPT (HE 15 to HE 21)	2.304

Summer Semi-Peak	Jul 1 - Oct 31 (792 Hours) Weekdays 6 am to 10 pm PPT (HE 7 to HE 22) excluding Summer On-Peak Hours	1.204
Summer Off-Peak	Jul 1 - Oct 31 (1544 Hours) All Weekend Hours, NERC Holiday Hours and Weekday Hours not already considered Summer On-Peak or Summer Semi-Peak	0.853

[For Energy Only bids and for ECR Projects located in Imperial Valley:

TOD Period	Period Days and Hours	TOD Factor
Winter On-Peak	Nov 1 - Jun 30 (696 Hours) Weekdays 5 pm to 9 pm PPT (HE 18 to HE 21)	1.509
Winter Semi-Peak	Nov 1 - Jun 30 (2262 Hours) Weekdays 6 am to 10 pm PPT (HE 7 to HE 22) excluding Winter On-Peak Hours	0.977
Winter Off-Peak	Nov 1 - Jun 30 (2874 Hours) All Weekend Hours NERC Holiday Hours and Weekday Hours not already considered Winter On-Peak or Winter Semi-Peak	0.853
Summer On-Peak	Jul 1 - Oct 31 (616 Hours) Weekdays 2 pm to 9 pm PPT (HE 15 to HE 21)	1.581
Summer Semi-Peak	Jul 1 - Oct 31 (792 Hours) Weekdays 6 am to 10 pm PPT (HE 7 to HE 22) excluding Summer On-Peak Hours	.957
Summer Off-Peak	Jul 1 - Oct 31 (1544 Hours) All Weekend Hours, NERC Holiday Hours and Weekday Hours not already considered Summer On-Peak or Summer Semi-Peak	0.896

- (c) **[For FCDS bids (excluding ECR Projects located in Imperial Valley):** Monthly Energy Payment. For each month during which Seller has achieved “Full Capacity Deliverability Status”, as defined in the CAISO Tariff (“FCDS”) as determined by the CAISO, 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 TOD Factor for the applicable TOD Period times the Bundled Green Energy in each hour (“Monthly Energy

Payment”). For each month during which Seller has not achieved FCDS as determined by the CAISO, Buyer shall pay Seller for the Product an amount equal to the sum for each hour in the month of the product of (i) the Energy Price minus *[insert the \$/MWh equal to the Deliverability Value as defined in the RAM RFO document]* (“Deliverability Value”) times (ii) the TOD Factor for the applicable TOD Period times (iii) the Bundled Green Energy (together, the “Monthly Energy Payment”).

[When the Project has achieved FCDS: Monthly Energy Payment for months that Seller has obtained FCDS = \sum Energy Price x TOD Factor x Bundled Green Energy]

[When the Project has not achieved FCDS: Monthly Energy Payment for months that Seller has not obtained FCDS = \sum ([Energy Price – Deliverability Value] x TOD Factor x Bundled Green Energy)]

[For Energy Only bids and ECR Projects located in Imperial Valley: Monthly Energy Payment. 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 TOD Factor for the applicable TOD Period times the Bundled Green Energy in each hour (“Monthly Energy Payment”).

Monthly Energy Payment = \sum Energy Price x TOD Factor x Bundled Green Energy]

4.2 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.” 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 regardless as to whether it was sold into the CAISO. Buyer and Seller shall allocate responsibility for all CAISO costs and penalties and other charges (and revenues, credits, and payments) in connection with Imbalance Energy as set forth in Section 3.3(b)(iii).]***

[When Seller is SC for the Project or when SDG&E 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 under Section 4.1 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. ***[When Seller is SC for the Project:*** 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.] ***[When SDG&E is the SC but the Project is not in the VER Forecasting Program:*** Buyer shall be entitled to all payments or credits from the CAISO in respect of any Positive Imbalance Energy and Buyer shall make all payments to the CAISO in connection with Positive Imbalance Energy during any CAISO settlement interval in which the Performance Tolerance Band has not been exceeded for any reason, other than Seller's failure to perform. Seller shall make all payments to the CAISO in connection with Positive Imbalance Energy during any CAISO settlement interval in which the Performance Tolerance Band has been exceeded for any reason, other than Buyer's failure to perform.]

- (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 under Section 4.1 in respect of the Negative Imbalance Energy. ***[When Seller is SC for the Project:*** 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.] ***[When SDG&E is the SC but the Project is not in the VER Forecasting Program:*** Buyer shall be entitled to all payments or credits from the CAISO in respect of any Negative Imbalance Energy and Buyer shall make all payments to the CAISO in connection with Negative Imbalance Energy during any CAISO settlement interval in which the Performance Tolerance Band has not been exceeded for any reason, other than Seller's failure to perform. Seller shall make all payments to the CAISO in connection with Negative Imbalance Energy during any CAISO settlement interval in which the Performance Tolerance Band has been exceeded for any reason, other than Buyer's failure to perform.]

4.3 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 ***[For FCDS bids: 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.

4.4 ***[Delete and replace with "Reserved" for existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement: Energy Sales Prior to Commercial Operation Date. Prior to Commercial Operation and Seller obtaining certification***

for the Project as a Participating Intermittent Resource under the VER Forecasting Program, Buyer shall pay Seller an amount equal to the sum for each hour of the product of 50% of the Energy Price in Contract Year 1 multiplied by the TOD Factor multiplied by the test energy delivered by Seller and received by Buyer in each hour at the Delivery Point, so long as such amount is 1MW or more; provided, however, that Seller shall not deliver test energy prior to nine (9) months before the Guaranteed Commercial Operation Date.]

ARTICLE FIVE: 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;
 - (ii) the failure by Seller to achieve the Commercial Operation Date *[For existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement, delete: no later than the end of the Project Cure Period;]*
 - (iii) 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;
 - (iv) the failure by Seller to deliver a Remedial Action Plan that reasonably demonstrates in detail how Seller will achieve the Commercial Operation Date [within the Project Cure Period, if such failure is not remedied within ten (10) days after Notice; *[For existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement, delete and replace with “Reserved.”]*]
 - (v) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.2 or 8.3 of this Agreement; or
 - (vi) 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.

ARTICLE SIX: PAYMENT

6.1 Billing and Payment. On or about the tenth (10th) day of each month beginning with the second month of the first Contract Year and every month thereafter, and continuing through and including the first month following the end of the Delivery Term, [*Where Seller is the SC:* Seller shall provide to Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Project for any CAISO settlement time interval during the preceding months, (b) access to any records, including invoices or settlement data from CAISO, necessary to verify the invoice; and (c) an invoice, in a format reasonably specified by Buyer,] [*Where Buyer is the SC:* Buyer shall provide to Seller an invoice] 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 SEVEN: 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 EIGHT: INSURANCE/ CREDIT AND COLLATERAL REQUIREMENTS

8.1 Insurance. In connection with Seller's performance of its duties and obligations under this Agreement, Producer shall maintain, from the CP Satisfaction date until the end of the term of this Agreement, insurance in accordance with Exhibit E.

8.2 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.

8.3 Performance Assurance.

- (a) Development Period Security and 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) Development Period Security in the amount of ***[\$60/kW for intermittent projects, and \$90/kW for baseload projects]*** in the form of cash or a Letter of Credit from the Execution Date of this Agreement until the return date specified in Section 8.3(b)(i) below; and
 - (ii) Delivery Term Security in the amount of ***[Insert amount which is 5% of expected total project revenues over the Delivery Term]*** in the form of cash or a Letter of Credit from the commencement of the Delivery Term until the return date specified in Section 8.3(b)[(i)/(ii)] below.

Except as set forth in Section 2.2 as it pertains to the Development Period Security, any such Performance Assurance shall not be deemed a limitation of damages.

(b) Return of Performance Assurance.

- (i) 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 Delivery Term Security, and (B) termination of the Agreement under the circumstances described

in Section 2.4(b) in which the Delivery Term Security is required to be returned.

- (ii) 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).

8.4 Interest on Cash. If Seller provides Performance Assurance in the form of cash, Buyer shall pay interest on such cash held as Development 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.

8.5 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 NINE: 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 TEN: 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) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that the Project qualifies as a Green-e® Energy Certified product.

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.

ARTICLE ELEVEN: 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 TWELVE: 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 panel conducted in San Diego, California, administered by and in accordance with AAA's Commercial Arbitration Rules ("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.
- (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 THIRTEEN: 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 (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 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 Execution Date, 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, ***[For existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement, delete: progress of each Milestone]***, 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, 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 substantially the same form as Exhibit F.

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 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 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 [_____]

SAN DIEGO GAS & ELECTRIC COMPANY
a California corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Exhibit A

PROJECT DESCRIPTION INCLUDING DESCRIPTION OF SITE

PROJECT DESCRIPTION [Project shall have no shared facilities, including interconnections, generation interties, or meters, with any other projects.]

Project name: _____

Project Site name: _____

Project physical address: _____

Longitude: _____ **Latitude:** _____

Total number of electric generating units at the Project (all must be committed to Buyer): _____

Technology Type: _____

Point of Interconnection of the Project (Substation and PNode): _____

The term “Site” as defined in the Agreement means the following parcel description upon which the Project is located:

[INSERT MAP]

The nameplate capacity of the Project is: _____.

[For Excess Sales bids: include details on onsite load estimates and meter configuration (if CAISO meter reflects subtraction of customer onsite load from Project output.)]

[For solar, please include the following information. For other technologies, similar project specifications as applicable] The electric generating units utilized as generation assets as part of the Project are described below:

Project Specifications	
<u>Project Size (MWdc)</u>	
<u>Mounting technology</u>	
<u>Module model</u>	
<u>Module size (W)</u>	
<u>Number of modules</u>	
<u>Inverter model</u>	
<u>Inverter size (kW)</u>	
<u>Number of inverters</u>	
<u>Medium voltage transformer (M.V.T.) size</u>	
<u>Number of M.V.T.s</u>	
<u>Step-up transformer (S.T.) size</u>	
<u>Number of S.T.s</u>	

Exhibit B

[Delete and replace with “Reserved” for existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement.]

MILESTONE SCHEDULE

<i>No.</i>	<i>Date</i>	<i>Project Name</i>
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 II Interconnection Study Report] [interconnection system impact study]
4.		Completes a comprehensive resource assessment.
5.		Files permitting application with appropriate agency(ies).
6.		Executes interconnection agreement and/or transmission agreement.
7.		Receives permitting approval(s)
8.		Receives FERC acceptance of interconnection agreement and transmission agreement(s).
9.		Executes a supply contract.
10.		Executes an Engineering, Procurement and Construction (“EPC”) contract.
11.		Completes financing.
12.		Delivers full NTP under EPC contract and begins construction of the Project.
13.		<i>[For ECR Projects located in SDG&E service territory: Executes Meter Service Agreement and Participating Generator Agreement.] [For ECR Projects located in Imperial Valley: Executes or causes to be executed all Pseudo Tie Agreements.]</i>
14.		Achieves initial operation.
15.		Receives all Governmental Approvals necessary to achieve Commercial Operation.
16.		Receives CEC Certification and Verification.

Exhibit C

FORM OF LETTER OF CREDIT

[DATE]

To: [Name and Address of Secured Party]

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

Gentlemen:

We hereby open our irrevocable standby Letter of Credit Number _____ in favor of [name of Secured Party] (“Secured Party”), by order and for account of [name of Account Party] (“Account Party”), [address of Account Party], 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 Secured Party stating that: “San Diego Gas & Electric Company (“Secured Party”) is entitled to draw under this Letter of Credit under the terms of the RAM Power Purchase Agreement between Secured Party and [insert name] (“Account Party”) dated _____, as may be amended (the “PPA”) or Account Party is in default under the terms of the PPA (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 Secured Party and Account Party, or otherwise). The amount due to Secured Party is U.S. \$ _____.”

or

2- Statement signed by a person purported to be an authorized representative of Secured Party stating that: “[name of Account Party] (“Account Party”) has forfeited all or part of its Development Period Security as set forth and defined in the RAM Power Purchase Agreement between Secured Party and Account Party dated _____. The amount due to Secured Party, whether or not a default has occurred, is U.S. \$ _____.”

or

3- Statement signed by a person purported to be an authorized representative of Secured Party 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 Secured Party, 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 Account Party.
- Partial and multiple drawings are permitted.
- Fax of Document 1, 2, or 3 above acceptable.

This Letter of Credit expires on _____ at our counters.

We hereby engage with Secured Party 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

[Delete and replace with “Reserved” for existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement]

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 RAM 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 ___, 20__

**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 E

INSURANCE

In connection with Seller's performance of its duties and obligations under this Agreement, Seller shall maintain, from the CP Satisfaction Date until the end of the term of this Agreement, general liability insurance with a combined single limit of not less than Two million dollars (\$2,000,000) for each occurrence.

Such general liability insurance shall include coverage for "Premises-Operations, Owners and Contractors Protective, Products/Completed Operations Hazard, Explosion, Collapse, Underground, Contractual Liability, and Broad Form Property Damage including Completed Operations."

The general liability insurance required herein shall, by endorsement to the policy or policies, (a) include Buyer as an additional insured; (b) contain a severability of interest clause or cross-liability clause; (c) provide that Buyer shall not by reason of its inclusion as an additional insured incur liability to the insurance carrier for payment of premium for such insurance; and (d) provide for thirty (30) calendar days' written notice to Buyer prior to cancellation, termination, alteration, or material change of such insurance.

Evidence of the insurance required herein shall state that coverage provided is primary and is not in excess to or contributing with any insurance or self-insurance maintained by Buyer.

Seller agrees to furnish the required certificates and endorsements to Buyer prior to initial deliveries of test energy. Buyer shall have the right to inspect or obtain a copy of the original policy or policies of insurance.

If Seller is self-insured with an established record of self-insurance, Seller may comply with the following in lieu of the third party insurance if:

- (a) Seller shall provide to Buyer, at least thirty (30) calendar days prior to the date of initial deliveries of test energy, evidence of an acceptable plan to self-insure to a level of coverage equivalent to that required by third party insurance providers as stated herein.
- (b) If Seller ceases to self-insure to the level required hereunder, or if Seller is unable to provide continuing evidence of Seller's ability to self-insure, Seller agrees to immediately obtain the third party insurance coverage required hereunder.

All insurance certificates, statements of self insurance, endorsements, cancellations, terminations, alterations, and material changes of such insurance shall be issued, clearly labeled with agreement ID number and submitted to the following:

San Diego Gas & Electric Company
Attention: Director, Procurement and Portfolio Design
Address: 8315 Century Park Court, CP21D
City: San Diego, CA 92123

Exhibit F

CONSENT AND AGREEMENT

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

RECITALS

WHEREAS, pursuant to the RAM Power Purchase Agreement made as of [Date] (the “Assigned Agreement”), between the Assignor and SDG&E, SDG&E has agreed to purchase output from the Assignor’s [_____] MW [_____] electric generating facility] (the “Project”) as further specified in therein;

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

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

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

Section 2. Consent to Assignment.

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

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

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

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

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

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

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

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

Section 4. Consent and Agreement.

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

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

(b) Notices of Default and Right to Cure.

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

the right to declare an Early Termination Date in accordance with Article 5 of the Assigned Agreement.

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

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

[name and details for account designated by the Assignee]

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

Section 5. Damages Limitation.

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

Section 6. Miscellaneous.

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

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

(c) This Consent shall be governed by, and construed under, the laws of the State of California applicable to contracts made and to be performed in such State and without reference to conflicts of laws. The parties hereto agree that any legal action or proceeding arising out of this Consent may be brought in the courts of the State of California, in and for the County of San Diego, or of the United States of America for the Southern District of California. By execution and delivery of this Consent, the parties hereto accept, for themselves and in respect of their property, generally and unconditionally, the jurisdiction of the aforesaid courts.

The parties hereto irrevocably consent to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified airmail, postage prepaid, to the Assignee, SDG&E and the Assignor, as the case may be, at their respective addresses for notices as specified herein and that such service shall be effective five (5) business days after such mailing. Nothing herein shall affect the right to serve process in any other manner permitted by law or the right of the Assignee or SDG&E to bring legal action or proceedings in any other competent jurisdiction. The parties hereto hereby waive any right to stay or dismiss any action or proceeding under or in connection with any or all of this Consent or the transactions contemplated hereby brought before the foregoing courts on the basis of *forum non-conveniens*.

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

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

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

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

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

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

SAN DIEGO GAS & ELECTRIC
COMPANY

By: _____
Name:
Title:

[Address for Notices:]

[ASSIGNOR]

By: _____
Name:
Title:

[Address for Notices:]

[ASSIGNEE]

By: _____
Name:
Title:

[Address for Notices:]

Exhibit G

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 RAM 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 Major² 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 I

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 I 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

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

between

SAN DIEGO GAS & ELECTRIC COMPANY

and

[NAME OF SELLER]

This Enhanced Community Renewables (ECR) Rider and Amendment (“ECR Rider and Amendment”) to the ECR RAM PPA (as that term is defined below) is entered into between San Diego Gas & Electric Company, a California corporation (“Buyer”), and **[Name of Seller]**, a **[Legal Status of Seller]** (“Seller”), dated as of _____, 2016 (“Effective Date”). Buyer and Seller are hereinafter sometimes referred to individually as a “Party” and jointly as the “Parties”. Capitalized terms used herein and not otherwise defined in this Rider shall have the meanings ascribed to such terms in the ECR RAM PPA (as that term is defined below).

RECITALS

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

- A. Concurrently herewith, Buyer and Seller enter into that certain Renewable Auction Mechanism Power Purchase Agreement (as amended from time to time, the “ECR RAM PPA”), under which, among other things, Seller will sell to Buyer, and Buyer will purchase from Seller, Product upon commencement of the Delivery Term.
- B. The Parties seek to modify the ECR RAM PPA with this ECR Rider and Amendment (together, the “Agreement”) in order to incorporate provisions related to the Enhanced Community Renewables program.

AGREEMENT

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

1. The following changes are made to Section 1.1:
 - a. Delete the definition of Commercial Operation Date and replace with the following:

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

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

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

“Customer-Seller Agreement” or “CSA” means that agreement to be executed between Customer and Seller in order for Customer to Subscribe to Seller’s Facility, which shall be subject to those requirements set forth within Section 13 of this Agreement. Buyer shall not be a party to, and is prohibited from requesting pricing information contained in, the CSA.

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

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

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

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

“FTC” means the Federal Trade Commission.

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

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

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

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

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

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

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

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

b) In the case of an energy-based subscription business model employed in the CSA, the

subscription that a Customer has signed up for (expressed in kWh), multiplied by the Contract Capacity (expressed in kW), divided by the Contract Quantity (expressed in kWh/year), multiplied by 12 months/year, the product of which shall be equal to the Subscription of the Customer, expressed in kW.

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

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

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

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

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

2. Insert the following subsections after Section 3.1(f):

- “(i) Subscribed Capacity. The aggregate Subscription level of all Customers with Subscriptions to the Project for each month represents the portion of the Contract Capacity that is Subscribed for the Project (“Subscribed Capacity”).
- “(ii) Unsubscribed Capacity. The Contract Capacity less the Subscribed Capacity for each billing month represents the portion of the Contract Capacity that is Unsubscribed for the Project (“Unsubscribed Capacity”).
- “(iii) Seller’s Minimum Subscription Requirement. The minimum Subscribed level required for each month of a Contract Year for the Project shall be as follows (“Minimum Subscription Requirement”):

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

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

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

“(m) ECR Program Subscription Requirements.

Seller shall provide Buyer with Subscription Information and Bill Credit Instructions in the format set forth in Appendix J (as such Appendix J may be modified by the Buyer in its reasonable discretion to reflect updates to its business

practices) setting forth, with respect to each of Seller's Customers for the Project, the information required in Appendix J, such Subscription Information and Bill Credit Instructions to be delivered no later than sixty (60) days prior to the Commercial Operation Date and, thereafter, ten (10) Business Days after the first day of each calendar month, with respect to the prior calendar month.

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

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

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

(B) Customer's Maximum Subscription: each Customer cannot subscribe to more than two (2) MW of nameplate generating capacity for a calendar year; except, that this limitation does not apply to federal, state, or local governments, schools or school districts, county offices of education, the California Community Colleges, the California State University, or the University of California, in which case such entities may exceed the two (2) MW cap provided that no single entity, its affiliates or subsidiaries Subscribes to more than twenty percent (20%) of any single calendar year's total cumulative rated generating capacity ("Maximum Subscription").

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(CC) Seller representation that any electricity, stripped of Renewable Energy Credits is null power and no longer renewable and that, due to change

of law provisions in the power purchase agreement between Buyer and Seller, power delivered may cease to be renewable;

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

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

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

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

Prior to or upon the Execution Date, Seller shall deliver to Buyer an original legal opinion, in form and substance acceptable to Buyer, and addressed to Buyer, issued by a law firm listed in The American Lawyer annual "AmLaw 100" list for the then-current year stating that the transactions between the Customers and Seller: (a) comply with securities law, and that Buyer and its ratepayers are not at risk for securities claims associated with the Project, and (b) comply with one of the following: (i) do not involve the offer or sale of "securities" under California or federal law, (ii) involve the offer or sale of securities that are registered under federal securities law and exempt from qualification under California securities law, (iii) involve the offer or sale of securities that are exempt from registration under federal securities law and are qualified under California securities law, or (iv) involve the offer or sale of securities exempt from registration under federal securities law and exempt from qualification under California securities law, as applicable. The legal opinion may not contain any exceptions or qualifications unacceptable to Buyer in its reasonable discretion. The Seller must submit to Buyer an attestation from an officer of Seller that the fact certificate provided by an officer of the Seller to the law firm issuing the legal opinion is true and complete and that Seller's business model with Customers is, and throughout the Delivery Term will be, as described in the legal opinion."

4. Insert the following new Section 3.11 after Section 3.10:

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

(a) Agreeing to provide Green-e[®] Energy certified resources to all Customers;

(b) Agreeing to abide by Green-e[®] Energy requirements and best practices, as specified on the Green-e[®] Energy website;

hour in which the Energy Price or Unsubscribed Energy Price, as applicable, is reduced by clause (i) or (ii) above):

TOD Period	TOD Delivery Cap
Winter On-Peak	[Insert number which is derived from multiplying annual Contract Quantity times the TOD delivery profile ratio contained in bid form]
Winter Semi-Peak	[Insert number which is derived from multiplying annual Contract Quantity times the TOD delivery profile ratio contained in bid form]
Winter Off-Peak	[Insert number which is derived from multiplying annual Contract Quantity times the TOD delivery profile ratio contained in bid form]
Summer On-Peak	[Insert number which is derived from multiplying annual Contract Quantity times the TOD delivery profile ratio contained in bid form]
Summer Semi-Peak	[Insert number which is derived from multiplying annual Contract Quantity times the TOD delivery profile ratio contained in bid form]
Summer Off-Peak	[Insert number which is derived from multiplying annual Contract Quantity times the TOD delivery profile ratio contained in bid form]

7. Renumber Section 4.1(c) to Section 4.1(d), delete the section in its entirety and replace with the following new Section 4.1(d):

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

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

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

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

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

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

Monthly Energy Payment to Seller from Buyer for Unsubscribed Delivered Energy for months that Seller has obtained FCDS = \sum (the lesser of (i) the Unsubscribed Energy Price and (ii) the Energy Price [– Deliverability Value, only if Seller has not achieved FCDS] x TOD Factor for the TOD Period) x Bundled Green Energy x (Unsubscribed Capacity/Contract Capacity))

(iii) Seller shall assign payment for Subscribed Delivered Energy from Subscribed Capacity to its Customers in the CSA, and payment for the Subscribed Delivered Energy shall be applied as a bill credit to Seller’s Customers. Payment for the Unsubscribed Delivered Energy from Unsubscribed Capacity, net amounts owed to Buyer from Seller, shall be paid to Seller from Buyer. For avoidance of doubt, if in any month Seller does not provide Subscription Information and Bill Credit Instructions pursuant to

Section 3.1(m), Buyer shall not apply Customers' bill credit or pay Seller's Monthly Energy Payment until such time as Seller provides its Customer Subscription Information and Bill Credit Instructions for that month.]

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

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

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

Monthly Energy Payment to Seller from Buyer for Unsubscribed Delivered Energy = \sum (Energy Price x TOD Factor x Bundled Green Energy x (Unsubscribed Capacity/Contract Capacity))

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

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

Monthly Energy Payment to Seller from Buyer for Unsubscribed Delivered Energy = \sum (the lesser of (i) the Unsubscribed Energy Price and (ii) the Energy Price multiplied by the applicable TOD Factor for the TOD Period) x Bundled Green Energy x (Unsubscribed Capacity/Contract Capacity))

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

Energy Payment until such time as Seller provides its Customer Subscription Information and Bill Credit Instructions for that month.]”

8. Amend Section 4.4 by deleting “50% of” from the first sentence, adding “Unsubscribed” in front of Energy Price in the first sentence, and deleting the phrases “in Contract Year 1” and “TOD Factor multiplied by the” from the first sentence.
9. Delete Section 6.1 in its entirety and replace with the following:

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

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

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

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

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

12. Insert new Sections 10.2(d) – 10.2(k) as follows:

(d) Seller has not entered into any other agreement with any party for the sale of Product produced by the Project, other than Customers in accordance with the CSA and with ECR Tariff.

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

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

(g) Seller, and, if applicable, its successors, represents, warrants and covenants that prior to the Execution Date and throughout the Term: (i) Seller has complied with and shall continue

to comply with the marketing plan requirements of the ECR Tariff and Green-e[®] Energy, (ii) all marketing by Seller shall be accurate and in compliance with the Federal Trade Commission Green Guides, (iii) any changes to the marketing plan shall be submitted to Buyer for review prior to Seller's use of such materials, (iv) Seller shall maintain an internet website dedicated to the Project containing disclosures about the Project required by Green-e[®] Energy, including a link to Buyer's ECR Tariff webpage, a link to the Green-e[®] Energy website, and customer service contact information; and (v) Seller has received from Buyer and has read Attachment 1 of the CPUC's CCA Code of Conduct decision (D.12-12-036) and has not and will not circumvent it.

(h) Seller has and shall continue to incorporate in each CSA it enters into with Customers the provisions required to be included in the CSA as identified in Section 3.1(m)(iv).

(i) Seller shall not use Buyer's corporate name, trademark, trade name, logo, identity or any affiliation for any reason, without Buyer's prior written consent.

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

(k) The Project shall comply with the requirements of the California Air Resources Board's Voluntary Renewable Electricity Program and Seller shall provide Buyer with all documents necessary to enable Buyer to retire greenhouse gas allowances on behalf of Customers in compliance with the Voluntary Renewable Electricity Program.

13. Insert the following at the end of Section 11.2(a):

“, or in connection with Seller's Subscription Information and Bill Credit Instructions, subscriptions, bill credits, disputes, violations of Law, misrepresentations made by Seller or Seller's contractors, agents, or representatives, claims relating to securities laws, or Green-e[®] Energy certification, or loss thereof”

14. Insert a new Section 13.15 after Section 3.14:

“13.15 No Partnership or Joint Venture. Nothing contained in this Agreement shall be construed as creating any relationship whatsoever between Buyer and Seller, including that of partners, co-employment, or joint venture parties.”

15. A new Appendix J (attached hereto) is added after Appendix I.

16. MISCELLANEOUS

(a) Reservation of Rights. Each of the Parties expressly reserves all of its respective rights and remedies under the Agreement.

(b) Legal Effect. Except as expressly modified as set forth herein, the Agreement remains unchanged and, as so modified, the Agreement shall remain in full force and effect. Each of the Parties hereby represents and warrants that the representations contained in the Agreement are true on and as of the date hereof as if made by the Party on and as of said date.

(c) Governing Law. THIS ECR RIDER AND AMENDMENT 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 ECR RIDER AND AMENDMENT.

- (d) Successors and Assigns. This ECR Rider and Amendment shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.
- (e) Authorized Signatures; Notices. Each Party represents and warrants that the person who signs below on behalf of that Party has authority to execute this ECR Rider and Amendment on behalf of such Party and to bind such Party to this ECR Rider and Amendment. Any written notice required to be given under the terms of this ECR Rider and Amendment shall be given in accordance with the terms of the Agreement.
- (f) Effective Date. This ECR Rider and Amendment shall be deemed effective as of the Execution Date.
- (g) Further Agreements. This ECR Rider and Amendment shall not be amended, changed, modified, abrogated or superseded by a subsequent agreement unless such subsequent agreement is in the form of a written instrument signed by the Parties.
- (h) Counterparts; Electronic Signatures. This ECR Rider and Amendment may be executed in one or more counterparts, each of which will be deemed to be an original of this ECR Rider and Amendment and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this ECR Rider and Amendment and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this ECR Rider and Amendment as to the Parties and may be used in lieu of the original ECR Rider and Amendment for all purposes.

[Remainder of Page Left Intentionally Blank.]

IN WITNESS WHEREOF, the Parties have caused this Rider and Amendment to be duly executed as of the date of the Agreement.

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

SAN DIEGO GAS & ELECTRIC COMPANY, a California corporation.
By: _____
Emily Shults Vice President, Vice President – Energy Procurement

APPENDIX J
Subscribed Customer Reporting Form

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

Name	Service Address	SDG&E Service Account Number	SDG&E Meter Number	Capacity Subscribed (%)	Load Subscribed (kWh)	Load Served (kW)

*** End of Appendix J ***

POWER PURCHASE AND SALE AGREEMENT

between

[BUYER'S NAME]

and

[SELLER'S NAME]

(ID #[Number])

Pro Forma Agreement for CHP Facilities Request for Offers Program

TERMS THAT ARE BOXED AND SHADED IN LIGHT YELLOW AND/OR BRACKETED AND IN BLUE FONT ARE EITHER BUYER COMMENTS OR GENERATING FACILITY-TYPE SPECIFIC COMMENTS THAT SHOULD BE REMOVED, ACCEPTED OR COMPLETED, AS APPLICABLE.

THIS FORM OF AGREEMENT IS BUYER'S PRO FORMA FOR THIS CHP RFO.

SELLER MAY, AT ITS OPTION, REVISE THIS AGREEMENT, WHICH REVISIONS ARE SUBJECT TO FURTHER NEGOTIATION AND BUYER'S ACCEPTANCE. BUYER ENCOURAGES SELLER TO MAKE REVISIONS TO THE TERMS OF THIS AGREEMENT TO THE EXTENT IT ADDS VALUE (INCLUDING ALTERNATIVE METHODS TO THOSE IN SECTION 1.02(f) THAT PROVIDE GHG SAVINGS FOR BUYER) TO SELLER'S OFFER.

TABLE OF CONTENTS

LIST OF EXHIBITS	iii
PREAMBLE.....	1
RECITALS.....	1
ARTICLE ONE: SPECIAL CONDITIONS	3
1.01 Term	3
1.02 Generating Facility	4
1.03 Delivery Point.....	7
1.04 Capacity Performance Requirements	7
1.05 Maintenance Outages; Major Overhaul	7
1.06 Power Product Prices; GHG Compliance Costs.....	8
1.07 Requirements Applicable Solely to New CHP Facilities, Repowered CHP Facilities, and Certain Expanded CHP Facilities	9
1.08 Scheduling Coordinator Election	10
1.09 Economic Curtailment Option.....	10
1.10 Power Rating	10
ARTICLE TWO: SELLER'S SATISFACTION OF OBLIGATIONS BEFORE THE TERM START DATE; TERMINATION; CPUC APPROVAL	11
2.01 Seller's Satisfaction of Obligations before the Term Start Date.....	11
2.02 Termination Rights of the Parties.....	12
2.03 Rights and Obligations Surviving Termination.....	12
2.04 CPUC Filing and Approval of this Agreement	13
ARTICLE THREE: SELLER'S OBLIGATIONS.....	15
3.01 Conveyance of the Product; Retained Benefits.....	15
3.02 Resource Adequacy Rulings	16
3.03 Site Control.....	17
3.04 Permits.....	17
3.05 Transmission	17
3.06 CAISO Relationship.....	18
3.07 Generating Facility Modifications.....	19
3.08 Metering	20
3.09 Telemetry System.....	22
3.10 Provision of Information	22
3.11 Progress Reporting	24
3.12 Fuel Supply.....	24
3.13 Capacity Demonstration Tests; Resource Adequacy Demonstrations	24
3.14 Operation and Record Keeping	25
3.15 Power Product Curtailments at Transmission Provider's, CAISO's or Buyer's Request	27
3.16 Report of Lost Output.....	28
3.17 FERC Qualifying Cogeneration Facility Status	29
3.18 Notice of Cessation or Termination of Service Agreements.....	29
3.19 Buyer's Access Rights	30
3.20 Seller Financial Information.....	30
3.21 NERC Electric System Reliability Standards	33
3.22 Allocation of Availability Incentive Payments and Non-Availability Charges	34

3.23	Seller's Reporting Requirements.....	34
	ARTICLE FOUR: BUYER'S OBLIGATIONS.....	35
4.01	Obligation to Pay.....	35
4.02	Payment Adjustments.....	35
4.03	Payment Statement and Payment.....	36
4.04	GHG Compliance Costs.....	38
4.05	No Representation by Buyer.....	39
4.06	Buyer's Responsibility.....	39
4.07	Buyer's Reporting Requirements.....	39
	ARTICLE FIVE: FORCE MAJEURE.....	40
5.01	No Default for Force Majeure.....	40
5.02	Requirements Applicable to the Claiming Party.....	40
5.03	Termination.....	40
	ARTICLE SIX: EVENTS OF DEFAULT; REMEDIES.....	41
6.01	Events of Default.....	41
6.02	Early Termination.....	46
6.03	Termination Payment.....	46
	ARTICLE SEVEN: LIMITATIONS OF LIABILITIES.....	48
	ARTICLE EIGHT: GOVERNMENTAL CHARGES.....	50
8.01	Cooperation to Minimize Tax Liabilities.....	50
8.02	Governmental Charges.....	50
8.03	Providing Information to Taxing Governmental Authorities.....	50
	ARTICLE NINE: MISCELLANEOUS.....	51
9.01	Representations, Warranties and Covenants.....	51
9.02	Additional Covenants by Seller.....	52
9.03	Indemnity.....	53
9.04	Assignment.....	55
9.05	Consent to Collateral Assignment.....	56
9.06	Governing Law and Jury Trial Waiver.....	59
9.07	Notices.....	59
9.08	General.....	59
9.09	Confidentiality.....	61
9.10	Insurance.....	63
9.11	Nondedication.....	65
9.12	Mobile Sierra.....	65
9.13	Seller Ownership and Control of Generating Facility.....	65
9.14	Simple Interest Payments.....	66
9.15	Payments.....	66
9.16	Provisional Relief.....	66
	ARTICLE TEN: DISPUTE RESOLUTION.....	67
10.01	Dispute Resolution.....	67
10.02	Mediation.....	67
10.03	Arbitration.....	67
	SIGNATURES.....	70

LIST OF EXHIBITS

- A. Definitions
- B. Generating Facility and Site Description
- C. Capacity Demonstration Test for Firm Contract Capacity
- D. Monthly Contract Payment Calculation
 - D-1. Force Majeure Credit Value
 - D-2. Transmission Curtailment Credit Value
 - D-3. Economic Curtailment Credit Value
- E. Scheduling and Calculation of Maintenance Outage and Major Overhaul Credits
- F. Requirements Applicable Solely to New CHP Facilities, Repowered CHP Facilities and Certain Expanded CHP Facilities
- G. Scheduling Coordinator Services
- H. Milestone Progress Reporting Form
- I. Seller's Forecasting Submittal and Accuracy Requirements
- J. CAISO Charges
- K. Scheduling and Delivery Deviation Adjustments
- L. Physical Trade Settlement Amount
- M. SC Trade Settlement Amount
- N. Notice List
- O. Form of Guaranty Agreement
- P. Form of Letter of Credit
- Q. Seller's Milestone Schedule
- R. Outage Schedule Submittal Requirements
- S. Payment Adjustments if Buyer Assumes GHG Compliance Costs; GHG Reporting Requirements
- T. QF Efficiency Monitoring Program – Cogeneration Data Reporting Form
- U. Economic Curtailment Option for Negative Pricing in the Day-Ahead Market

POWER PURCHASE AND SALE AGREEMENT

between

[BUYER'S NAME]

and

[SELLER'S NAME]

(ID# [Number])

PREAMBLE

This Power Purchase and Sale Agreement by and between **[Buyer's name]**, a California corporation (“Buyer”), and **[Seller's name]**, a **[Seller's form of business entity and state of registration]** (“Seller”), together with the exhibits, attachments, and any applicable referenced collateral agreement or similar arrangement between the Parties that is expressly incorporated into this Agreement by the Parties (collectively, this “Agreement”), is made, effective and binding as of **[Date of execution]** (the “Effective Date”).

Buyer and Seller are sometimes referred to in this Agreement individually as a “Party” and jointly as the “Parties.” Unless the context otherwise specifies or requires, initially capitalized terms used in this Agreement have the meanings set forth in Exhibit A.

RECITALS

- A. On or about September 20, 2007, the CPUC issued Decision (“D.”) 07-09-040 (the “Decision”) which, among other things, directed Buyer to develop a form of a standard contract and offer such contract to qualifying facilities meeting the eligibility criteria set forth in the Decision.
- B. Commencing in May 2009, Pacific Gas and Electric Company, San Diego Gas and Electric Company, Southern California Edison Company, the California Cogeneration Council, the Cogeneration Association of California, the Energy Producers and Users Coalition, the Independent Energy Producers Association, the Division of Ratepayer Advocates of the California Public Utilities Commission, and The Utility Reform Network (collectively, the “Settling Parties”) entered into CPUC-facilitated settlement negotiations in order to resolve certain outstanding issues among the Settling Parties, including the implementation of the Decision.
- C. Pursuant to the settlement negotiations, the Settling Parties entered into that certain Settlement Agreement, dated **[Date of Settlement Agreement]** (the “Settlement”).

Agreement”), which resolved certain issues pending in Rulemakings 99-11-022, 04-04-003 and 04-04-025.

- D. The Settlement Agreement became effective on [] (the “Settlement Effective Date”).
- E. The Settling Parties, pursuant to the Settlement Agreement, established a request for offers program for eligible CHP Facilities and developed a pro forma agreement to be made available to such CHP Facilities as part of such request for offers program (the “CHP RFO Pro Forma”).

The Parties, intending to be legally bound, agree as follows:

ARTICLE ONE. SPECIAL CONDITIONS

{Buyer Comment: If the Term is greater than or equal to five years, before executing this Agreement, Seller must provide to Buyer documentation evidencing its compliance with the Greenhouse Gas Emissions Performance Standard set forth in D.07-01-039 and in subsequent CPUC rulings implementing D.07-01-039, and with any subsequent CPUC-established precondition to the execution of this Agreement, including any precondition set forth in the Settlement Agreement.}

In accordance with Sections 7 and 8 of the Settlement Agreement, before executing this Agreement, Seller must provide to Buyer anticipated Generating Facility operations estimates in order for Buyer to count this Agreement towards Buyer's GHG Emissions Reduction Target (as defined in the Settlement Agreement), which include reasonable estimates of (i) the total expected Useful Thermal Energy Output of the Generating Facility per Term Year, and (ii) the total expected electricity generation of the Generating Facility per Term Year. Buyer shall use such information as specified in Section 7 of the Settlement Agreement.}

1.01 Term.

- (a) The term of this Agreement (the "Term") commences on, or within 120 days before [Date]; *provided, however*, that Seller may change the date set forth in this Section 1.01(a) by providing Notice to Buyer at least one year before such date;
- (b) Seller shall provide Buyer with 30 days advance Notice confirming the exact date on which the Term commences, which date must be within the 120-day period set forth in Section 1.01(a) (the "Term Start Date");
- (c) The Term Start Date must occur on the first day of a calendar month;
- (d) The Term ends [Number of months] months after the Term Start Date (the "Term End Date"); and
- (e) Notwithstanding the proviso set forth in Section 1.01(a), the Term Start Date must occur within 60 months of CPUC Approval, subject to any extension of the Term Start Date as a result of a Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03) and Section 4(c)(ii) of Exhibit F.

{Buyer Comment: Select this Section 1.01 if the Generating Facility is a New CHP Facility or a Repowered CHP Facility. Seller designates the Term Start Date and the Term End Date; provided, however, that the Term must be no more than 12 years.}

- (a) The term of this Agreement (the "Term") commences on, or within 120 days before [Date]; *provided, however*, that Seller may change the date set forth in this Section 1.01(a) by providing Notice to Buyer at least one year before such date;

- (b) Seller shall provide Buyer with 30 days advance Notice confirming the exact date on which the Term commences, which date must be within the 120-day period set forth in Section 1.01(a) (the “Term Start Date”);
- (c) The Term Start Date must occur on the first day of a calendar month;
- (d) The Term ends [Number of months] months after the Term Start Date (the “Term End Date”); and
- (e) Notwithstanding the proviso set forth in Section 1.01(a), the Term Start Date must occur within 36 months of CPUC Approval, subject to any extension of the Term Start Date as a result of a Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03) and Section 4(c)(ii) of Exhibit F.

{Buyer Comment: Select this Section 1.01 if the Generating Facility is an Expanded CHP Facility. Seller designates the Term Start Date and the Term End Date; provided, however, (a) the Term must be no more than seven years if Seller has elected in Section 1.02(a) not to comply with the credit and collateral obligations set forth in this Agreement with respect to such Expanded CHP Facility, and (b) no more than 12 years if the Generating Facility is an Expanded CHP Facility, and Seller has elected in Section 1.02(a) to comply with the credit and collateral requirements set forth in this Agreement with respect to such Expanded CHP Facility.}

- (a) The term of this Agreement (the “Term”) commences on [Date] (the “Term Start Date”);
- (b) The Term ends [Number of months] months after the Term Start Date (the “Term End Date”);
- (c) Seller may change the Term Start Date set forth in this Section 1.01 by providing Notice to Buyer at least one year before such Term Start Date; and
- (d) Notwithstanding Section 1.01(c), the Term Start Date must occur within 24 months of the Effective Date, subject to any extension of the Term Start Date as a result of a Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03).

{Buyer Comment: Select this Section 1.01 if the Generating Facility is an Existing CHP Facility. Seller designates the Term Start Date and the Term End Date; provided, however, that the Term must be no more than seven years.}

1.02 Generating Facility.

- (a) Name; Designation. The name of the Generating Facility is [Generating Facility name], which:

_____ is a New CHP Facility;

_____ is an Existing CHP Facility;

_____ is or will be a Repowered CHP Facility on or before the Term Start Date;

_____ is or will be an Expanded CHP Facility on or before the Term Start Date, which elects to comply with the credit and collateral requirements set forth in this Agreement; or

_____ is or will be an Expanded CHP Facility on or before the Term Start Date, which elects not to comply with the credit and collateral requirements set forth in this Agreement.

- (b) Location; Site. The Generating Facility is located at [Generating Facility address], and is further described in Exhibit B.
- (c) CHP Facility Type. As of the Effective Date, the Generating Facility is a [“topping-cycle cogeneration facility”, as defined in 18 CFR Part 292, Section 292.202(d)] [“bottoming-cycle cogeneration facility”, as defined in 18 CFR Part 292, Section 292.202(e)].
- (d) Contract Capacity. As set forth in the following table, Seller may elect (i) only Firm Contract Capacity, (ii) only As-Available Contract Capacity, or (iii) both Firm Contract Capacity and As-Available Contract Capacity:

Month	Monthly Firm Contract Capacity (kW)	As-Available Contract Capacity (kW)	Net Contract Capacity (kW)
January	[]	[]	[]
February	[]	[]	[]
March	[]	[]	[]
April	[]	[]	[]
May	[]	[]	[]
June	[]	[]	[]
July	[]	[]	[]
August	[]	[]	[]
September	[]	[]	[]
October	[]	[]	[]
November	[]	[]	[]
December	[]	[]	[]

Firm Contract Capacity, As-Available Contract Capacity and Net Contract Capacity are subject to adjustment in accordance with Section 3.07(c) and, if the Generating Facility is (w) a New CHP Facility, (x) an Expanded CHP Facility, (y) a Repowered CHP Facility, or (z) as set forth in Section 5.2.4.4 of the Settlement Agreement, an Existing CHP Facility that is Operating in California but that has never entered into an agreement for the purchase and sale of electric energy with Buyer or any other California investor-owned utility, then, in each case, the Firm

Contract Capacity, As-Available Contract Capacity and Net Contract Capacity are subject to adjustment in accordance with Section 3.13(b) and Exhibit C, as applicable.

{Buyer Comment: The Net Contract Capacity must equal the sum of Firm Contract Capacity and As-Available Contract Capacity, and cannot exceed PMax.}

- (e) Expected Term Year Energy Production. The Expected Term Year Energy Production for each Term Year equals [] kWh. The Expected Term Year Energy Production may be revised in accordance with Section 3.07(c), or based on changes in the Site Host Load or the Site Host thermal requirements; *provided, however*, that such revision must be supported by a certification from a California-licensed professional engineer qualified to make a representation affirming that such revision is reasonable and based on (i) actual modifications to the Generating Facility performed or to be performed by Seller in accordance with and subject to Section 3.07(c), or (ii) changes in the Site Host Load or the Site Host thermal requirements. Such certification must include all data relied on to support the revised Expected Term Year Energy Production.

{Buyer Comment: Expected Term Year Energy Production cannot exceed Net Contract Capacity at 100% capacity factor applied over the Term Year.}

- (f) Efficiency.
- (i) The Generating Facility has an Efficiency Rating of []% (the “Expected ER”).
- (ii) If, at any time during the Term, the Efficiency Rating of the Generating Facility falls below the Expected ER (an “Efficiency Rating Deficiency”), Buyer shall send a Notice to Seller, which Notice shall require Seller, within 90 days after Seller’s receipt of Buyer’s Notice, to provide a written plan and schedule (the “Efficiency Rating Cure Plan”) for correcting the Efficiency Rating Deficiency. Within 30 days after Buyer’s timely receipt of the Efficiency Rating Cure Plan from Seller, Buyer shall provide a Notice to Seller either accepting or rejecting such Efficiency Rating Cure Plan. If Buyer rejects the Efficiency Rating Cure Plan, Buyer and Seller shall negotiate in good faith to rectify any deficiency in the Efficiency Rating Cure Plan. Upon Buyer’s acceptance of the Efficiency Rating Cure Plan, Buyer shall send a Notice to Seller, which Notice shall provide Seller with 180 days from the date of such Notice (the “Efficiency Rating Cure Period”) to rectify the Efficiency Rating Deficiency. On or before the last day of the Efficiency Rating Cure Period (the “Efficiency Rating Cure Date”), Seller must demonstrate to Buyer’s reasonable satisfaction that Seller has cured the Efficiency Rating Deficiency by establishing that (1) Seller has satisfied its obligations under the Efficiency Rating Cure Plan, and (2) the Efficiency Rating of the Generating Facility

is equal to or greater than the Expected ER (such demonstration may include, at Buyer's election, the delivery by Seller to Buyer of certification, including all supporting data, from a qualified independent California-licensed professional engineer, which certification makes the representations set forth in Sections 1.02(f)(ii)(1) and (2)).

(iii) Notwithstanding anything to the contrary set forth in Section 1.02(f)(ii), Seller shall only have the right to cure an Efficiency Rating Deficiency, in accordance with Section 1.02(f)(ii), two times during the Term, such that any subsequent Efficiency Rating Deficiency is an Event of Default under Section 6.01(c)(xix).

(iv) Seller is solely liable for any costs, fees or penalties assessed upon Seller or Buyer by any Governmental Authority resulting from any Efficiency Rating Deficiency.

1.03 Delivery Point. The delivery point is the point of delivery of the Power Product to the CAISO Controlled Grid (the "Delivery Point"). Seller shall provide and convey to Buyer the Power Product from the Generating Facility at the Delivery Point. Title to and risk of loss related to the Power Product transfer from Seller to Buyer at the Delivery Point.

1.04 Capacity Performance Requirements. As further described in Exhibit D, if the Generating Facility elects to provide Firm Contract Capacity, then the Generating Facility must have a minimum Firm Contract Capacity performance requirement of 95% to earn the Maximum Firm Capacity Payment and a minimum Capacity Performance Requirement of 60% to earn any portion of the Maximum Firm Capacity Payment.

1.05 Maintenance Outages; Major Overhaul.

(a) The total Maintenance Debit Value for Maintenance Outages, as determined in accordance with Exhibit E, may not exceed 550 hours in the first Term Year. At the end of each Term Year following the first Term Year, up to a maximum of 50 unused hours may be carried over to the following Term Year. For each of the Term Years after the first Term Year, the total Maintenance Debit Value for Maintenance Outages may not exceed 550 hours plus hours carried over from prior Term Years; *provided, however*, that such Maintenance Debit Value may not exceed 600 hours in any Term Year.

(b) If the Term is greater than or equal to five years, Seller may (i) request up to two Major Overhaul Allowances (in accordance with Exhibit E) of up to 750 total hours for each Major Overhaul, and (ii) schedule up to two Major Overhauls; *provided, however*, that the second Major Overhaul may not occur within 48 months after the completion of the first Major Overhaul and the Maintenance Debit Value for each Major Overhaul may not exceed 750 hours.

- (c) If Seller utilizes all of its Major Overhaul Allowance during a Major Overhaul, the remaining portion of the Major Overhaul may be converted to a Maintenance Outage as far as Maintenance Credit Value and Maintenance Debit Value are concerned; *provided, however*, that Seller submits a Notice to Buyer of such conversion within 60 days of the end of such Major Overhaul.
- (d) During the Peak Months, Seller may only schedule Maintenance Outages during the non-peak hours of such Peak Months, and the monthly Maintenance Debit Value for Maintenance Outages during the Peak Months may not exceed 12 non-peak hours per Peak Month. Such limitation is part of, and not in addition to, the annual limits as set forth in Section 1.05(a).

1.06 Power Product Prices; GHG Compliance Costs.

- (a) Firm Capacity Price. The Firm Capacity Price equals \$[] per kW-year.
- (b) As-Available Capacity Price. The As-Available Capacity Price equals \$[] per kW-year.

{Buyer Comment: In accordance with the requirements of this CHP-only RFO program, Seller must provide as part of its offer package (i) a pricing option whereby Seller assumes GHG Compliance Cost, and (ii) a pricing option whereby Seller elects to pass-through GHG Compliance Costs to Buyer. Seller may, at its election, also offer a third hybrid pricing option whereby Seller and Buyer allocate GHG Compliance Costs between the Parties. The Seller provided pricing options may, at Seller's election, be reflected in the capacity price or the energy price or both capacity and energy price. Buyer may select, in its sole discretion, which of these pricing options, if any, Buyer chooses as part of this CHP-only RFO program. }

- (c) TOD Period Energy Price. The TOD Period Energy Price is set forth in Section 2 of Exhibit D.
- (d) Allocation of GHG Compliance Costs.

_____ Seller is solely responsible for all GHG Compliance Costs and all other costs associated with implementation and regulation of Greenhouse Gas emissions with respect to Seller or the Generating Facility.

_____ Buyer is solely responsible for all GHG Compliance Costs in accordance with this Agreement. Other than as set forth in this Agreement, Seller is solely responsible for all costs associated with the implementation and regulation of Greenhouse Gas emissions with respect to Seller or the Generating Facility. The Parties agree to comply with their respective obligations as set forth in Exhibit S.

_____ The Parties agree to allocate GHG Compliances Costs as follows: *[Seller may, at its option, provide an alternative to the two options set forth immediately above]*. Other than as set forth in this Agreement, Seller is solely responsible for

all GHG Compliance Costs and all other costs associated with implementation and regulation of Greenhouse Gas emissions with respect to Seller or the Generating Facility. The Parties agree to comply with their respective obligations as set forth in Exhibit S.

{Buyer Comment: If Buyer selects Seller's offer as part of this CHP-only RFO, Buyer may select, in its sole discretion, one of the options set forth in Section 1.06(d), subject to the restrictions set forth in Buyer's Comment immediately above and the requirements of the Settlement Agreement. Section 4.2.7 of the Settlement Agreement provides that that Seller must offer one option whereby Seller assumes GHG Compliance Costs and one option whereby Seller elects to pass-through GHG Compliance Costs to Buyer. As set forth in Section 4.2.7.3 of the Settlement Agreement, "Seller and Buyer may elect a hybrid approach for GHG cost recovery. For example, Buyer covers GHG costs up to a certain Heat Rate and Seller assumes additional costs above that Heat Rate. This hybrid approach may create an efficiency incentive for the Seller to provide additional reductions of GHG emissions."}

1.07 Requirements Applicable Solely to New CHP Facilities, Repowered CHP Facilities, and Certain Expanded CHP Facilities. If the Generating Facility is a New CHP Facility, a Repowered CHP Facility, or an Expanded CHP Facility that has elected in Section 1.02(a) to comply with the credit and collateral requirements set forth in this Agreement, the provisions of this Section 1.07 also apply to Seller.

(a) Credit and Collateral Requirements.

- (i) Seller shall post and thereafter maintain the Development Security in accordance with Section 4(b) of Exhibit F.
- (ii) Seller shall post and thereafter maintain the Performance Assurance, in accordance with Section 2(a) of Exhibit F, in an amount equal to [Option 1: 12 months of expected total Net Contract Capacity revenues] [Option 2: 12 months of expected total revenues] [Option 3: five percent of the expected total revenues] [Option 4: [As proposed by Seller, subject to further negotiations between the Parties]] of the Generating Facility under this Agreement (the "Performance Assurance Amount") The initial Performance Assurance Amount equals \$[____]. The Performance Assurance Amount will be revised upon any change to the Expected Term Year Energy Production.

{Buyer Comment: Select one of the three options for posting Performance Assurance listed above. Alternatively, Seller may provide, at its option, an alternative to the options listed above for posting Performance Assurance, which option shall be subject to further negotiations between the Parties.}

- (iii) Seller shall comply with all of the provisions of Exhibit F.

(b) Seller's Guarantor; Guaranty Amount; Guarantor Cross Default Amount.

- (i) Seller's Guarantor, if any, is [Name of Guarantor]. Unless otherwise set forth in the immediately preceding sentence, the Guarantor set forth in this Section 1.07(b)(i) does not include any parent, subsidiary or Related Entity of Seller.
- (ii) Guarantor shall guarantee \$[Performance Assurance Amount x 1.25].
- (iii) The Guarantor Cross Default Amount, if any, equals \$[_____].

{Buyer Comment: Guarantor Cross Default Amount must equal two percent of Guarantor's tangible net worth.}

- 1.08 Scheduling Coordinator Election. [Buyer][Seller][_____, an agent of Seller] is the Scheduling Coordinator under this Agreement. Notwithstanding anything to the contrary set forth in this Agreement, Buyer must be the Scheduling Coordinator under this Agreement if the Generating Facility is an Existing CHP Facility and Seller intends to utilize the exemptions set forth in, and subject to, Sections 3.06(b) or 3.09(b).
- 1.09 Economic Curtailment Option. Buyer [has][does not have] the right to request that Seller curtail the Generating Facility's production of the Power Product in accordance with Exhibit U.
- 1.10 Power Rating. If the Generating Facility is an Existing CHP Facility, on the Effective Date, the Power Rating of the Generating Facility equals [] MW. Notwithstanding anything to the contrary set forth in this Agreement, the Power Rating of the Generating Facility (whether such Generating Facility is a New CHP Facility, an Existing CHP Facility, a Repowered CHP Facility or an Expanded CHP Facility) must always exceed 5 MW.

*** End of Article One ***

ARTICLE TWO. SELLER'S SATISFACTION OF OBLIGATIONS BEFORE THE TERM START DATE; TERMINATION; CPUC APPROVAL

2.01 Seller's Satisfaction of Obligations before the Term Start Date. Seller shall satisfy each of the following obligations before the Term Start Date:

- (a) The Generating Facility is a CHP Facility, subject to Section 3.17(c);
- (b) Seller enters into all agreements, obtains all Governmental Authority approvals and Permits, and takes all steps necessary for it to:
 - (i) Operate the Generating Facility;
 - (ii) Deliver electric energy from the Generating Facility to the Delivery Point; and
 - (iii) Schedule, or arrange for a third party or Buyer to Schedule, the electric energy produced by the Generating Facility with the CAISO;
- (c) Seller's Scheduling Coordinator, as set forth in Section 1.08, is authorized by the CAISO to Schedule the electric energy produced by the Generating Facility with the CAISO;
- (d) Seller satisfies its obligation to install the CAISO-Approved Meters, as set forth in this Agreement;
- (e) Seller furnishes to Buyer the insurance documents required under Section 9.10(c);
- (f) Seller is in compliance with the CAISO Tariff as set forth in this Agreement;
- (g) Seller enters into and fulfills all of its obligations under (i) the applicable interconnection agreements with the applicable Transmission Provider that are required to enable Parallel Operation of the Generating Facility with the interconnected electric system and the CAISO Controlled Grid, and (ii) any transmission, distribution or other service agreement that are required to enable Seller to transmit electric energy from the Generating Facility to the Delivery Point;
- (h) Seller furnishes to Buyer the documents required under Section 3.05;
- (i) If Buyer is Scheduling Coordinator and the Generating Facility is PIRP-eligible, then the Generating Facility is certified as a PIRP resource by the CAISO;
- (j) If the Generating Facility is a New CHP Facility, a Repowered CHP Facility, or an Expanded CHP Facility that has elected in Section 1.02(a) to comply with the credit and collateral requirements set forth in this Agreement, Seller has posted

with Buyer the Performance Assurance Amount in accordance with Section 1.07 and Exhibit F; and

- (k) If the Generating Facility is a New CHP Facility, a Repowered CHP Facility, or an Expanded CHP Facility, Seller shall provide the Power Rating Notice to Buyer.

2.02 Termination Rights of the Parties.

- (a) [Intentionally omitted.]
- (b) [Intentionally omitted.]
- (c) Event of Default. In the event of an uncured Event of Default or an Event of Default for which there is no opportunity for cure permitted in this Agreement, the Non-Defaulting Party may, at its option, terminate this Agreement as set forth in Section 6.02 and, if the Non-Defaulting Party is Buyer, then Seller (or any entity over which Seller or any owner or manager of Seller exercises control) agrees to waive any right it may have under PURPA, or otherwise, to enter into any new mandatory must-purchase contract (including the Transition PPA, the QF PPA or the Optional As-Available PPA, as such terms are defined in the Settlement Agreement) to sell electric energy, capacity or Related Products from the Generating Facility to Buyer or any other California investor-owned utility for a period of 365 days following the date of such termination. For purposes of this Section 2.02(c), “control” means the direct or indirect ownership of 20% or more of the outstanding capital stock or other equity interests having ordinary voting power.
- (d) End of Term. This Agreement automatically terminates at 11:59 p.m. PPT on the Term End Date.
- (e) Failure to Obtain CPUC Approval. Either Party has the right to terminate this Agreement on Notice, which will be effective five Business Days after such Notice is given, if CPUC Approval has not been obtained or waived by Buyer in its sole discretion within [180] [365] days after Buyer files its request for CPUC Approval and a Notice of termination is given on or before the [210th] [395th] day after Buyer files the request for CPUC Approval.

{Buyer Comment: Select “180” and “210th” if this Agreement will be filed as a Tier 2 advice letter with the CPUC. Select “365” and “395th” if this Agreement will be filed as a Tier 3 advice letter with the CPUC.}

- 2.03 Rights and Obligations Surviving Termination. The rights and obligations of the Parties that are intended to survive a termination of this Agreement are all such rights and obligations that this Agreement expressly provides survive such termination as well as those rights and obligations arising from either Parties’ covenants, agreements,

representations or warranties applicable to, or to be performed, at, before or as a result of the termination of this Agreement, including:

- (a) The obligation of Buyer to make all outstanding Monthly Contract Payments for periods before termination of this Agreement;
- (b) The obligation of Buyer to invoice Seller for all payment adjustments for periods before termination of this Agreement, as set forth in Section 4.02;
- (c) The obligation of Seller to pay any Buyer payment-adjustment invoice described in Section 4.03(b) for periods before termination of this Agreement within 30 days of Seller's receipt of such invoice;
- (d) The obligation to make a Termination Payment, as set forth in Section 6.03;
- (e) The indemnity obligations, as set forth in Section 9.03;
- (f) The obligation of confidentiality, as set forth in Section 9.09;
- (g) The right to pursue remedies under Section 6.02(c);
- (h) The limitation of damages under Article Seven;
- (i) If the Generating Facility is a New CHP Facility, a Repowered CHP Facility, or an Expanded CHP Facility that has elected in Section 1.02(a) to comply with the credit and collateral requirements set forth in this Agreement, the obligation of Seller to post Performance Assurance in accordance with Section 1.07 and Exhibit E; and
- (j) If Section 1.06(d) provides that Buyer has assumed some or all of the GHG Compliance Costs under this Agreement, the obligation of Buyer or Seller, as applicable, to make payments, if any, after the termination of this Agreement, as set forth in Section 2(c) of Exhibit S.

2.04 CPUC Filing and Approval of this Agreement.

- (a) Within 60 days after the Effective Date, Buyer shall file with the CPUC the appropriate request for CPUC Approval. Buyer shall expeditiously seek CPUC Approval, including promptly responding to any requests for information related to the request for CPUC Approval. Seller shall use commercially reasonable efforts to support Buyer in obtaining CPUC Approval. Buyer has no obligation to seek rehearing or to appeal a CPUC decision which fails to approve this Agreement or which contains findings required for CPUC Approval with conditions or modifications unacceptable to either Party.

- (b) Before the Term Start Date, Buyer must have obtained or waived CPUC Approval.

**** End of Article Two ****

ARTICLE THREE. SELLER'S OBLIGATIONS

3.01 Conveyance of the Product; Retained Benefits.

- (a) Product. During the Term, Seller shall provide and convey the Product to Buyer in accordance with the terms of this Agreement, and Buyer shall have the exclusive right to the Product and all benefits derived therefrom, including the exclusive right to sell, convey, transfer, allocate, designate, award, report or otherwise provide any and all of the Product purchased under this Agreement and the right to all revenues generated from the use, sale or marketing of the Product.
- (b) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with the Related Products as part of the Product being delivered during the Term. Seller represents and warrants that Seller holds the rights to all Green Attributes associated with the Related Products, 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.
- (c) Further Action by Seller. Seller shall, at its own cost, take all reasonable actions and execute all documents or instruments that are reasonable and necessary to effectuate the use of the Related Products for Buyer's benefit throughout the Term, which actions may include:
 - (i) Cooperating with the Governmental Authority responsible for resource adequacy administration to certify the Generating Facility for resource adequacy purposes;
 - (ii) Testing the Generating Facility as may be required to certify the Generating Facility for resource adequacy purposes in accordance with the requirements set forth in the CAISO Tariff or as otherwise agreed to by the Parties;
 - (iii) Committing to Buyer the Net Contract Capacity; and
 - (iv) Complying with Applicable Laws regarding the registration, transfer or ownership of Green Attributes associated with the Related Products, including, if applicable to the Generating Facility, participation in WREGIS or other process recognized under Applicable Laws. With respect to WREGIS, at Buyer's option, Seller shall cause and allow Buyer to be the "Qualified Reporting Entity" and "Account Holder" (as these two terms are defined by WREGIS) for the Generating Facility;
 - (v) Complying with all CAISO Tariff requirements applicable to a Resource Adequacy Resource; and

- (vi) If Buyer is not the Scheduling Coordinator:
 - 1) Timely submitting, or causing Seller's Scheduling Coordinator to timely submit, Supply Plans to identify and confirm the Net Qualifying Capacity of the Generating Facility sold to Buyer as a Resource Adequacy Resource; and
 - 2) Causing the Generating Facility's Scheduling Coordinator to certify to Buyer, within 15 Business Days before the relevant deadline for any applicable RAR Showing or LAR Showing, that Buyer will be credited with the Net Qualifying Capacity of the Generating Facility for such RAR Showing or LAR Showing in the Generating Facility's Scheduling Coordinator's Supply Plan.
- (d) Retained Benefits. Seller shall retain for its own use or disposition all Financial Incentives and all attributes, benefits and credits associated with the Generating Facility and the electrical or thermal energy produced therefrom, other than the Power Product and the Related Products. Subject to Seller's compliance with the applicable FERC rules and regulations, Seller may use, provide and convey any electric energy, capacity, Green Attributes, Capacity Attributes, Resource Adequacy Benefits, or any other product or benefit associated with the Generating Facility or the output thereof before the Term Start Date.

3.02 Resource Adequacy Rulings. During the Term, Seller shall grant, pledge, assign and otherwise commit to Buyer the generating capacity of the Generating Facility associated with the Related Products in order for Buyer to use in meeting its resource adequacy obligations under any Resource Adequacy Ruling. Seller:

- (a) Has not used, granted, pledged, assigned or otherwise committed any portion of the generating capacity of the Generating Facility associated with the Related Products to meet the Resource Adequacy Rulings of, or to confer Resource Adequacy Benefits on, any Person other than Buyer;
- (b) Will not during the Term use, grant, pledge, assign or otherwise commit any portion of the generating capacity of the Generating Facility associated with the Related Products to meet the Resource Adequacy Rulings of, or to confer Resource Adequacy Benefits on, any Person other than Buyer; and
- (c) Shall take all reasonable actions (including complying with all current and future CAISO Tariff provisions and decisions of the CPUC or any other Governmental Authority that address Resource Adequacy Rulings) and execute all documents that are reasonable and necessary to effect the use of the generating capacity of the Generating Facility associated with the Related Products for Buyer's sole benefit throughout the Term.

3.03 Site Control.

- (a) Seller shall have Site Control as of the earlier of: (i) the Term Start Date, and (ii) any period before the Term Start Date to the extent necessary for Seller to perform its obligations under this Agreement and, in each case, will maintain Site Control throughout the Term. Seller shall provide Buyer with prompt Notice of any change in the status of Seller's Site Control.
- (b) If the Generating Facility is a New CHP Facility, Seller shall provide Buyer with Notice of the status of its Site Control before commencing construction of the Generating Facility.

3.04 Permits. Seller shall obtain and maintain any and all Permits necessary for the Operation of the Generating Facility and to deliver electric energy from the Generating Facility to the Delivery Point.

3.05 Transmission.

- (a) Interconnection Studies. Seller has provided Buyer with true and complete copies of all Interconnection Studies received by Seller for the Generating Facility after the date that is 24 months before the Effective Date.
- (b) Seller's Responsibility. Seller shall obtain and maintain all distribution, transmission and interconnection rights and agreements (including all Governmental Authority approvals) required to enable Parallel Operation of the Generating Facility with the Transmission Provider's electric system and the applicable Control Area operator's electric grid and to effect Scheduling of the electric energy from the Generating Facility and transmission and delivery to the Delivery Point.

Except as otherwise provided in its interconnection agreement, the CAISO Tariff, or the Transmission Provider's tariff, rules or regulations, Seller shall pay all Transmission Provider charges or other charges directly caused by, associated with, or allocated to the following:

- (i) All required Interconnection Studies, facilities upgrades, and agreements;
- (ii) Interconnection of the Generating Facility to the Transmission Provider's electric system;
- (iii) Any costs or fees associated with obtaining and maintaining a wholesale distribution access tariff agreement, if applicable; and
- (iv) The transmission and delivery of electric energy from the Generating Facility to the Delivery Point.

- (c) Acknowledgement. The Parties acknowledge and agree that any other agreement between Seller and Buyer, including any interconnection agreements, is separate and apart from this Agreement and does not modify or add to the Parties' obligations under this Agreement, and that any Party's breach under such other agreement does not excuse such Party's nonperformance under this Agreement, except to the extent that such breach constitutes a Force Majeure under this Agreement.

3.06 CAISO Relationship.

- (a) Throughout the Term, Seller shall comply with all applicable provisions of the CAISO Tariff (including complying with any exemption obtained from the CAISO pursuant to the CAISO Tariff), as determined by the CAISO, including securing and maintaining in full force all of the CAISO agreements, certifications and approvals required in order for the Generating Facility to comply with the applicable provisions of the CAISO Tariff.
- (b) Notwithstanding anything to the contrary set forth in Section 3.06(a), if (i) the Generating Facility is an Existing CHP Facility, (ii) Buyer is the Scheduling Coordinator under this Agreement, and (iii) Buyer and Seller were, immediately before the Effective Date, parties to the Existing PPA, then, to the extent that Seller would be out of compliance with the CAISO Tariff as of the Term Start Date if Seller has not installed one or more CAISO-Approved Meters for the Generating Facility on or before the Term Start Date, Seller will not be in breach of this Agreement with respect to such requirement to install CAISO-Approved Meter(s) if Seller installs such CAISO-Approved Meter(s) within 180 calendar days after the Effective Date; *provided, however*, that Seller must demonstrate progress toward compliance with the CAISO Tariff requirement to install CAISO-Approved Meter(s) by complying with a milestone schedule specified by the CAISO in consultation with Seller for satisfaction of this requirement within the 180-calendar-day compliance period. Seller may request further extensions from the CAISO (pursuant to the CAISO Tariff) with respect to Seller's requirement that the CAISO-Approved Meters for the Generating Facility be installed on or before the Term Start Date, which extensions, if approved by the CAISO, must be in writing and provided to Buyer by Seller upon Buyer's request.
- (c) Buyer agrees that, subject to the limitation set forth in Section 3.06(b) and upon the CAISO's request, pending the installation of the CAISO-Approved Meter(s) by Seller for the Generating Facility, Buyer shall provide to the CAISO any settlement quality meter data reasonably requested by the CAISO for settlement purposes.

3.07 Generating Facility Modifications.

- (a) Seller is responsible for the design, procurement and construction of all modifications necessary for the Generating Facility to meet the requirements of this Agreement and to comply with any restriction set forth in any Permit.
- (b) Subject to Section 3.07(c), Seller shall provide 30 days advance Notice to Buyer if there is any modification (other than a routine fluctuation in output or consumption) of the Generating Facility, the Site Host Load or operations related to the Site Host Load changing:
 - (i) Electric energy output by five percent of Expected Term Year Energy Production; or
 - (ii) The type of Primary Fuel consumed by the Generating Facility.
- (c) Seller shall only materially modify the Generating Facility if:
 - (i) Such modification is necessary because of (1) an imminent or actual mechanical failure of the Generating Facility, or (2) a mechanical defect of the Generating Facility that affects 30% of comparable equipment, in each case that is not a result of Seller's negligence or failure to maintain the Generating Facility in accordance with Prudent Electrical Practices; and
 - (ii) Seller provides Notice to Buyer as soon as possible after (1) such actual mechanical failure of the Generating Facility, or (2) Seller determines in its reasonable discretion that a mechanical failure of the Generating Facility is imminent; and
 - (iii) A qualified California-licensed professional engineer verifies that the equipment that will be used to modify the Generating Facility is not oversized relative to other equipment on the market; and
 - (iv) Results in capacity added to the Generating Facility over the Term that is within the applicable MW limits set forth in the following table (for a Generating Facility with multiple turbines, the limits below are limits per turbine):

Current Turbine Name Plate on the Effective Date	Increase to Turbine Name Plate Over the Term
10MW or Less	5MW
Greater than 10MW but less than 20MW	10MW
Greater than or equal to 20MW but less than 25MW	15MW

Greater than or equal to 25MW but less than 50MW	20MW
Greater than or equal to 50MW but less than 100MW	25MW
Greater than or equal to 100 but less than 200MW	35MW
Greater than or equal to 200 but less than 350MW	45MW
Greater than or equal 350MW	50MW

Or,

- (v) Such modification is reasonably necessary to respond to a Force Majeure or a change in law or regulation, and a qualified California-licensed professional engineer verifies that such modification is not oversized relative to other equipment on the market.
- (d) Separate and distinct from Seller's rights under Section 3.07(c), Seller in its sole discretion may modify the Generating Facility if such modification does not increase the Power Rating of the Generating Facility by more than 10 percent. Such 10 percent increase shall be based upon the Power Rating of the Generating Facility on (i) the Effective Date (as set forth in Section 1.10), if the Generating Facility is an Existing CHP Facility, or (ii) the Term Start Date (as set forth in the Power Rating Notice), if the Generating Facility is a New CHP Facility, an Expanded CHP Facility or a Repowered CHP Facility.
- (e) With respect to Section 3.07(c), Seller shall bear the cost of the professional engineer and Seller shall secure all studies and upgrades necessitated by or associated with the modification of the Generating Facility.
- (f) Seller acknowledges that nothing in this Section 3.07 excuses Seller from any requirements of the CAISO's interconnection process or any other applicable interconnection process.
- (g) Seller is solely responsible for all GHG Compliance Costs and all other costs associated with the implementation and regulation of Greenhouse Gas emissions with respect to Seller or the Generating Facility to the extent that such GHG Compliance Costs or other costs result from Seller's modification of the Generating Facility in accordance with this Section 3.07.

3.08 Metering.

- (a) CAISO-Approved Meter. Seller shall, at its own cost, install, maintain and test all CAISO-Approved Meters pursuant to the CAISO Tariff or other applicable metering requirements.
- (b) Check Meter. Buyer may, at its sole cost, furnish and install one Check Meter at the interconnection associated with the Generating Facility at a location

designated by Seller or any other location mutually agreeable to the Parties. The Check Meter location must allow for the Check Meter to be interconnected with Buyer's communication network to permit:

- (i) Periodic, remote collection of revenue quality meter data; and
- (ii) Back-up real time transmission of operating-quality meter data through the Telemetry System set forth in Section 3.09; *provided, however*, that the transmission of such meter data through the Telemetry System is permitted by the CAISO.

If the Generating Facility provides Firm Contract Capacity and is a New CHP Facility, an Expanded CHP Facility or a Repowered CHP Facility, before commencement of the Capacity Demonstration Test, Buyer shall provide a Notice to Seller providing Seller with access to all Check Meters for all meter data through a secure internet website.

Buyer shall test and recalibrate the Check Meter at least once every Term Year. The Check Meter will be locked or sealed, and the lock or seal shall be broken only by a Buyer representative. Seller has the right to be present whenever such lock or seal is broken. Buyer shall replace the Check Meter battery at least once every 36 months; *provided, however*, if the Check Meter battery fails, Buyer shall promptly replace such battery.

(c) Use of Check Meter for Back-Up Purposes.

- (i) Buyer shall routinely compare the Check Meter data to the CAISO-Approved Meter data.
- (ii) If the deviation between the CAISO-Approved Meter data (after adjusting (1) for all appropriate compensation and correction factors applied, if applicable, by the CAISO to the CAISO-Approved Meter, or (2) for any deviation that may result due to the CAISO-Approved Meter and Check Meter being physically situated in different locations) and the Check Meter data for any comparison is greater than 0.3%, Buyer shall provide Notice to Seller of such deviation and the Parties shall mutually arrange for a meter check or recertification of the Check Meter or CAISO-Approved Meter, as applicable.
- (iii) Each Party shall bear its own costs for any meter check or recertification.
- (iv) Testing procedures and standards for the Check Meter will be the same as for a comparable Buyer-owned meter. Seller shall have the right to have representatives present during all such tests.

- (v) The Check Meter is intended to be used (1) for back-up purposes in the event of a failure or other malfunction of the CAISO-Approved Meter, and (2) in the event Seller has not installed the CAISO-Approved Meter, as further described in Section 3.06(b). Data from the Check Meter will only be used to validate the CAISO-Approved Meter data and, in the event of a failure or other malfunction of the CAISO-Approved Meter, or in accordance with and subject to Section 3.06(b), in place of the CAISO-Approved Meter until such time that the CAISO-Approved Meter is certified.

3.09 Telemetry System.

- (a) Seller is responsible for designing, furnishing, installing, maintaining and testing a real time Telemetry System in accordance with the CAISO Tariff provisions applicable to the Generating Facility. Seller has the right to request any exemption from such requirements from the CAISO so long as it is obtained pursuant to the CAISO Tariff.
- (b) Notwithstanding anything to the contrary set forth in Section 3.09(a), if (i) the Generating Facility is an Existing CHP Facility, (ii) Buyer is the Scheduling Coordinator under this Agreement, and (iii) Buyer and Seller were, immediately before the Effective Date, parties to the Existing PPA, then, to the extent that Seller would be out of compliance with the CAISO Tariff as of the Term Start Date if Seller has not complied with Section 3.09(a) on or before the Term Start Date, Seller will not be in breach of this Agreement if Seller fully complies with Section 3.09(a) within 180 calendar days after the Effective Date; *provided, however,* that Seller must demonstrate progress toward compliance with the CAISO Tariff requirement set forth in Section 3.09(a) by complying with a milestone schedule specified by the CAISO in consultation with Seller for satisfaction of this requirement within the 180-calendar-day compliance period. Seller may request further extensions from the CAISO (pursuant to the CAISO Tariff) with respect to the requirement set forth in Section 3.09(a), which extensions, if approved by the CAISO, must be in writing and provided to Buyer by Seller upon Buyer's request.
- (c) Buyer agrees that, subject to the limitation set forth in Section 3.09(b) and upon the CAISO's request, pending Seller compliance with Section 3.09(a), Buyer shall provide to the CAISO any telemetry data reasonably requested by the CAISO for operating information purposes.

3.10 Provision of Information.

- (a) Within 30 days after the Effective Date, Seller shall provide to Buyer (to the extent not already in Buyer's possession), subject to Section 9.09:

- (i) All currently operative agreements with providers of distribution, transmission or interconnection services for the Generating Facility and all amendments thereto;
 - (ii) Any currently operative filings at FERC, including any rulings, orders or other pleadings or papers filed by FERC, concerning the qualification of the Generating Facility as a Qualifying Cogeneration Facility;
 - (iii) Any Permits reasonably requested by Buyer concerning the Operation or licensing of the Generating Facility, and any applications or filings requesting or pertaining to such Permits;
 - (iv) Each of the following engineering documents for the Generating Facility:
 - 1) Site plan drawings;
 - 2) Electrical one-line diagrams;
 - 3) Control and data acquisition details and configuration documents;
 - 4) Major electrical equipment specifications;
 - 5) Process flow diagrams;
 - 6) Piping and instrumentation diagrams;
 - 7) General arrangement drawings; and
 - 8) Aerial photographs of the Site, if any; and
 - (v) Instrument specifications, installation instructions, operating manuals, maintenance procedures and wiring diagrams for the CAISO-Approved Meter(s) and the Telemetry System reasonably requested by Buyer.
- (b) If applicable and subject to Section 9.09, as soon as possible, Seller shall provide to Buyer (i) engineering specifications and design drawings for the Telemetry System, and (ii) annual test reports for the CAISO-Approved Meters.
- (c) Subject to Section 9.09 and upon Buyer's request, Seller shall make commercially reasonable efforts to provide Buyer with all documentation necessary for Buyer to comply with any discovery or data request for information from the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal, which commercially reasonable efforts shall, at a minimum, include providing Buyer with all documentation regarding the operational characteristics or past performance of the Generating Facility if such documentation is requested by the CPUC.

- 3.11 Progress Reporting. If the Generating Facility is a New CHP Facility, Seller shall use commercially reasonable efforts to meet the Milestone Schedule and shall advise Buyer as soon as reasonably practicable of any problems or issues of which Seller is aware which may materially impact its ability to meet the Milestone Schedule.

No later than the 10th day of each month while Seller has not yet met one or more milestones set forth in the Milestone Schedule, and within five days of Buyer's request, Seller shall, in accordance with Exhibit H, prepare and provide to Buyer a written report detailing Seller's progress toward meeting the Milestone Schedule.

Seller shall include in such report a list of all letters, notices and Permits to or from any Governmental Authority (and the CAISO) applicable to Seller's effort to meet the Milestone Schedule, and shall provide any such documents as may be reasonably requested on Notice from Buyer.

- 3.12 Fuel Supply. Seller shall supply all fuel required for the Power Product and any testing or demonstration of the Generating Facility.

- 3.13 Capacity Demonstration Tests; Resource Adequacy Demonstrations.

(a) If the Generating Facility provides only Firm Contract Capacity and is (i) a New CHP Facility, (ii) a Repowered CHP Facility, (iii) an Expanded CHP Facility, or (iv) as set forth in Section 5.2.4.4 of the Settlement Agreement, an Existing CHP Facility that is Operating in California but that has never entered into an agreement for the purchase and sale of electric energy with Buyer or any other California investor-owned utility, then Seller shall complete the Capacity Demonstration Test in accordance with Exhibit C. To the extent the Firm Contract Capacity set forth in Section 1.02(d) on the Effective Date and the Firm Contract Capacity demonstrated in accordance with Exhibit C are different, Section 1.02(d) will be adjusted to reflect the Firm Contract Capacity demonstrated in accordance with and subject to the limitations set forth in Exhibit C. The Reportable Capacity determined pursuant to Section 10 of Exhibit C will be used by Buyer to determine Buyer's MW Target with respect to this Agreement.

(b) If the Generating Facility provides only As-Available Contract Capacity and is (i) a New CHP Facility, (ii) a Repowered CHP Facility, (iii) an Expanded CHP Facility, or (iv) as set forth in Section 5.2.4.4 of the Settlement Agreement, an Existing CHP Facility that is Operating in California but that has never entered into an agreement for the purchase and sale of electric energy with Buyer or any other California investor-owned utility, then Seller shall, on or before the Firm Operation Date, satisfy the Capacity Demonstration Test by delivering to Buyer a certificate, including all supporting data, from a qualified independent California-licensed professional engineer (the "As-Available Contract Capacity Confirmation Certificate"), which As-Available Contract Capacity Confirmation

Certificate must set forth (x) the As-Available Contract Capacity, and (y) the Reportable Capacity, in each case as demonstrated to and determined by such engineer. To the extent the As-Available Contract Capacity set forth in Section 1.02(d) on the Effective Date and the As-Available Contract Capacity set forth in the As-Available Contract Capacity Confirmation Certificate are different, Section 1.02(d) will be adjusted to reflect the As-Available Contract Capacity set forth in the As-Available Contract Capacity Confirmation Certificate. The Reportable Capacity set forth in the As-Available Contract Capacity Confirmation Certificate will be used by Buyer to determine Buyer's MW Target with respect to this Agreement.

- (c) If the Generating Facility provides both Firm Contract Capacity and As-Available Contract Capacity and (i) is a New CHP Facility, (ii) a Repowered CHP Facility, (iii) an Expanded CHP Facility, or (iv) as set forth in Section 5.2.4.4 of the Settlement Agreement, an Existing CHP Facility that is Operating in California but that has never entered into an agreement for the purchase and sale of electric energy with Buyer or any other California investor-owned utility, then Seller shall comply with each of the requirements set forth in Sections 3.13(a) and 3.13(b). The Firm Contract Capacity, the As-Available Contract Capacity and the Net Contract Capacity are subject to adjustment in accordance with Exhibit C. The Reportable Capacity determined pursuant to Section 3.13(b) above and Section 10 of Exhibit C will be used by Buyer to determine Buyer's MW Target with respect to this Agreement.
- (d) Seller shall comply with any demonstration required for Resource Adequacy Rulings; *provided, however*, if such demonstrations could interfere with the operations of Seller, Seller shall be entitled to challenge such requirements with the CPUC or other relevant agency. Absent a ruling or other action granting a stay, compliance shall be required pending resolution of the challenge.

3.14 Operation and Record Keeping. Seller shall:

- (a) Operate the Generating Facility in accordance with Prudent Electrical Practices;
- (b) Comply with the Forecasting requirements, as set forth in Exhibit I;
- (c) Use reasonable efforts to Operate the Generating Facility so that the Power Product conforms with the Forecast provided in accordance with Exhibit I;
- (d) Pay all CAISO Charges, as set forth in Exhibit J;
- (e) Pay all SDD Adjustments for which Seller is responsible, as set forth in Exhibit K;

- (f) Comply with the Maintenance Outage scheduling procedures, as set forth in Exhibit E;
- (g) Comply with the Outage Schedule Submittal Requirements, as set forth in Exhibit R;
- (h) Use reasonable efforts to deliver the maximum possible quantity of As-Available Contract Capacity and associated electric energy during an Emergency Condition or a System Emergency;
- (i) Use reasonable efforts to reschedule any outage that occurs during an Emergency Condition or a System Emergency;
- (j) Keep a daily Operating log for the Generating Facility that includes information on availability, outages, circuit breaker trip operations requiring a manual reset, and any significant events related to the Operation of the Generating Facility, including:
 - (i) Real and reactive power production;
 - (ii) Changes in Operating status;
 - (iii) Protective apparatus operations; and
 - (iv) Any unusual conditions found during inspections;
- (k) Keep all Operating records required of a CHP Facility by any applicable CPUC order as well as any additional information that may be required of a CHP Facility in order to demonstrate compliance with all applicable California utility industry standards which have been adopted by the CPUC;
- (l) Provide copies of all daily Operating logs and Operating records to Buyer within 20 days of a Notice from Buyer;
- (m) Provide, upon Buyer's request, all reports of actual or forecasted outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with Section 761.3 of the California Public Utilities Code or any Applicable Law mandating the reporting by investor-owned utilities of expected or experienced outages by facilities under contract to supply electric energy;
- (n) Pay all Scheduling Fees, as set forth in Exhibit G;
- (o) [Intentionally omitted]
- (p) Register with the NERC as the Generating Facility's Generator Owner and Generator Operator if Seller is required to register by the NERC;

- (q) Maintain documentation of all procedures applicable to the testing and maintenance of the Generating Facility protective devices as necessary to comply with the NERC Reliability Standards applicable to protection systems for electric generators if Seller is required to maintain such documentation by the NERC;
- (r) If Buyer is Scheduling Coordinator, then at least 30 days before the Term End Date, or in accordance with Section 7(a) of Exhibit G, or as soon as practicable before the date of an early termination of this Agreement, (i) submit to the CAISO the name of the Scheduling Coordinator that will replace Buyer, and (ii) cause the Scheduling Coordinator that will replace Buyer to submit a letter to the CAISO accepting the designation as Seller's Scheduling Coordinator; and
- (s) If Buyer is not Scheduling Coordinator:
 - (i) Cause its Scheduling Coordinator to submit a Self-Schedule of Seller's Day-Ahead Forecast associated with the Generating Facility through the IFM; Seller shall then submit the quantity associated with the Self-Schedule of Seller's Day-Ahead Forecast as a Physical Trade to Buyer in the IFM, specifying the generating resource identifier and all other CAISO-required Inter-SC Trade attributes;
 - (ii) Cause its Scheduling Coordinator to submit the IFM Day-Ahead Schedule quantity associated with the Generating Facility as an Inter-SC Trade of IFM Load Uplift Obligation to Buyer to be cleared through the Real-Time Market, specifying all CAISO-required Inter-SC Trade attributes; and
 - (iii) Make available to Buyer all CAISO settlement data with respect to the Generating Facility required to validate payments made under this Agreement.

3.15 Power Product Curtailments at Transmission Provider's, CAISO's or Buyer's Request.

- (a) Seller shall promptly curtail the production of the Power Product upon receipt of a notice or instruction from the CAISO, which may be communicated by Buyer if Buyer is the Scheduling Coordinator. Such notice or instruction shall only be provided when the CAISO orders curtailment and the Scheduling Coordinator implements such curtailment in compliance with the CAISO Tariff or applicable orders to avoid or address a declared System Emergency.
- (b) Seller shall promptly curtail the production of the Power Product upon receipt of a notice or instruction from the Transmission Provider, which may be communicated by Buyer if Buyer is the Scheduling Coordinator. Such notice or instruction shall only be provided when curtailment of the Power Product is required to comply with:

- (i) A CAISO curtailment declared pursuant to Section 3.15(a) or Transmission Provider declared Emergency Condition, subject to the interconnection agreement between Seller and the Transmission Provider; or
 - (ii) Transmission Provider's maintenance requirements, subject to the interconnection agreement between Seller and the Transmission Provider.
 - (c) Notwithstanding the above, except as may be required in order to respond to any Emergency Condition or System Emergency, Buyer shall, consistent with FERC Order 888 and the interconnection agreement between Seller and the Transmission Provider and with the applicable provisions of the CAISO Tariff:
 - (i) Use reasonable good faith efforts to coordinate Transmission Provider's curtailment needs with Seller to the extent it can influence such needs; or
 - (ii) Request the Transmission Provider and CAISO limit the curtailment duration.
 - (d) If Seller has entered into a QF PGA or PGA with the CAISO, or an interconnection agreement, the terms of the applicable QF PGA or PGA and the applicable interconnection agreement with respect to CAISO or Transmission Provider curtailments, shall govern the rights and obligations of Buyer and Seller to the extent any provision of Sections 3.15(a) through (d) are inconsistent with such applicable QF PGA or PGA, and interconnection agreement.
 - (e) In the event Seller interconnects with a Person other than the CAISO, Seller shall adhere to any reliability curtailment order by such Person pursuant to the applicable tariff provisions of such Person.
 - (f) If Section 1.09 provides that Buyer has the right to request that Seller curtail the Generating Facility's production of the Power Product, Buyer may instruct Seller to curtail the Generating Facility's production of the Power Product in accordance with Exhibit U.
- 3.16 Report of Lost Output. To the extent the conditions set forth in Sections 3.16(a) through (e) occur, Seller shall prepare and provide to Buyer, by the fifth Business Day following the end of each month during the Term, a lost output report. The lost output report shall identify the date, time, duration, cause and amount by which the Metered Energy was reduced below the Seller's Energy Forecast due to:
- (a) Maintenance Outages;
 - (b) Major Overhauls;
 - (c) CAISO or Transmission Provider-ordered curtailments;

- (d) Force Majeure; or
- (e) Forced Outages.

3.17 FERC Qualifying Cogeneration Facility Status.

- (a) Within 30 Business Days following the end of each year, and within 30 Business Days following the Term End Date, Seller shall provide to Buyer:
 - (i) A completed copy of Buyer's "QF Efficiency Monitoring Program – Cogeneration Data Reporting Form", substantially in the form of Exhibit T, with calculations and verifiable supporting data, which demonstrates the compliance of the Generating Facility with qualifying cogeneration facility operating and efficiency standards set forth in 18 CFR Part 292, Section 292.205 "Criteria for Qualifying Cogeneration Facilities", for the applicable year; and
 - (ii) A copy of a FERC order waiving for the Generating Facility the applicable operating and efficiency standards for qualifying cogeneration facilities, as contemplated in 18 CFR Part 292, Section 292.205, "Criteria for Qualifying Cogeneration Facilities", for the applicable year, if Seller has received such order from the FERC.
- (b) [Intentionally omitted.]
- (c) Seller shall take all necessary steps, including making or supporting timely filings with the FERC in order to maintain, or obtain a FERC waiver of, the Qualifying Cogeneration Facility status of the Generating Facility throughout the Term; *provided, however*, that this obligation does not apply to the extent Seller is unable to maintain Qualifying Cogeneration Facility status using commercially reasonable efforts because of (i) a change in PURPA or in regulations of the FERC implementing PURPA occurring after the Effective Date, or (ii) a change in Applicable Laws directly impacting the Qualifying Cogeneration Facility status of the Generating Facility occurring after the Effective Date.

The term "commercially reasonable efforts" in this Section 3.17(c) does not require Seller to pay or incur more than \$20,000 multiplied by the number of Term Years in the Term.

3.18 Notice of Cessation or Termination of Service Agreements. Seller shall provide Notice to Buyer within one Business Day if there is a termination of, or cessation of service under, any agreement required in order for the Generating Facility to:

- (a) Interconnect with the Transmission Provider's electric system;
- (b) Transmit and deliver electric energy to the Delivery Point; or

- (c) Own and operate any CAISO-Approved Meter.

3.19 Buyer's Access Rights.

- (a) Upon providing at least one Business Day advance Notice to Seller, or as set forth in any Applicable Law (whichever is later), Buyer has the right to examine the Site, the Generating Facility and the Operating records, provided that Buyer follows Seller's safety policies and procedures that Seller has communicated to Buyer, does not interfere with or hinder Seller's Operations, and agrees to escorted access to the Generating Facility during regular business hours for:
 - (i) Any purpose reasonably connected with this Agreement;
 - (ii) The exercise of any and all rights of Buyer under Applicable Law or its tariff schedules and rules on file with the CPUC; or
 - (iii) The inspection and testing of any Check Meter, CAISO-Approved Meter or the Telemetry System.
- (b) Seller shall promptly provide Buyer access to all meter data and data acquisition services both in real-time, and at later times, as Buyer may reasonably request. Seller shall promptly inform Buyer of meter quantity changes after becoming aware of, or being informed of, any such changes by the CAISO. Seller shall provide instructions to the CAISO granting authorizations or other documentation sufficient to provide Buyer with access to the CAISO-Approved Meter and to Seller's settlement data on OMAR.

3.20 Seller Financial Information.

- (a) The Parties shall determine, through consultation and review with their respective independent registered public accounting firms, whether Buyer is required to consolidate Seller's financial statements with Buyer's financial statements for financial accounting purposes under Accounting Standards Codification (ASC) 810/Accounting Standards Update 2009-17, "Consolidation of Variable Interest Entities" (ASC 810), or future guidance issued by accounting profession governance bodies or the SEC that affects Buyer accounting treatment for this Agreement (the "Financial Consolidation Requirement").
- (b) If the Parties mutually agree that the Financial Consolidation Requirement is applicable, then:
 - (i) Within 20 days following the end of each year (for each year that such treatment is required), Seller shall deliver to Buyer unaudited financial statements and related footnotes of Seller as of the end of the year. It is

permissible for Seller to use accruals and prior month's estimates with true-up to actual activity, in subsequent periods, when preparing the unaudited financial statements.

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

If audited financial statements are prepared for Seller for the year, Seller shall provide such statements to Buyer within five Business Days after those statements are issued.

- (ii) Within 15 days following the end of each fiscal quarter (for each quarter that such treatment is required), Seller shall deliver to Buyer unaudited financial statements and related footnotes of Seller as of the end of the quarterly period.

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

- (iii) If Seller regularly prepares its financial data in accordance GAAP, the International Financial Reporting Standards ("IFRS"), or any successor to either of the foregoing ("Successor"), the financial information provided to Buyer shall be prepared in accordance with such principles. If Seller is not a SEC registrant and does not regularly prepare its financial data in accordance with GAAP, IFRS or Successor, the information provided to Buyer shall be prepared in a format consistent with Seller's regularly applied accounting principles, e.g., the format that Seller uses to provide financial data to its auditor.

- (c) If the Parties mutually agree that the Financial Consolidation Requirement is applicable, then promptly upon Notice from Buyer, Seller shall allow Buyer's independent registered public accounting firm such access to Seller's records and personnel, as reasonably required so that Buyer's independent registered

public accounting firm can conduct financial statement audits in accordance with the standards of the Public Company Accounting Oversight Board (United States), as well as internal control audits in accordance with Section 404 of the Sarbanes-Oxley Act of 2002, as applicable. All expenses for the foregoing shall be borne by Buyer.

If Buyer's independent registered public accounting firm during or as a result of the audits permitted in this Section 3.20(c) determines a material weakness or significant deficiency, as defined by GAAP, IFRS or Successor, as applicable, exists in Seller's internal controls over financial reporting, then within 90 days of Seller's receipt of Notice from Buyer, Seller shall remediate any such material weakness or significant deficiency; *provided, however*, that Seller has the right to challenge the appropriateness of any determination of material weakness or significant deficiency. Seller's true up to actual activity for yearly or quarterly information as provided herein shall not be evidence of material weakness or significant deficiency.

- (d) Buyer shall treat Seller's financial statements and other financial information provided under the terms of this Section 3.20 in strict confidence and, accordingly:
- (i) Shall utilize such Seller financial information *only* for purposes of preparing, reviewing or certifying Buyer's or any Buyer parent company financial statements, for making regulatory, tax or other filings required by law in which Buyer is required to demonstrate or certify its or any parent company's financial condition or to obtain credit ratings;
 - (ii) Shall make such Seller financial information available only to its officers, directors, employees or auditors who are responsible for preparing, reviewing or certifying Buyer's or any Buyer parent company financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Buyer parent company financial statement and to those Persons who are entitled to receive confidential information as identified in Sections 9.09(a)(vi) and 9.09(a)(vii); and
 - (iii) Buyer shall ensure that its internal auditors and independent registered public accounting firm (1) treat as confidential any information disclosed to them by Buyer pursuant to this Section 3.20, (2) use such information solely for purposes of conducting the audits described in this Section 3.20, and (3) disclose any information received only to personnel responsible for conducting the audits.
- (e) If the Parties mutually agree that the Financial Consolidation Requirement is applicable, then, within two Business Days following the occurrence of any

event affecting Seller which Seller understands, during the Term, would require Buyer to disclose such event in a Form 8-K filing with the SEC, Seller shall provide to Buyer a Notice describing such event in sufficient detail to permit Buyer to make a Form 8-K filing.

- (f) If, after consultation and review, the Parties do not agree on issues raised by Section 3.20(a), then such dispute shall be subject to review by another independent audit firm not associated with either Party's respective independent registered public accounting firm, reasonably acceptable to both Parties. This third independent audit firm will render its recommendation on whether consolidation by Buyer is required. Based on this recommendation, Seller and Buyer shall mutually agree on how to resolve the dispute. If Seller fails to provide the data consistent with the mutually agreed upon resolution, Buyer may declare an Event of Default pursuant to Section 6.01. If Buyer's independent audit firm, after the review by the third independent audit firm still determines that Buyer must consolidate, then Seller shall provide the financial information necessary to permit consolidation to Buyer; *provided, however*, that in addition to the protections in Section 3.20(d), such information shall be password protected and available only to those specific officers, directors, employees and auditors who are preparing and certifying the consolidated financial statements and not for any other purpose.

- 3.21 NERC Electric System Reliability Standards. During the Term, for purposes of complying with any NERC Reliability Standards applicable to the Generating Facility, Seller (or an agent of Seller as agreed to by Buyer in its reasonable discretion) must, if required by the NERC, register with the NERC as the Generator Operator and the Generator Owner for the Generating Facility and must perform all Generator Operator Obligations and Generator Owner Obligations except those Generator Operator Obligations that Buyer, in its capacity as Scheduling Coordinator (if Seller has elected to have Buyer serve as its Scheduling Coordinator), is required to perform under this Agreement or under the CAISO Tariff.

Notwithstanding anything to the contrary set forth in this Section 3.21 and subject to the indemnity obligations set forth in Section 9.03(h), each Party acknowledges that such Party's performance of the Generator Operator Obligations or Generator Owner Obligations may not satisfy the requirements for self-certification or compliance with the NERC Reliability Standards, and that it shall be the sole responsibility of each Party to implement the processes and procedures required by the NERC, the WECC, the CAISO, or a Governmental Authority in order to comply with the NERC Reliability Standards.

If Buyer is Seller's Scheduling Coordinator, Buyer as Scheduling Coordinator will reasonably cooperate with Seller to the extent necessary to enable Seller to comply and for Seller to demonstrate Seller's compliance with the NERC Reliability Standards referenced above. Buyer's cooperation will include providing to Seller, or such other

Person as Seller designates in writing, information in Buyer's possession that Buyer as Scheduling Coordinator has provided to the CAISO related to the Generating Facility or actions that Buyer has taken as Scheduling Coordinator related to Seller's compliance with the NERC Reliability Standards referenced above (e.g., Seller's notices and updates provided by Buyer to the CAISO via SLIC). Buyer may, in its reasonable discretion (depending upon the quantity of information requested by Seller and the timeframe established by Seller for compliance), comply with the requirement to provide information set forth in the previous sentence, by making such information available for inspection by Seller or by providing responsive summaries or excerpts of same, so long as the foregoing enables Seller to comply with the NERC Reliability Standards. In addition, Buyer may redact any information or data that is confidential to Buyer from materials or information to be supplied to Seller.

3.22 Allocation of Availability Incentive Payments and Non-Availability Charges.

- (a) If Buyer is the Scheduling Coordinator, and if the Generating Facility is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under Section 40.9 of the CAISO Tariff, then any Availability Incentive Payments will be for the benefit of Buyer and for Buyer's account and any Non-Availability Charges will be the responsibility of Buyer and for Buyer's account.
- (b) If Buyer is not the Scheduling Coordinator, and if the Generating Facility is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under Section 40.9 of the CAISO Tariff, then any Availability Incentive Payments will be for the benefit of Seller and for Seller's account and any Non-Availability Charges will be the responsibility of Seller and for Seller's account.

3.23 Seller's Reporting Requirements.

- (a) Seller shall comply with the reporting requirements set forth in Section 2 of Exhibit S.
- (b) Seller shall deliver to Buyer, on or before the 10th Business Day following receipt of a Notice from Buyer, such information that Buyer is required to report to any authorized Governmental Authority pursuant to the Settlement Agreement, or which Buyer otherwise requires in order to comply with the Settlement Agreement.

*** End of Article Three ***

ARTICLE FOUR. BUYER'S OBLIGATIONS

4.01 Obligation to Pay. For Seller's full compensation under this Agreement, during the Term, Buyer shall make a monthly payment (a "Monthly Contract Payment") calculated in accordance with Exhibit D.

4.02 Payment Adjustments.

- (a) Buyer shall adjust each Monthly Contract Payment to Seller to account for:
- (i) Scheduling Fees owed by Seller to Buyer, as set forth in Exhibit G;
 - (ii) Any SDD Adjustment, as set forth in Exhibit K;
 - (iii) Any Forecast penalties owed by Seller to Buyer, as set forth in Exhibit I;
 - (iv) Any CAISO Charges owed by Seller to Buyer, as set forth in Exhibit J;
 - (v) Any Physical Trade Settlement Amount owed by either Party to the other Party, as set forth in Exhibit L;
 - (vi) Any SC Trade Settlement Amount owed by either Party to the other Party, as set forth in Exhibit M;
 - (vii) Any payment adjustments (including adjustments to CAISO Charges) provided for under this Agreement;
 - (viii) Any Governmental Charges owed by either Party to the other Party, as set forth in Section 8.02;
 - (ix) The agreement of the Parties that Buyer shall have no liability to make any energy payments to Seller for any electricity deliveries from the Generating Facility in a Term Year that exceed 120% of Expected Term Year Energy Production;
 - (x) If Section 1.06(d) provides that Buyer has assumed some or all of the GHG Compliance Costs under this Agreement, any payment adjustments provided for under Exhibit S; and
 - (xi) Any payment adjustments resulting from Buyer-instructed curtailments, as set forth in Exhibit U.
- (b) During the Term, any payment adjustments will be added to or deducted from a subsequent regular Monthly Contract Payment that is made by Buyer to Seller after the expiration of a 30-day period which begins upon Buyer's receipt of all of the information required in order to calculate payment adjustments (unless

otherwise provided for in Exhibit S, if Section 1.06(d) provides that Buyer has assumed some or all of the GHG Compliance Costs under this Agreement).

- (c) After the Term End Date, Buyer shall invoice Seller for all payment adjustments within 60 days of Buyer's receipt of all of the information required in order to calculate payment adjustments (unless otherwise provided for in Exhibit S, if Section 1.06(d) provides that Buyer has assumed some or all of the GHG Compliance Costs under this Agreement).

4.03 Payment Statement and Payment.

- (a) No later than 30 days after the end of each calendar month (or the last day of the month if the month in which the payment statement is being sent is February), or the last Business Day of the month if such 30th day (or 28th or 29th day for February) is not a Business Day, Buyer shall mail to Seller:

- (i) A table showing the hourly electric energy quantities for each of the following, in MWh per hour:

- 1) Seller's Energy Forecast;
- 2) Seller's Day-Ahead Forecast;
- 3) Metered Energy;
- 4) Metered Amounts;
- 5) The final Buyer Energy Schedule; and
- 6) The final Buyer Parent Energy Schedule.

- (ii) A statement showing:

- 1) TOD Period subtotals and overall monthly totals for each of the items set forth in Section 4.03(a)(i);
- 2) A calculation of the Monthly Contract Payment, as set forth in Exhibit D;
- 3) A calculation of any payment adjustments pursuant to Section 4.02;
- 4) If Section 1.06(d) provides that Buyer has assumed some or all of the GHG Compliance Costs under this Agreement, a calculation of any payment adjustments pursuant to Exhibit S; and

- 5) A calculation of the net dollar amount due for the month.
- (iii) Buyer's payment to Seller, in accordance with Section 9.15, in the net dollar amount owed to Seller for the month (less any overpayments by Buyer of Seller's GHG Compliance Costs, if any, under Section 4.04 in any calendar month); *provided, however*, in the event the statement shows a net amount owed to Buyer, Seller shall pay such amount within 20 days of the statement date or, if Seller fails to make such payment, Buyer may offset this amount from a subsequent Monthly Contract Payment.
- (b) If Buyer determines that a calculation of Metered Energy or Metered Amounts is incorrect as a result of an inaccurate meter reading or the correction of data by the CAISO in the CAISO's meter-data acquisition and processing system, Buyer shall promptly recompute the Metered Energy or Metered Amounts quantity for the period of the inaccuracy based on an adjustment of such inaccurate meter reading in accordance with the CAISO Tariff.

Buyer shall then promptly recompute any payment or payment adjustment affected by such inaccuracy. Any amount due from Buyer to Seller or Seller to Buyer, as the case may be, shall be made as an adjustment to the next monthly statement that is calculated after Buyer's recomputation using corrected measurements.

If the recomputation results in a net amount owed to Buyer after offsetting any amounts owing to Seller as shown on the next monthly statement, any such additional amount still owing to Buyer shall be shown as an adjustment on Seller's monthly statement until such amount is fully collected by Buyer.

At Buyer's sole discretion, Buyer may offset any remaining amount owed to Buyer in any subsequent monthly payments to Seller or invoice Seller for such amount, in which case Seller must pay the amount owing to Buyer within 20 days of receipt of such invoice.

- (c) Buyer reserves the right to deduct amounts that would otherwise be due to Seller under this Agreement from any amounts owing and unpaid by Seller to Buyer:
- (i) Under this Agreement; or
- (ii) Arising out of or related to any other agreement, tariff, obligation or liability pertaining to the Generating Facility.
- (d) Except as provided in Section 4.03(b) and as otherwise provided in this Section 4.03(d), if, within 45 days of receipt of Buyer's payment statement, Seller does not give Notice to Buyer of an error, then Seller shall be deemed to have waived any error in Buyer's statement, computation and payment and the statement shall

be conclusively deemed correct and complete; *provided, however*, that if an error is identified by Seller as a result of settlement, audit or other information provided to Seller by the CAISO after the expiration of the original 45-day period, Seller shall have an additional 90 days from the date on which it receives the information from the CAISO in which to give Notice to Buyer of the error identified by such settlement, audit or other information.

If Seller identifies an error in Seller's favor and Buyer agrees that the identified error occurred, Buyer shall reimburse Seller for the amount of the underpayment caused by the error and add the underpayment to the next monthly statement that is calculated.

If Seller identifies an error in Buyer's favor and Buyer agrees that the identified error occurred, Seller shall reimburse Buyer for the amount of overpayment caused by the error and Buyer shall apply the overpayment to the next monthly statement that is calculated.

If the recomputation results in a net amount still owing to Buyer after applying the overpayment, the next monthly statement shall show a net amount owing to Buyer.

At Buyer's sole discretion, Buyer may apply this net amount owing to Buyer in any subsequent monthly statements to Seller or invoice Seller for such amount, in which case Seller must pay the amount owing to Buyer within 20 days of receipt of such invoice.

The Parties shall negotiate to resolve any disputes regarding claimed errors in a statement. Any disputes which the Parties are unable to resolve through negotiation may be submitted for resolution through the dispute resolution procedure in Article Ten.

Nothing in this Section 4.03 limits a Party's rights under applicable tariffs, other agreements or Applicable Law.

- 4.04 GHG Compliance Costs. If Section 1.06(d) provides that Buyer has assumed some or all of the GHG Compliance Costs under this Agreement, then Buyer shall pay for Seller's GHG Compliance Costs in accordance with Exhibit S; *provided, however*, that notwithstanding anything to the contrary set forth in this Agreement (including Exhibit S), in no event will Buyer pay for any of Seller's GHG Compliance Costs to the extent that such GHG Compliance Costs are associated with deliveries of the Power Product that are in excess of 120% of the Expected Term Year Net Energy Production in any Term Year.

- 4.05 No Representation by Buyer. Any review by Buyer of the design, engineering, construction, testing and Operation of the Generating Facility is solely for Buyer's information. Buyer makes no representation that:
- (a) It has reviewed the financial viability, technical feasibility, operational capability, or long term reliability of the Generating Facility;
 - (b) The Generating Facility complies with any Applicable Laws; or
 - (c) The Generating Facility will be able to meet the terms of this Agreement.

Seller shall in no way represent to any third party that any such review by Buyer constitutes any such representation.

- 4.06 Buyer's Responsibility. Buyer shall obtain and maintain all distribution, transmission and interconnection rights and agreements (including all Governmental Authority approvals) required to enable transmission and delivery of electric energy at and after the Delivery Point.
- 4.07 Buyer's Reporting Requirements. Buyer shall deliver to Seller, on or before the 10th Business Day following receipt of a Notice from Seller, such information as Seller is required to report to any authorized Governmental Authority pursuant to the Settlement Agreement, or which Seller otherwise requires in order to comply with the Settlement Agreement.

*** End of Article Four ***

ARTICLE FIVE. FORCE MAJEURE

- 5.01 No Default for Force Majeure. Neither Party will be in default in the performance of any of its obligations set forth in this Agreement, except for obligations to pay money, when and to the extent failure of performance is caused by Force Majeure.
- 5.02 Requirements Applicable to the Claiming Party. If a Party, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due under this Agreement, such Party (the “Claiming Party”) shall be excused from whatever performance is affected by the Force Majeure to the extent so affected.

In order to be excused from its performance obligations under this Agreement by reason of Force Majeure:

- (a) The Claiming Party, within 14 days after the initial occurrence of the claimed Force Majeure, must give the other Party Notice describing the particulars of the occurrence; and
- (b) The Claiming Party must provide timely evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement.

The suspension of the Claiming Party’s performance due to Force Majeure may not be greater in scope or longer in duration than is required by such Force Majeure.

In addition, the Claiming Party shall use diligent efforts to remedy its inability to perform.

This Article Five will 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. It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be at the sole discretion of the Claiming Party.

When the Claiming Party is able to resume performance of its obligations under this Agreement, the Claiming Party shall give the other Party prompt Notice to that effect.

- 5.03 Termination. Either Party may terminate this Agreement on Notice, which Notice will be effective five Business Days after such Notice is provided, in the event of Force Majeure which materially interferes with such Party’s ability to perform its obligations under this Agreement and which extends for more than 365 consecutive days, or for more than a total of 365 days in any consecutive 540-day period.

*** End of Article Five ***

ARTICLE SIX. EVENTS OF DEFAULT; REMEDIES

6.01 Events of Default. An “Event of Default” means the occurrence of any of the following:

- (a) With respect to either Party (a “Defaulting Party”):
 - (i) Any representation or warranty made by such Party in this Agreement is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature, if such misrepresentation or breach of warranty is not:
 - 1) Remedied within 10 Business Days after Notice from the Non-Defaulting Party to the Defaulting Party; or
 - 2) Capable of a cure, but the Non-Defaulting Party’s damages resulting from such misrepresentation or breach of warranty can reasonably be ascertained and the payment of such damages is not made within 10 Business Days after a Notice of such damages is provided by the Non-Defaulting Party to the Defaulting Party;
 - (ii) Except for an obligation to make payment when due, the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default or to the extent excused by a Force Majeure) if such failure is not remedied within 30 days after Notice of such failure is provided by the Non-Defaulting Party to the Defaulting Party, which Notice sets forth in reasonable detail the nature of the Event of Default; *provided, however*, that if the Event of Default is not reasonably capable of being cured within such 30-day cure period, the Defaulting Party shall have such additional time (not to exceed 120 days) as is reasonably necessary to cure such Event of Default, so long as such Defaulting Party promptly commences and diligently pursues such cure;
 - (iii) A Party fails to make when due any payment (other than amounts disputed in accordance with the terms of this Agreement) due and owing under this Agreement and such failure is not cured within five Business Days after Notice is provided by the Non-Defaulting Party to the Defaulting Party of such failure;
 - (iv) A Party becomes Bankrupt; or
 - (v) A Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another Person and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee Person fails to assume all the obligations

of such Party under this Agreement to which such Party 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's Guarantor, if any (each event listed below to be deemed an Event of Default with respect to Seller):
- (i) Any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature and the misrepresentation or breach of warranty is not remedied within 10 Business Days after Notice from Buyer to Seller;
 - (ii) The failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty Agreement and such failure is not remedied within five Business Days after Notice from Buyer to Seller;
 - (iii) A Guarantor becomes Bankrupt and replacement credit support is not provided within five Business Days after Notice from Buyer to Seller;
 - (iv) The occurrence and continuation of a default, event of default or other similar condition or event under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in the aggregate amount of not less than the Guarantor Cross Default Amount, which results in such indebtedness becoming immediately due and payable and replacement credit support is not provided within five Business Days after Notice from Buyer to Seller;
 - (v) The failure of any Guaranty Agreement to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) and replacement credit support is not provided within five Business Days after Notice from Buyer to Seller;
 - (vi) The Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of any Guaranty Agreement given to Buyer and replacement credit support is not provided within five Business Days after Notice from Buyer to Seller; or
 - (vii) If the Guarantor fails to maintain a Credit Rating of at least (1) BBB- from S&P, Baa3 from Moody's, and BBB- from Fitch, if Guarantor is rated by all three ratings agencies, (2) the lower of BBB- by S&P, Baa3 by Moody's, or BBB- by Fitch if Guarantor is rated by only two of the three ratings agencies, or (3) BBB- by S&P, Baa3 by Moody's, or BBB- by Fitch if Guarantor is rated by only one of the ratings agency, and

replacement credit support is not provided within 10 Business Days after Notice from Buyer to Seller.

- (c) With respect to Seller:
- (i) Seller does not own or lease the Generating Facility or otherwise have the authority over the Generating Facility as required in Section 3.03(a), and Seller has not cured a failure with respect to Section 3.03(a) within 30 days after providing Notice to Buyer in accordance with Section 3.03(a);
 - (ii) If Seller abandons the Generating Facility (for purposes of this Section 6.01(c)(ii), Seller will be deemed to have abandoned the Generating Facility if Seller has ceased work on the Generating Facility or the Generating Facility has ceased production and delivery of the Product for a consecutive 30-day period and such cessation is not a result of an event of Force Majeure);
 - (iii) Except as provided for in Section 3.01(d), Seller (1) conveys, transfers, allocates, designates, awards, reports or otherwise provides any and all of the Product, or any portion thereof, or any benefits derived therefrom, to any party other than Buyer (except as may relate to transactions in the imbalance market arising from ordinary course deviations between Metered Energy and electric energy Scheduled to Buyer), or (2) starts up or Operates the Generating Facility per instruction of or for the benefit of any third party (except in order to satisfy the Site Host Load, or as required by other Applicable Laws);
 - (iv) Seller intentionally or knowingly delivers, Schedules, or attempts to deliver or Schedule at the Delivery Point for sale under this Agreement electric energy that was not generated by the Generating Facility;
 - (v) Seller removes from the Site equipment upon which the Net Contract Capacity has been based, except for the purposes of replacement, refurbishment, repair, repowering or maintenance, and such equipment is not returned within five Business Days after Notice from Buyer to Seller;
 - (vi) [Intentionally omitted]
 - (vii) Termination of, or cessation of service under, any agreement necessary for the interconnection of the Generating Facility to the Transmission Provider's electric system for transmission and delivery of the electric energy from the Generating Facility to the Delivery Point, or for metering the Metered Energy, and such service is not reinstated, or alternative

- arrangements implemented, within 120 days after such termination or cessation;
- (viii) Seller fails to make all reasonable efforts to increase the Power Output from the Generating Facility to the Firm Contract Capacity during an Emergency Condition or a System Emergency;
 - (ix) Seller fails to provide any financial statements or other information within the timeframe and in the manner set forth in Sections 3.20(b)(i) and (ii), and such failure is not remedied within 10 days after Notice from Buyer to Seller;
 - (x) Seller fails to remediate any material weakness or significant deficiency in internal controls over financial reporting in accordance with Section 3.20(c), and such failure is not remedied within 90 days after Notice from Buyer to Seller;
 - (xi) Seller fails to take all reasonable actions and execute all documents or instruments that are reasonable and necessary to effectuate the use of the Related Products for Buyer's benefit throughout the Term as specified in Section 3.01, if such failure is not remedied within 10 days after Notice of such failure is provided by Buyer to Seller, which Notice sets forth in reasonable detail the nature of the Event of Default; *provided, however*, that if the Event of Default is not reasonably capable of being cured within such 10-day cure period, Seller shall have such additional time (not to exceed 120 days) as is reasonably necessary to cure such Event of Default, so long as Seller promptly commences and diligently pursues such cure;
 - (xii) [Intentionally omitted]
 - (xiii) If any failure by Seller to comply with the CAISO Tariff materially impacts Buyer's ability to comply with this Agreement, the CAISO Tariff or other Applicable Laws, and such failure by Seller (including any consequences suffered by Buyer) is not cured within 30 days after Notice from Buyer to Seller;
 - (xiv) If Seller materially modifies the Generating Facility (except as provided in Section 3.07(c)) without Buyer's prior written consent;
 - (xv) If Seller fails to satisfy all of the conditions set forth in Section 2.01 before the Term Start Date, and such failure is not cured within 30 Business Days after Notice from Buyer to Seller;
 - (xvi) If the Generating Facility is a New CHP Facility, a Repowered CHP Facility, or an Expanded CHP Facility that has elected in Section 1.02(a)

to comply with the credit and collateral requirements set forth in this Agreement:

- 1) Seller fails to satisfy the creditworthiness and collateral requirements in Sections 2 and 3 of Exhibit F and such failure is not cured within five Business Days after Notice is provided by Buyer to Seller;
- 2) The stock or equity ownership interest in Seller has been pledged or assigned as collateral or otherwise to any party other than Lender without Buyer's consent, which consent may not be unreasonably withheld, delayed or conditioned;
- 3) Seller fails to post and maintain the Development Security pursuant to Section 4(b) of Exhibit F and such failure is not cured within five Business Days after Notice of such failure from Buyer to Seller;
- 4) Seller fails to post and maintain the Performance Assurance Amount pursuant to Section 2 of Exhibit F and such failure is not cured within five Business Days after Notice of such failure from Buyer to Seller;
- 5) The occurrence and continuation of a default, event of default or other similar condition or event under any loan agreement with any Lender, or any other related agreement or instrument with or for the benefit of any Lender, which results in any indebtedness under those agreements or instruments becoming immediately due and payable; *provided, however*, if Seller, Buyer and a Lender have entered into a Collateral Assignment Agreement with substantially the provisions set forth in Section 9.05, and the terms of such Collateral Assignment Agreement conflict or are inconsistent with this Section 6.01(c)(xvi)(5), the provisions of the Collateral Assignment Agreement control;
- 6) The occurrence and continuation of a default, event of default or other similar condition or event under any power purchase agreement between Buyer and Seller (other than this Agreement) or under any other related agreement or instrument with or for the benefit of Buyer; or
- 7) Subject to Section 3.17(c), the Generating Facility (A) is not designed and constructed so as to satisfy all of the requirements applicable to a CHP Facility, (B) fails to maintain its status as a Qualifying Cogeneration Facility during the Term, or (C)

otherwise fails to meet the requirements of a CHP Facility during the Term;

- (xvii) If the Generating Facility is an Existing CHP Facility, then at any time on or, subject to Section 3.17(c), the Generating Facility (1) fails to maintain its status as a Qualifying Cogeneration Facility, or (2) otherwise fails to meet the requirements of a CHP Facility;
- (xviii) If the Generating Facility is an Expanded CHP Facility or a Repowered CHP Facility, then, at anytime on or, subject to Section 3.17(c), after (1) the Effective Date, the Generating Facility fails to maintain its status as a Qualifying Cogeneration Facility, or (2) the Term Start Date, the Generating Facility otherwise fails to meet the requirements of a CHP Facility;
- (xix) If there occurs more than two Efficiency Rating Deficiencies during the Term; or
- (xx) If Seller:
 - 1) Does not cure an Efficiency Rating Deficiency, in accordance with Section 1.02(f)(ii), on or before the Efficiency Rating Cure Date for such Efficiency Rating Deficiency; or
 - 2) Otherwise fails to satisfy its obligations under Section 1.02(f)(ii), and such failure is not cured within five Business Days after Notice of such failure from Buyer to Seller.

6.02 Early Termination. If an Event of Default has occurred, there will be no opportunity for cure except as specified in Section 6.01 or pursuant to a Collateral Assignment Agreement agreed upon by Buyer, Seller and Lender in accordance with Section 9.05. The Party taking the default (the "Non-Defaulting Party") will have the right to:

- (a) Designate by Notice to the Defaulting Party a date, no later than 20 days after the Notice is effective, for the early termination of this Agreement (an "Early Termination Date");
- (b) Immediately suspend performance under this Agreement; and
- (c) Pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages), except to the extent that such remedies are limited by the terms of this Agreement.

6.03 Termination Payment. As soon as practicable after an Early Termination Date is declared, the Non-Defaulting Party shall provide Notice to the Defaulting Party of the

sum of all amounts owed by the Defaulting Party under this Agreement less any amounts owed by the Non-Defaulting Party to the Defaulting Party under this Agreement, including any Forward Settlement Amount (the “Termination Payment”). The Notice shall include a written statement setting forth, in reasonable detail, the calculation of such Termination Payment, including the Forward Settlement Amount, together with appropriate supporting documentation. If the Generating Facility is a New CHP Facility, no Forward Settlement Amount is assessed for any Termination Payment due to Buyer as the Non-Defaulting Party by Seller as the Defaulting Party if this Agreement is terminated before the Term Start Date.

If the Termination Payment is positive, the Defaulting Party shall pay such amount to the Non-Defaulting Party within 10 Business Days after the Notice is provided. If the Termination Payment is negative (i.e., the Non-Defaulting Party owes the Defaulting Party more than the Defaulting Party owes the Non-Defaulting Party), then the Non-Defaulting Party shall pay such amount to the Defaulting Party within 10 Business Days after the Notice is provided; *provided, however*, that if Seller is the Defaulting Party as a result of an Efficiency Rating Deficiency pursuant to Section 1.02(f)(ii) and the Termination Payment is negative, then, notwithstanding any provision to the contrary in the foregoing, Buyer, as the Non-Defaulting Party, shall make no payment to Seller.

The Parties shall negotiate to resolve any disputes regarding the calculation of the Termination Payment and Forward Settlement Amount. Any disputes which the Parties are unable to resolve through negotiation may be submitted for resolution through the dispute resolution procedure in Article Ten.

*** End of Article Six ***

ARTICLE SEVEN. LIMITATIONS OF LIABILITIES

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

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

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, THE OBLIGOR'S LIABILITY IS LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES IS THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

THE VALUE OF ANY PRODUCTION TAX CREDITS DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) IF ANY, SHALL BE DEEMED DIRECT DAMAGES.

THE VALUE OF ANY INVESTMENT TAX CREDITS DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) IF ANY, SHALL BE DEEMED DIRECT DAMAGES.

UNLESS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, INCLUDING THE PROVISIONS OF SECTION 9.03, 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.

IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS IMPOSED IN THIS ARTICLE SEVEN 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 UNDER THIS AGREEMENT ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE

ID #[Number], [Seller's Name]

DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED UNDER THIS AGREEMENT CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

NOTHING IN THIS ARTICLE SEVEN PREVENTS, OR IS INTENDED TO PREVENT BUYER FROM PROCEEDING AGAINST OR EXERCISING ITS RIGHTS WITH RESPECT TO ANY SECURED INTEREST IN COLLATERAL.

**** End of Article Seven ****

ARTICLE EIGHT. GOVERNMENTAL CHARGES

8.01 Cooperation to Minimize Tax Liabilities. Each Party shall use diligent 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.

8.02 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 Generating Facility, Monthly Contract Payments made by Buyer to Seller, or the Power Product before the Delivery Point, including ad valorem taxes and other taxes attributable to the Generating Facility, the Site or land rights or interests in the Site or the Generating Facility.

Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Power Product at and after the Delivery Point.

If Seller is required by Applicable Laws to remit or pay Governmental Charges which are Buyer’s responsibility under this Agreement, Buyer shall promptly reimburse Seller for such Governmental Charges.

If Buyer is required by Applicable Law or regulation to remit or pay Governmental Charges which are Seller’s responsibility under this Agreement, Buyer may deduct such amounts from payments to Seller made pursuant to Article Four.

If Buyer elects not to deduct such amounts from Seller’s payments, Seller shall promptly reimburse Buyer for such amounts upon Notice from Buyer of the amount to be reimbursed.

Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under Applicable Laws.

If Section 1.06(d) provides that Buyer has assumed some or all of the GHG Compliance Costs under this Agreement, nothing stated in this Section 8.02 relieves Buyer of its obligation to pay Seller for Seller’s GHG Compliance in accordance with and subject to this Agreement (including Exhibit S).

8.03 Providing Information to Taxing Governmental Authorities. To the extent required by Applicable Law and subject to Section 9.09(b), each Party shall provide information concerning the Generating Facility to any requesting taxing Governmental Authority.

*** End of Article Eight ***

ARTICLE NINE. MISCELLANEOUS

9.01 Representations, Warranties and Covenants.

- (a) On the Effective Date, each Party represents and warrants to the other Party that:
- (i) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
 - (ii) The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Laws;
 - (iii) This Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;
 - (iv) There is not pending, or to its knowledge, threatened against it or, in the case of Seller, any of its Related Entities, any legal proceeding that could materially adversely affect its ability to perform under this Agreement;
 - (v) No Event of Default with respect to it has occurred and is continuing and no such event or circumstance will occur as a result of its entering into or performing its obligations under this Agreement;
 - (vi) It is acting for its own account, and its decision to enter into this Agreement is based upon its own judgment, not in reliance upon the advice or recommendations of the other Party and it is capable of assessing the merits of and understanding, and understands and accepts the terms, conditions and risks of this Agreement;
 - (vii) It has not relied on any promises, representations, statements or information of any kind whatsoever that are not contained in this Agreement in deciding to enter into this Agreement; and
 - (viii) It has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to provide or receive the Power Product as contemplated by this Agreement.
- (b) On the Effective Date:
- (i) Each Party covenants to the other Party that, except for CPUC Approval in the case of Buyer, it has or will timely acquire all regulatory

authorizations necessary for it to legally perform its obligations under this Agreement;

- (ii) If Section 1.02(a) provides that the Generating Facility will be an Expanded CHP Facility or a Repowered CHP Facility, then, Seller represents and warrants to Buyer that the Generating Facility is a Qualifying Cogeneration Facility;
- (iii) If Section 1.02(a) provides that the Generating Facility is an Existing CHP Facility, then, Seller represents and warrants to Buyer that the Generating Facility qualifies as a Qualifying Cogeneration Facility and otherwise meets the requirements of a CHP Facility; and
- (iv) If the Generating Facility is an Existing CHP Facility, the Seller represents and warrants to Buyer that the Power Rating of the Generating Facility equals the value set forth in Section 1.10.

9.02 Additional Covenants by Seller. Seller covenants to Buyer that:

- (a) It will have Site Control as of the earlier of (i) the Term Start Date and (ii) any period before the Term Start Date to the extent necessary for Seller to perform its obligations under this Agreement and, in each case, will maintain Site Control throughout the Term;
- (b) Throughout the Term, it will hold the rights to all of the Product, subject to the terms of this Agreement;
- (c) Throughout the Term, it or its subcontractors will own or lease and Operate the Generating Facility unless otherwise agreed to by the Parties;
- (d) Throughout the Term, it will deliver the Product to Buyer free and clear of all liens, security interests, Claims and encumbrances or any interest therein or thereto by any Person;
- (e) If Section 1.02(a) provides that the Generating Facility is a New CHP Facility, then, subject to Section 3.17(c), (i) the Generating Facility will be designed and constructed so as to satisfy all of the requirements applicable to a CHP Facility, and (ii) throughout the Term, the Generating Facility will maintain its status as a Qualifying Cogeneration Facility and will otherwise meet the requirements of a CHP Facility;
- (f) If Section 1.02(a) provides that the Generating Facility is an Existing CHP Facility, then, subject to Section 3.17(c), from the Effective Date until the Term End Date, the Generating Facility will maintain its status as a Qualifying

Cogeneration Facility and will otherwise meet the requirements of a CHP Facility;

- (g) If Section 1.02(a) provides that the Generating Facility is an Expanded CHP Facility or a Repowered CHP Facility, then, subject to Section 3.17(c), (i) from the Effective Date until the Term End Date, the Generating Facility will maintain its status as a Qualifying Cogeneration Facility, and (ii) throughout the Term, the Generating Facility will otherwise meet the requirements of an Expanded CHP Facility or Repowered CHP Facility;
- (h) Throughout the Term, it will not (1) convey, transfer, allocate, designate, award, report or otherwise provide any or all of the Product, or any portion thereof, or any benefits derived therefrom, to any party other than Buyer (except, if Buyer is not Scheduling Coordinator, as may relate to transactions in the Real-Time Market arising from ordinary course deviations between Metered Energy and electric energy Scheduled to Buyer), or (2) start-up or Operate the Generating Facility per instruction of or for the benefit of any third party (except in order to satisfy the Site Host Load, or as required by other Applicable Laws);
- (i) Upon Buyer's request, Seller shall provide to Buyer documentation evidencing the Generating Facility's contribution to Buyer's compliance with the GHG EPS;
- (j) Seller shall comply with all (i) applicable cap-and-trade programs for the regulation of Greenhouse Gas, as established by any Governmental Authority pursuant to federal or state legislation, and (ii) other applicable programs regulating Greenhouse Gas emissions;
- (k) Subject to Section 1.02(f)(ii), throughout the Term, the Efficiency Rating of the Generating Facility must be equal to or greater than the Efficiency Rating set forth in Section 1.02(f)(i); and
- (l) If the Generating Facility is a New CHP Facility, an Expanded CHP Facility or a Repowered CHP Facility, Seller covenants that before the Term Start Date it shall provide a Notice to Buyer setting forth the Power Rating ("Power Rating Notice") of the Generating Facility on the Term Start Date.

9.03 Indemnity.

- (a) Each Party as indemnitor shall defend, save harmless and indemnify the other Party and the directors, officers, employees, and agents of such other Party against and from any and all loss, liability, damage, claim, cost, charge, demand, or expense (including any direct, indirect, or consequential loss, liability, damage, claim, cost, charge, demand, or expense, including reasonable attorneys' fees) for injury or death to Persons, including employees of either Party, and physical damage to property including property of either Party arising out of or in

connection with the negligence or willful misconduct of the indemnitor relating to its obligations under this Agreement.

This indemnity applies notwithstanding the active or passive negligence of the indemnitee. However, neither Party is indemnified under this Agreement for its loss, liability, damage, claim, cost, charge, demand or expense to the extent resulting from its negligence or willful misconduct.

- (b) Each Party releases and shall defend, save harmless and indemnify the other Party from any and all loss, liability, damage, claim, cost, charge, demand or expense arising out of or in connection with any breach made by the indemnifying Party of its representations, warranties and covenants in Section 9.01 and Section 9.02.
- (c) The provisions of this Section 9.03 may 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.
- (d) Notwithstanding anything to the contrary in this Agreement, if Seller fails to comply with the provisions of Section 9.10, Seller shall, at its own cost, defend, save harmless and indemnify Buyer, its directors, officers, employees, and agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, or expense of any kind or nature (including any direct, indirect, or consequential loss, damage, claim, cost, charge, demand, or expense, including reasonable attorneys' fees and other costs of litigation), resulting from injury or death to any person or damage to any property, including the personnel or property of Buyer, to the extent that Buyer would have been protected had Seller complied with all of the provisions of Section 9.10.

The inclusion of this Section 9.03(d) is not intended to create any express or implied right in Seller to elect not to provide the insurance required under Section 9.10.

- (e) Each Party shall defend, save harmless and indemnify the other Party against any Governmental Charges for which such indemnifying Party is responsible under Article Eight.
- (f) Seller shall defend, save harmless and indemnify Buyer against any increase in GHG Compliance Costs and other costs associated with the implementation and regulation of Greenhouse Gas emissions with respect to Seller or the Generating Facility to the extent that such GHG Compliance Costs or other costs result from Seller's modification of the Generating Facility in accordance with Section 3.07.
- (g) Seller shall defend, save harmless and indemnify Buyer against any penalty imposed upon Buyer as a result of Seller's failure to fulfill its obligations

regarding Resource Adequacy Benefits as set forth in Sections 3.01 and 3.02, with the exception of the obligations set forth in Section 3.01(c)(vi).

- (h) Seller is solely responsible for any NERC Standards Non-Compliance Penalties arising from or relating to Seller's failure to perform the Generator Operator Obligations or the Generator Owner Obligations for which Seller is responsible, in accordance with Section 3.21, and will indemnify, defend and hold Buyer harmless from and against all liabilities, damages, Claims, losses, and reasonable costs and expenses (which shall include reasonable costs and expenses of outside or in-house counsel) incurred by Buyer arising from or relating to Seller's actions or inactions that result in NERC Standards Non-Compliance Penalties or an attempt by any Governmental Authority, Person to assess such NERC Standards Non-Compliance Penalties against Buyer. Buyer will indemnify, defend and hold Seller harmless from and against all liabilities, damages, Claims, losses and reasonable costs and expenses (which shall include reasonable costs of outside and in-house counsel) incurred by Seller for any NERC Standards Non-Compliance Penalties to the extent they are due to Buyer's negligence or willful misconduct in performing its role as Seller's Scheduling Coordinator during the Term.
- (i) All indemnity rights will survive the termination of this Agreement for 12 months.

9.04 Assignment.

- (a) With Consent. Subject to Section 9.04(b), Seller may not transfer or assign this Agreement or its rights under this Agreement without the prior written consent of Buyer, which consent may not be unreasonably withheld or delayed. Any direct or indirect change of control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent will not be unreasonably withheld. For purposes of this Section 9.04, Buyer will not withhold its consent to an indirect change of control of Seller if Seller demonstrates to Buyer's reasonable satisfaction that Seller shall continue to perform its obligations under this Agreement as if no such indirect change of control had occurred.
- (b) Without Consent. Notwithstanding anything to the contrary set forth in Section 9.04(a):
 - (i) Seller may, without the consent of Buyer (and without relieving itself from liability hereunder): (1) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements in accordance with Section 9.05; or (2) transfer or assign this Agreement to an Related Entity

of Seller, which Related Entity's creditworthiness is equal to or higher than that of Seller; and

- (ii) Seller does not need to obtain Buyer's consent to any change of control described in this Section 9.04 if such change of control results from a purchase of the outstanding shares of a publicly traded company.

9.05 Consent to Collateral Assignment. Subject to the provisions of this Section 9.05, Seller may (but is not obligated to) assign this Agreement as collateral to a Lender for any financing or refinancing of the Generating Facility, including a Sale-Leaseback Transaction or Equity Investment and, in connection therewith, Buyer shall in good faith work with Seller and Lender to agree upon a consent to a collateral assignment of this Agreement or to a Sale-Leaseback Transaction or Equity Investment, as applicable ("Collateral Assignment Agreement").

The Collateral Assignment Agreement shall be in form and substance reasonably agreed to by Buyer, Seller and Lender, and shall include, among others, the following provisions (together with such other commercially reasonable provisions required by any Lender that are reasonably acceptable to Buyer):

- (a) Buyer shall give, to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, simultaneously with the Notice to Seller and before exercising its right to terminate this Agreement, written Notice of any event or circumstance known to Buyer which would, if not cured within the applicable cure period specified in Article VI, constitute an Event of Default (an "Incipient Event of Default");
- (b) Lender shall have the right to cure an Incipient Event of Default or an Event of Default by Seller in accordance with the same provisions of this Agreement as apply to Seller;
- (c) Following an Event of Default by Seller under this Agreement, Buyer may require Seller to (although Lender may, but shall have no obligation, subject to 9.05(g)) provide to Buyer a report concerning:
 - (i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;
 - (ii) Impediments to the cure plan or its development;
 - (iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

- (iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan;
- (d) Seller or Lender shall provide the report to Buyer within 10 Business Days after Notice from Buyer requesting the report. Buyer shall have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;
- (e) Lender shall have the right to cure an Event of Default or Incipient Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the end of any cure period indicating Lender's intention to cure. Lender may remedy or cure the Event of Default or Incipient Event of Default within the cure period under this Agreement. Such cure period for Lender shall be extended for each day Buyer does not provide the Notice to Lender referred to in Section 9.05(a). In addition, such cure period may, in Buyer's reasonable discretion, be extended by no more than an additional 180 days. If possession of the Generating Facility is necessary to cure such Incipient Event of Default or Event of Default, Lender has commenced foreclosure proceedings within 60 days after receipt of such Notice from Buyer, and Lender is making diligent and consistent efforts to complete such foreclosure, take possession of the Generating Facility and promptly cure the Incipient Event of Default or Event of Default, Lender or its designee(s) or assignee(s) will be allowed a reasonable period of time to complete such foreclosure proceedings, take possession of the Generating Facility and cure such Incipient Event of Default or Event of Default, not to exceed 180 days after Lender's commencement of foreclosure. Additionally, if Lender is prohibited from curing any Incipient Event of Default or Event of Default by any process, stay or injunction issued by a Governmental Authority or pursuant to any bankruptcy, insolvency or similar proceedings, then the time period for curing such Incipient Event of Default or Event of Default shall be extended for the period of the prohibition provided that Lender is exercising reasonable diligence in having such process, stay or injunction removed;
- (f) Lender shall have the right to consent before any termination of this Agreement which does not arise out of an Event of Default or the end of the Term;
- (g) Lender shall receive prior Notice of, and shall have the right to approve material amendments to this Agreement, which approval may not be unreasonably withheld, delayed or conditioned;
- (h) In the event Lender, directly or indirectly, takes title to the Generating Facility (including title by foreclosure or deed in lieu of foreclosure), the Person taking title to the Generating Facility shall assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the

Collateral Assignment Agreement); *provided, however*, that Lender (or such Person) shall have no liability for any monetary obligations of Seller under this Agreement which are due and owing to Buyer as of the assumption date (but this provision may not be interpreted to limit Buyer's rights to proceed against Seller as a result of an Event of Default) and Lender's (or such Person's) liability to Buyer after such assumption shall be limited to its interest in the Generating Facility; *provided further*, that before such assumption, if Buyer advises Lender (or such Person) that Buyer will require that Lender (or such Person) cure (or cause to be cured) one or more monetary or non-monetary Incipient Event(s) of Default or Event(s) of Default existing as of the date such Person takes title in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Incipient Event(s) of Default or Event(s) of Default, then Lender (or such Person) at its option and in its sole discretion may elect to either (i) cause such Incipient Event(s) of Default or Event of Default to be cured, or (ii) not assume this Agreement;

- (i) If Lender has assumed this Agreement as provided in Section 9.05(h) and elects to sell or transfer the Generating Facility (after Lender directly or indirectly, takes title to the Generating Facility), or sale of the Generating Facility occurs through the actions of Lender or an agent of or representative of Lender (excluding any foreclosure sale where a third party other than Lender, Seller, an Related Entity of Lender or an Related Entity of Seller is the buyer), then Lender must cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer excluding, however, a foreclosure (unless the transferee or buyer is Lender, Seller, an Related Entity of Lender or an Related Entity of Seller). Lender shall be released from all further obligations under the Agreement and all related documents following such assumption. Such sale or transfer (excluding a foreclosure) may be made only to a Person reasonably acceptable to Buyer; and
- (j) If this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith and if Lender or its representative or designee, directly or indirectly, takes title to the Generating Facility, then, at the request of either Buyer or Lender, Buyer and Lender (or its designee or representative) shall promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement for the term that would have been remaining under this Agreement, provided that Lender's (or its designee's or representative's) liability under such new agreement shall be limited to its interest in the Generating Facility and neither Lender (or its designee or representative) nor Buyer shall have any personal liability to the other for any amounts owing and neither Buyer nor Lender (or its designee or representative) shall have any obligation to cure any defaults under the original Agreement that was rejected in, or otherwise terminated in connection with Seller's Bankruptcy.

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

9.07 Notices. All Notices shall be provided as specified in Exhibit N. Notices (other than Forecasts and Scheduling requests) shall, unless otherwise specified in this Agreement, be in writing and may be delivered by hand delivery, first class United States mail, overnight courier service, electronic transmission or facsimile. Notices provided in accordance with this Section 9.07 are deemed given as follows:

- (a) Notice by facsimile, electronic transmission or hand delivery is deemed given at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise are deemed given at the close of business on the next Business Day;
- (b) Notice by overnight first class United States mail or overnight courier service is deemed given on the next Business Day after such Notice is sent out;
- (c) Notice by first class United States mail is deemed given two Business Days after the postmarked date;
- (d) Notices are effective on the date deemed given, unless a different date for the Notice to go into effect is stated in another section of this Agreement;
- (e) A Party may change its designated representatives, addresses and other contact information by providing Notice of same in accordance herewith; and
- (f) All Notices for this Generating Facility must reference the identification number set forth on the cover page of this Agreement.

9.08 General.

- (a) This Agreement supersedes all prior agreements, whether written or oral, between the Parties with respect to its subject matter and constitutes the entire agreement between the Parties relating to its subject matter.
- (b) This Agreement will not be construed against any Party as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

- (c) Except to the extent provided for in this Agreement, no amendment or modification to this Agreement is enforceable unless reduced to a writing signed by all Parties.
- (d) If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.
- (e) Waiver by a Party of any default by the other Party will not be construed as a waiver of any other default.
- (f) The term “including” when used in this Agreement is by way of example only and will not be considered in any way to be in limitation.
- (g) The word “or” when used in this Agreement includes the meaning “and/or” unless the context unambiguously dictates otherwise.
- (h) The headings used in this Agreement are for convenience and reference purposes only and will not affect its construction or interpretation. All references to “Articles”, “Sections” and “Exhibits” refer to the corresponding Articles, Sections and Exhibits of this Agreement. Unless otherwise specified, all references to “Articles” or “Sections” in Exhibits A through U refer to the corresponding Articles and Sections in the main body of this Agreement. Words having well-known technical or industry meanings have such meanings unless otherwise specifically defined in this Agreement.
- (i) Where days are not specifically designated as Business Days, they are calendar days. Where years are not specifically designated as Term Years, they are calendar years.
- (j) This Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the Parties. Nothing in this Agreement will be construed to give any Person other than the Parties any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement, except as shall inure to a successor or permitted assignee.
- (k) No provision of this Agreement is intended to contradict or supersede any applicable agreement between the Parties or between or among Seller, the CAISO and the Transmission Provider, covering transmission, distribution, metering, scheduling or interconnection of electric energy (including the PGA and QF PGA). In the event of an apparent contradiction between this Agreement and any such agreement, the applicable agreement controls.

- (l) Whenever this Agreement specifically refers to any law, tariff, government department or agency, regional reliability council, Transmission Provider, or credit rating agency, the Parties agree that the reference also refers to any successor to such law, tariff or organization.
- (m) The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a “forward contract” within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each “forward contract merchants” within the meaning of the United States Bankruptcy Code.
- (n) This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission, an Adobe Acrobat file or by other electronic means constitutes effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or by other electronic means will be deemed to be their original signatures for all purposes.

9.09 Confidentiality.

- (a) Neither Party may disclose any Confidential Information to a third party, other than:
 - (i) To such Party’s employees, Lenders, investors, attorneys, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential;
 - (ii) To potential Lenders with the consent of Buyer, which consent will not be unreasonably withheld; *provided, however*, that disclosure (1) of cash flow and other financial projections to any potential Lender or investor in connection with a potential loan or tax equity investment; or (2) to potential Lenders or investors with whom Seller has negotiated (but not necessarily executed) a term sheet or other similar written mutual understanding, will not require such consent of Buyer; *provided further*, that in each case such potential Lender or investor has a need to know such information and has agreed to keep such terms confidential;
 - (iii) To Buyer’s Procurement Review Group, as defined in D.02-08-071, subject to a protective order applicable to Buyer’s Procurement Review Group;

- (iv) With respect to Confidential Information other than nonpublic financial information of Seller supplied to Buyer pursuant to Section 3.20, to the CPUC, the CEC or the FERC, under seal for any regulatory purpose, including policymaking, but only provided that the confidentiality protections from the CPUC under Section 583 of the California Public Utilities Code or other statute, order or rule offering comparable confidentiality protection are in place before the communication of such Confidential Information;
 - (v) In order to comply with any Applicable Law or any exchange, Control Area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing party, other than to those entities set forth in Section 9.09(a)(vi);
 - (vi) In order to comply with any Applicable Law, including applicable regulation, rule, subpoena, or order of the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal, or any discovery or data request of the CPUC;
 - (vii) To representatives of a Party's credit ratings agencies who have a need to review the terms and conditions of this Agreement for the purpose of assisting the Party in evaluating this Agreement for credit rating purposes or with respect to the potential impact of this Agreement on the Party's financial reporting obligations, in each case subject to confidentiality restrictions no less stringent than as set forth in this Agreement; and
 - (viii) As may reasonably be required to participate in the WREGIS or other process recognized under Applicable Laws for the registration, transfer or ownership of Green Attributes associated with the Related Products.
- (b) In connection with requirements, requests or orders to produce documents or information in the circumstances provided in Sections 8.03 and 9.09(a)(vi) ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts to (i) notify the other Party before disclosing the confidential information, and (ii) prevent or limit such disclosure. After using such reasonable efforts, the disclosing party may not be (x) prohibited from complying with a Disclosure Order, or (y) liable to the other Party for monetary or other damages incurred in connection with the disclosure of any terms or conditions of this Agreement which are the subject of such Disclosure Order.
- (c) Except as provided in clause (y) of Section 9.09(b), the Parties are entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, the confidentiality obligations set forth in this Section 9.09.

9.10 Insurance.

(a) As of the Effective Date and throughout the Term (and for such additional periods as may be specified in this Section 9.10), Seller shall, at its own expense, provide and maintain in effect the insurance policies and minimum limits of coverage specified in this Section 9.10, and such additional coverage as may be required by Applicable Law, with insurance companies which are authorized to do business in the state in which the services are to be performed and which have an A.M. Best's Insurance Rating of not less than A-:VII. The minimum insurance requirements specified in this Section 9.10 do not in any way limit or relieve Seller of any obligation assumed elsewhere in this Agreement, including, but not limited to, Seller's defense and indemnity obligations.

- (i) Workers' Compensation Insurance with the statutory limits required by the state having jurisdiction over Seller's employees;
- (ii) Employer's Liability Insurance with limits of not less than:
 - 1) Bodily injury by accident – One Million dollars (\$1,000,000) each accident;
 - 2) Bodily injury by disease – One Million dollars (\$1,000,000) policy limit; and
 - 3) Bodily injury by disease – One Million dollars (\$1,000,000) each employee; and
- (iii) Commercial General Liability Insurance, (which, except with the prior written consent of Buyer and subject to Sections 9.10(a)(ii)(1) and (2), shall be written on an "occurrence," not a "claims-made" basis), covering all operations by or on behalf of Seller arising out of or connected with this Agreement, including coverage for bodily injury, broad form property damage, personal and advertising injury, products/completed operations, and contractual liability. Such insurance shall bear a combined single limit per occurrence and annual aggregate of not less than one million dollars (\$1,000,000), exclusive of defense costs, for all coverages. Such insurance shall contain standard cross-liability and severability of interest provisions.

If Seller elects, with Buyer's written concurrence, to use a "claims made" form of Commercial General Liability Insurance, then the following additional requirements apply:

- 1) The retroactive date of the policy must be prior to the Effective Date; and
- 2) Either the coverage must be maintained for a period of not less than four years after the Agreement terminates, or the policy must

provide for a supplemental extended reporting period of not less than four years after the Agreement terminates.

- (iv) Commercial Automobile Liability Insurance covering bodily injury and property damage with a combined single limit of not less than \$1,000,000 per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired automobiles in the performance of the Agreement.
 - (v) Umbrella/Excess Liability Insurance, written on an "occurrence," not a "claims-made" basis, providing coverage excess of the underlying Employer's Liability, Commercial General Liability, and Commercial Automobile Liability insurance, on terms at least as broad as the underlying coverage, with limits of not less than \$10,000,000 per occurrence and in the annual aggregate. The insurance requirements of this Section 9.10 can be provided by any combination of Seller's primary and excess liability policies.
- (b) The insurance required in Section 9.10(a) apply as primary insurance to, without a right of contribution from, any other insurance maintained by or afforded to Buyer, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, and employees, regardless of any conflicting provision in Seller's policies to the contrary. To the extent permitted by Applicable Law, Seller and its insurers are required to waive all rights of recovery from or subrogation against Buyer, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, employees and insurers. The Commercial General Liability and Umbrella/Excess Liability insurance required above shall name Buyer, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents and employees, as additional insureds for liability arising out of Seller's construction, ownership or Operation of the Generating Facility.
- (c) At the time this Agreement is executed, or within a reasonable time thereafter, and within a reasonable time after coverage is renewed or replaced, Seller shall furnish to Buyer certificates of insurance evidencing the coverage required in this Section 9.10, written on forms and with deductibles reasonably acceptable to Buyer. All deductibles, co-insurance and self-insured retentions applicable to the insurance above shall be paid by Seller. All certificates of insurance shall note that the insurers issuing coverage shall endeavor to provide Buyer with at least 30 days' prior written notice in the event of cancellation of coverage. Buyer's receipt of certificates that do not comply with the requirements stated herein, or Seller's failure to provide certificates, does not limit or relieve Seller of the duties and responsibility of maintaining insurance in compliance with the requirements in this Section 9.10 and does not constitute a waiver of any of the requirements in this Section 9.10.

- (d) If Seller fails to comply with any of the provisions of this Section 9.10, Seller, among other things and without restricting Buyer's remedies under the Applicable Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required Commercial General Liability, Umbrella/Excess Liability and Commercial Automobile Liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above.
 - (e) Seller has the right to self-insure to comply with Seller's obligations under this Section 9.10. The insurance carrier or carriers and form of policy (including any deductible amount), or any plan for self-insurance shall be subject to review and approval by Buyer, which approval may not be unreasonably withheld, conditioned or delayed.
- 9.11 Nondedication. Notwithstanding any other provisions of this Agreement, neither Party dedicates any of the rights that are or may be derived from this Agreement or any part of its facilities involved in the performance of this Agreement to the public or to the service provided under this Agreement, and such service shall cease upon termination of this Agreement.
- 9.12 Mobile Sierra. Notwithstanding any provision of this Agreement, neither Party will seek, nor will 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" 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).
- 9.13 Seller Ownership and Control of Generating Facility. Seller agrees, that, in accordance with FERC Order No. 697, upon request of Buyer, Seller shall submit a letter of concurrence in support of an affirmative statement by Buyer that the contractual arrangement set forth in this Agreement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that the contractual arrangement set

forth in this Agreement conveys ownership or control of generation capacity from Seller to Buyer.

- 9.14 Simple Interest Payments. Except as specifically provided in this Agreement, any outstanding and past due amounts owing and unpaid by either Party under the terms of this Agreement shall be eligible to receive a Simple Interest Payment calculated using the Interest Rate for the number of days between the date due and the date paid.
- 9.15 Payments. Payments to be made under this Agreement shall be made, at Seller's option, by check or electronic wire funds transfer.
- 9.16 Provisional Relief. The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms hereof, that money damages would not be a sufficient remedy for any breach of such provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or the other security, to seek a preliminary injunction, temporary restraining order, or other provisional relief as a remedy for a breach of Sections 3.01, 3.02, 3.03, or 9.09 (and, if applicable, Section 4(e) of Exhibit F) in any court of competent jurisdiction, notwithstanding the obligation to submit all other disputes (including all Claims for monetary damages under this Agreement) to arbitration pursuant to Section 10.01. The Parties further acknowledge and agree that the results of such arbitration may be rendered ineffectual without such provisional relief.

Such a request for provisional relief does not waive a Party's right to seek other remedies for the breach of the provisions specified above in accordance with Section 10.01, notwithstanding any prohibition against claim-splitting or other similar doctrine. The other remedies that may be sought include specific performance and injunctive or other equitable relief, plus any other remedy specified in this Agreement for such breach of the provision, or if this Agreement does not specify a remedy for such breach, all other remedies available at law or equity to the Parties for such breach.

*** End of Article Nine ***

ARTICLE TEN. DISPUTE RESOLUTION

10.01 Dispute Resolution. Other than requests for provisional relief under Section 9.16, any and all disputes, Claims or controversies arising out of, relating to, concerning, or pertaining to the terms of this Agreement, or to either Party's performance or failure of performance under this Agreement ("Disputes"), which Disputes the Parties have been unable to resolve by informal methods, will first be submitted to mediation in accordance with the procedures described in Section 10.02, and if the Dispute is not resolved through mediation, then for final and binding arbitration in accordance with the procedures described in Section 10.03.

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

The Parties will cooperate with one another in selecting the mediator ("Mediator") from the panel of neutrals from JAMS or any other mutually acceptable non-JAMS Mediator, and in scheduling the time and place of the mediation. Such selection and scheduling will be completed within 45 days after Notice of the request for mediation.

Unless otherwise agreed to by the Parties, the mediation will not be scheduled for a date that is greater than 120 days from the date of Notice of the request for mediation.

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

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

10.03 Arbitration. Either Party may initiate binding arbitration with respect to the matters first submitted to mediation in accordance with Section 10.02 by providing Notice of a demand for binding arbitration before a single, neutral arbitrator (the "Arbitrator") at any time following the unsuccessful conclusion of the mediation provided for in Section 10.02.

The Parties will cooperate with one another in selecting the Arbitrator within 60 days after Notice of the demand for arbitration and will further cooperate in scheduling the

arbitration to commence no later than 180 days from the date of Notice of the demand. If the Parties are unable to agree upon a mutually acceptable Arbitrator, the Arbitrator will be appointed as provided for in California Code of Civil Procedure Section 1281.6. To be qualified as an Arbitrator, each candidate must be a retired judge of a trial court of any state or federal court, or retired justice of any appellate or supreme court.

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

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

Except as provided for in this Section 10.03, the arbitration will be conducted by the Arbitrator in accordance with the rules and procedures for arbitration of complex business disputes for the organization with which the Arbitrator is associated. Absent the existence of such rules and procedures, the arbitration will be conducted in accordance with the California Arbitration Act, California Code of Civil Procedure Section 1280 et seq. and California procedural law (including the Code of Civil Procedure, Civil Code, Evidence Code and Rules of Court, but excluding local rules).

Notwithstanding the rules and procedures that would otherwise apply to the arbitration, and unless the Parties agree to a different arrangement, the place of the arbitration will be in [], California, and discovery will be limited as follows:

{Buyer Comment: For PG&E, insert San Francisco; for SDG&E, insert San Diego; and for SCE, insert Los Angeles.}

- (a) Before discovery commences, the Parties shall exchange an initial disclosure of all documents and percipient witnesses which they intend to rely upon or use at any arbitration proceeding (except for documents and witnesses to be used solely for impeachment);
- (b) The initial disclosure will occur within 30 days after the initial conference with the Arbitrator or at such time as the Arbitrator may order;
- (c) Discovery may commence at any time after the Parties' initial disclosure;
- (d) The Parties will not be permitted to propound any interrogatories or requests for admissions;
- (e) Discovery will be limited to 25 document requests (with no subparts), three lay witness depositions, and three expert witness depositions (unless the Arbitrator

holds otherwise following a showing by the Party seeking the additional documents or depositions that the documents or depositions are critical for a fair resolution of the Dispute or that a Party has improperly withheld documents);

- (f) Each Party is allowed a maximum of three expert witnesses, excluding rebuttal experts;
- (g) Within 60 days after the initial disclosure, or at such other time as the Arbitrator may order, the Parties shall exchange a list of all experts upon which they intend to rely at the arbitration proceeding;
- (h) Within 30 days after the initial expert disclosure, the Parties may designate a maximum of two rebuttal experts;
- (i) Unless the Parties agree otherwise, all direct testimony will be in form of affidavits or declarations under penalty of perjury; and
- (j) Each Party shall make available for cross-examination at the arbitration hearing its witnesses whose direct testimony has been so submitted.

Subject to Article Seven, the Arbitrator will have the authority to grant any form of equitable or legal relief a Party might recover in a court action. The Parties acknowledge and agree that irreparable damage would occur in the event certain provisions of this Agreement are not performed in accordance with the terms hereof, that money damages would not be a sufficient remedy for any breach of such provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to specific performance and injunctive or other equitable relief as a remedy for a breach of Sections 3.01, 3.02, 3.03 or 9.09 (and, if applicable, Section 4(e) of Exhibit F).

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

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

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

*** End of Article Ten ***

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective authorized representatives as of the Effective Date.

[SELLER'S NAME],

[BUYER'S NAME],

a [Seller's business registration]

a California corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A
Definitions

For purposes of this Agreement, the following terms and variations thereof have the meanings specified or referred to in this Exhibit A:

“20-Day Demonstration” has the meaning set forth in Section 2 of Exhibit C.

“Agreement” has the meaning set forth in the Preamble.

“Allowance” means a limited tradable authorization (whether in the form of a credit, allowance or other similar right), allocated to, issued to or purchased by, Seller, the Site Host or an Related Entity of Seller, with respect to the Generating Facility, to emit one MT of Greenhouse Gas, in accordance with a cap-and-trade program in California for the regulation of Greenhouse Gas, as established by the CARB (or by a different Governmental Authority pursuant to federal or state legislation), and as applied to the Greenhouse Gas emitted by the Generating Facility.

“Allowed Firm Energy” is determined in Section 3(l) of Exhibit D.

“Allowed Hourly Energy”, or “E”, is determined in Section 3(f) of Exhibit D.

“Allowed Payment Energy”, or “APE”, is determined in Section 2(e) of Exhibit D.

“Ambient Factors” mean those particular corrections for actual ambient conditions being different from specified ambient conditions that are to be applied to the Demonstrated Rate of Metered Energy or Power Output during a Capacity Demonstration Test pursuant to Exhibit C, as defined in a written agreement between the Parties and as further explained in Section 9 of Exhibit C.

“Ambient Outage” means reductions in capacity due to that status of, or variations in, Site Host Load or ambient weather conditions.

“Annual GHG Reports” has the meaning set forth in Section 2(a) of Exhibit S.

“Applicable Laws” means all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to either or both of the Parties, the Generating Facility or the terms of this Agreement.

“Arbitrator” has the meaning set forth in Section 10.03.

“As-Available Capacity”, or “AAC”, is determined in Section 3(c) of Exhibit D.

“As-Available Capacity Payment”, or “ACP”, is determined in Section 3(b) of Exhibit D.

“As-Available Capacity Price” is set forth in Section 1.06(b), in dollars per kW-year.

“As-Available Contract Capacity” means the electric energy generating capacity that Seller provides on an as-available basis for the Power Product, as set forth in Section 1.02(d), and as may be adjusted in accordance with Section 3.07(c), Section 3.13(b) or Exhibit C, as applicable.

“As-Available Contract Capacity Confirmation Certificate” has the meaning set forth in Section 3.13(b).

“Availability Credit Factor”, or “ACF”, is determined in Section 3(i) of Exhibit D.

“Availability Incentive Payments” has the meaning set forth in the CAISO Tariff.

“Availability Penalty Factor”, or “APF”, is determined in Section 3(n) of Exhibit D.

“Availability Standards” has the meaning set forth in the CAISO Tariff.

“Bankrupt” means with respect to any Person, such Person:

- (a) Files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it (which petition is not dismissed within 90 days);
- (b) Makes an assignment or any general arrangement for the benefit of creditors;
- (c) Otherwise becomes bankrupt or insolvent (however evidenced);
- (d) Has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; or
- (e) Is generally unable to pay its debts as they fall due.

“Benchmark Capacity” is determined, as applicable, in Section 3(a) of Exhibit D-1, Section 3(a) of Exhibit D-2, Section 3(a) of Exhibit D-3, and Section 9(a) of Exhibit E.

“Business Day” means any day except a Saturday, Sunday, the Friday after the United States Thanksgiving holiday, or a Federal Reserve Bank holiday that begins at 8:00 a.m. and end at 5:00 p.m. local time for the Party sending a Notice or payment or performing a specified action.

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

“Buyer Energy Schedule” means the schedule of electric energy that Buyer establishes with the CAISO for electric energy produced by the Generating Facility.

“Buyer Parent Energy Schedule” means the schedule of electric energy that Buyer establishes with the CAISO for electric energy delivered to the CAISO for the CAISO Global Resource ID associated with the Generating Facility.

“Buyer Projected Energy Forecast” has the meaning set forth in Section 2(a) of Exhibit G.

“CAISO” means the California Independent System Operator Corporation or successor entity that dispatches certain generating units, supplies certain loads and controls the transmission facilities of entities that (a) own, operate and maintain transmission lines and associated facilities or have entitlements to use certain transmission lines and associated facilities, and (b) have transferred to the CAISO or its successor entity operational control of such facilities or entitlements.

“CAISO-Approved Meter” means any revenue quality, electric energy measurement meter furnished by Seller, that (a) is designed, manufactured and installed in accordance with the CAISO’s metering requirements, or, to the extent that the CAISO’s metering requirements do not apply, Prudent Electrical Practices, and (b) includes all of the associated metering transformers and related appurtenances that are required in order to measure the net electric energy output from the Generating Facility.

“CAISO-Approved Quantity” means the total quantity of electric energy that Buyer Schedules with the CAISO and the CAISO approves in its final schedule which is published in accordance with the CAISO Tariff.

“CAISO Charges” means the debits, costs, fees, penalties, sanctions, interest or similar charges, including imbalance energy charges, that are directly assigned by the CAISO to the CAISO Global Resource ID for the Generating Facility for, or attributable to, Scheduling or deliveries from the Generating Facility under this Agreement.

“CAISO Charges Invoice” has the meaning set forth in Section 5 of Exhibit G.

“CAISO Controlled Grid” has the meaning set forth in the CAISO Tariff.

“CAISO Forced Outage Report” means a complete copy of a forced outage report in a form reasonably acceptable to Buyer which includes detailed information regarding the event, including the affected Generating Unit, outage start date and time, estimation of outage duration, MW unavailable and summary of work to be performed.

“CAISO Global Resource ID” means the number or name assigned by the CAISO to the CAISO-Approved Meter.

“CAISO Revenues” means the credits, fees, payments, revenues, interest or similar benefits, including imbalance energy payments, that are directly assigned by the CAISO to the CAISO Global Resource ID for the Generating Facility for, or attributable to, Scheduling or deliveries from the Generating Facility under this Agreement.

“CAISO Tariff” means the California Independent System Operator Corporation 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 the FERC.

“Capacity Attributes” means any and all current or future defined characteristics, certificates, tag, credits, ancillary service attributes, or accounting constructs, howsoever entitled, other than Resource Adequacy Benefits, attributed to or associated with the electricity generating capability of the Generating Facility.

“Capacity Credit Hours”, or “CCH”, is determined in Section 3(m) of Exhibit D.

“Capacity Credit Period” is determined in Section 3(b)(iv) of Exhibit E.

“Capacity Demonstration Test” means the procedures for testing or otherwise determining the Power Product and the Reportable Capacity, as set forth in Exhibit C or Section 3.13(b), as applicable.

“Capacity Demonstration Factor” is determined in Section 3 of Exhibit C.

“Capacity Measurement Interval” means each 15-minute time period, beginning on the hour (e.g. 12:00 to 12:15, 12:30, 12:45, etc.), for which the Power Output is measured.

“Capacity Payment Allocation Factors”, or “CAF”, means the TOD Period factors which are used to calculate the TOD Period Capacity Payment, as set forth in the table in Section 3(a) of Exhibit D.

“Capacity Performance Requirement”, or “CR”, means the values set forth in Section 1.04.

“CARB” means California Air Resources Board, or any successor entity.

“CARB Annual Report” has the meaning set forth in Section 2(a)(i) of Exhibit S.

“CARB Mandatory GHG Emissions Annual Report” means the mandatory reporting regulations approved by CARB in December 2007, which became effective in January 2009, pursuant to the requirements set forth in the California Global Warming Solutions Act of 2006 for the reporting of Greenhouse Gas by major sources.

“CEC” means the California Energy Commission, or any successor entity.

“CFR” means the Code of Federal Regulations, as may be amended from time to time.

“Check Meter” means the Buyer revenue-quality meter section or meter(s), which Buyer may require at its discretion, as set forth in Section 3.08(b) and will include those devices normally supplied by Buyer or Seller under the applicable utility Electric Service Requirements.

“CHP Facility” means a Generating Facility that (a) is a Qualifying Cogeneration Facility, (b) meets the definition of “cogeneration” under CPUC Code Section 216.6, and (c) satisfies the Greenhouse Gas emissions performance standards set forth in CPUC Code Section 8341 (California Senate Bill 1368).

“CHP RFO Pro Forma” has the meaning set forth in Recital E.

“Claiming Party” has the meaning set forth in Section 5.02.

“Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed before or after the termination of this Agreement.

“Collateral Assignment Agreement” has the meaning set forth in Section 9.05.

“Commissioning Test” means tests applied to the Generating Facility, after completion of the construction of the Generating Facility, in order to verify that the Generating Facility may be released for Operation.

“Confidential Information” means all oral or written communications exchanged between the Parties on or after the Effective Date relating to the implementation of this Agreement, including information related to Seller’s compliance with operating and efficiency standards applicable to a “qualifying cogeneration facility” (as contemplated in 18 CFR Part 292, Section 292.205). Confidential Information does not include (i) information which is in the public domain as of the Effective Date or which comes into the public domain after the Effective Date from a source other than from the other Party, (ii) information which either Party can demonstrate in writing was already known to such Party on a non-confidential basis before the Effective Date, (iii) information which comes to a Party from a bona fide third-party source not under an obligation of confidentiality, or (iv) information which is independently developed by a Party without use of or reference to Confidential Information or information containing Confidential Information.

“Contract Heat Rate” or “CHR” means the values set forth by season and TOD Period in Table 1 of Section 2(b) of Exhibit D, in BTU per kWh, Higher Heating Value basis.

“Control Area” means the electric power system (or combination of electric power systems) under the operational control of the CAISO or any other electric power system under the operational control of another organization vested with authority comparable to that of the CAISO.

“Converted Physical Trade”, or “CPT”, means the quantity from Physical Trades, in MWh, that did not pass CAISO’s physical validation of the IFM.

“Converted Physical Trade Price” means the price, in dollars per MWh, used by the CAISO to settle the quantity, in MWh, associated with the Converted Physical Trade.

“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions, legal expenses and other similar third party transaction costs and expenses reasonably incurred by such Party in entering into any new arrangement which replaces this Agreement.

“CPUC” means the California Public Utilities Commission, or any successor entity.

“CPUC Approval” means either (1) a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, or (2) a final and non-appealable disposition of the CPUC’s Energy Division, without conditions or modifications unacceptable to the Parties, or either of them, which deems approved an advice letter requesting approval of this Agreement in its entirety, including payments to be made by Buyer, subject to CPUC review of Buyer’s administration of this Agreement. CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

“Credit Rating” means with respect to any Person, on the relevant date of determination, the respective ratings then assigned to such Person’s unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P, Moody’s or Fitch. If no rating is assigned to such Person’s unsecured, senior long-term debt or deposit obligation by any of S&P, Moody’s or Fitch, then “Credit Rating” shall mean the general corporate credit rating or long-term issuer rating assigned to such Person by S&P, Moody’s or Fitch, as the case may be.

“Curtailed Notice” has the meaning set forth in Section 3(a) of Exhibit U.

“Curtailed Period” means a time period for which Seller is requested by Buyer, the CAISO or a Transmission Provider to curtail its Power Product for Force Majeure or otherwise, as set forth in Exhibits D-1, D-2 and D-3.

“Curtailed Period Cap” has the meaning set forth in Section 1 of Exhibit U.

“D.” has the meaning set forth in Recital A.

“Daily Delay Liquidated Damages” has the meaning set forth in Section 4(c)(ii) of Exhibit F.

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

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

“Day-Ahead Price” means the LMP_{QF}, as set forth in Section 2(a) of Exhibit D.

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

“Decision” has the meaning set forth in Recital A.

“Defaulting Party” has the meaning set forth in Section 6.01(a).

“Delivery Point” has the meaning set forth in Section 1.03.

“Demonstrated Firm Contract Capacity” means the rate of electric energy delivery that the Generating Facility is able to demonstrate as a result of the Capacity Demonstration Test of the Firm Contract Capacity, as set forth in Exhibit C.

“Demonstration Rate of Metered Energy” means the quantity, in kWh per hour, calculated by multiplying the Metered Energy amount, within a Metering Interval in kWh per interval, times the number of Metering Intervals in a one-hour period.

“Development Security” has the meaning set forth in Section 4(b)(i) of Exhibit F.

“Disclosure Order” has the meaning set forth in Section 9.09(b).

“Dispute” has the meaning set forth in Section 10.01.

“Early Termination Date” has the meaning set forth in Section 6.02(a).

“Earned Capacity Hours”, or “ECH”, means the number of firm capacity equivalent available hours determined by dividing the Firm TOD Energy by the Firm Contract Capacity, as set forth in Section 3(j) of Exhibit D.

“Economic Curtailment Limit Schedule” means the schedule that Seller must provide to Buyer, in accordance with Exhibit U, which schedule must be submitted to Buyer by 5:00 p.m. PPT on the day before the Trading Day, and which must set forth the number of MWhs of the Power Product that Buyer may not economically curtail pursuant to a Curtailment Notice.

“Economic Curtailment Credit Value” or “ECV” is the adder applied to the Earned Capacity Hours to account for the time during which Seller is not able to meet the Firm Contract Capacity obligation due to a curtailment of Power Product requested by Buyer, as determined in accordance with Section 3 of Exhibit D-3.

“Effective Date” has the meaning set forth in the Preamble.

“Efficiency Rating” means the sum for the Term Year of Useful Thermal Energy Output, Metered Energy and Site Host Load energy, all in BTUs, divided by the Term Year amount of fuel consumed by the CHP Facility, in BTUs on a Higher Heating Value basis for the applicable Term Year, times one hundred percent. The foregoing values will be taken from (a) Seller’s Annual GHG Report, (b) Seller’s “QF Efficiency Monitoring Program – Cogeneration Data Reporting Form”, the form of which is attached hereto as Exhibit T, or (c) any other information available to Buyer, such as the loss of the Site Host.

“Efficiency Rating Cure Date” has the meaning set forth in Section 1.02(f)(ii).

“Efficiency Rating Cure Period” has the meaning set forth in Section 1.02(f)(ii).

“Efficiency Rating Cure Plan” has the meaning set forth in Section 1.02(f)(ii).

“Efficiency Rating Deficiency” has the meaning set forth in Section 1.02(f)(ii).

“Emergency Condition” has the meaning set forth in the Transmission Provider’s LGIA or SGIA with Seller, or the distribution-level FERC-jurisdictional interconnection agreement with Seller, as applicable; *provided, however*, that if Seller interconnects pursuant to Tariff Rule 21, “Emergency Condition” means “Emergency”, as defined in such Tariff Rule 21.

“Equitable Defense” means any Bankruptcy or 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.

“Equity Investment” means an acquisition by a Lender of an ownership interest in the form of stock, membership or partnership interest of Seller or the immediate parent of Seller under which Seller retains the right to act in all matters relating to the control and Operation of the Site and the Generating Facility for the Term, subject to Lender’s rights to enforce its ownership interest in Seller or the immediate parent of Seller, as applicable, in the event of a default by Seller or the immediate parent of Seller under Lender’s equity acquisition agreement or the partnership agreement, operating agreement, or other agreement governing the relationship between the equity owners of the Generating Facility.

“Event of Default” has the meaning set forth in Section 6.01.

“Existing CHP Facility” means a CHP Facility that commenced Parallel Operation before the Settlement Effective Date, but is not an Expanded CHP Facility or a Repowered CHP Facility.

“Existing PPA” means [\[insert title and date of the existing power purchase agreement between Buyer and Seller, including any amendments, as well as any extension agreements entered into pursuant D.07-09-040\]](#).

The definition of Existing PPA above is necessary for purposes of Sections 3.06(b) and 3.09(b). If Buyer and Seller are not parties to an existing power purchase agreement (including any extension agreements entered into pursuant to D.07-09-40), the above definition should be removed or revised as necessary.

“Expanded CHP Facility” means (i) an existing topping-cycle CHP Facility that, on or after the Settlement Effective Date, has added at least one new combustion turbine and increased the Power Rating of the Generating Facility by not less than 90% of the Power Rating of the largest existing combustion turbine at the Generating Facility, or (ii) an existing bottoming-cycle CHP Facility that has increased its total Power Rating by at least 30% as compared to the Power Rating before such expansion.

“Expected ER” has the meaning set forth in Section 1.02(f)(i).

“Expected Term Year Energy Production” means the Metered Energy quantity expected to be produced by the Generating Facility during each Term Year, as set forth in Section 1.02(e).

“Federal Funds Effective Rate” means the rate for that day opposite the caption “Federal Funds (effective)” as set forth in the weekly statistical release as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.

“FERC” means the Federal Energy Regulatory Commission, or any successor entity.

“Financial Consolidation Requirement” has the meaning set forth in Section 3.20(a).

“Financial Incentives” means any and all financial incentives, benefits or credits associated with the Generating Facility, or the ownership or Operation thereof, or the electrical or thermal output of the Generating Facility, including any production or investment tax credits, real or personal property tax credits or sales or use tax credits, but not including any Green Attributes, Capacity Attributes or Resource Adequacy Benefits.

“Firm Capacity Payment”, or “FCP”, has the meaning set forth in Section 3(g) of Exhibit D.

“Firm Capacity Price” or “CP” is set forth in Section 1.06(a), in dollars per kW-year.

“Firm Contract Capacity”, or “FCC”, means the monthly generating capacity that Seller commits to have available at the Site for the Power Product, as set forth in Section 1.02(d) and as may be adjusted in accordance with Section 3.07(c) and Exhibit C if the Generating Facility is a New CHP Facility, an Expanded CHP Facility, a Repowered CHP Facility, or, as set forth in Section 5.2.4.4 of the Settlement Agreement, an Existing CHP Facility that is Operating in California but that has never entered into an agreement for the purchase and sale of electric energy with Buyer or any other California investor-owned utility.Exhibit C.

“Firm Operation Date” means the date that is six months after the Term Start Date.

“Firm TOD Energy”, or “FE”, has the meaning set forth in Section 3(k) of Exhibit D.

“First Penalty Month” has the meaning set forth in Section 3(b) of Exhibit I.

“Fitch” means Fitch Ratings Ltd.

“Forced Outage” has the meaning set forth in the CAISO Tariff.

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

- (a) A failure of performance of any other Person, including any Person providing electric transmission service or fuel transportation to the Generating Facility, except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure event;

- (b) Failure to timely apply for or obtain Permits or other credits required to Operate the Generating Facility;
- (c) Breakage or malfunction of equipment (except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure); or
- (d) A lack of fuel of an inherently intermittent nature such as wind, water, solar radiation or waste gas or waste derived fuel.

“Force Majeure Credit Value”, or “FCV”, is the adder applied to the Earned Capacity Hours to account for the time during which Seller is not able to meet the Firm Contract Capacity obligation due to a Force Majeure curtailment requested by Buyer, determined in accordance with Section 3 of Exhibit D-1.

“Forecast” means the hourly forecast of (a) the total electric energy production of the Generating Facility (in MWh) when the Generating Facility is not PIRP-eligible or Buyer is not Scheduling Coordinator net of the Site Host Load and Station Use, or (b) the available total generation capacity of the Generating Facility (in MW) when the Generating Facility is PIRP-eligible and Buyer is Scheduling Coordinator net of the Site Host Load and Station Use.

“Forward Settlement Amount” means the Non-Defaulting Party’s Costs and Losses on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Forward Settlement Amount shall be zero dollars. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Forward Settlement Amount shall be an amount owing to the Non-Defaulting Party. The Forward Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“Free Allowance” means any Allowance freely allocated to Seller or the Generating Facility by CARB or an authorized Governmental Authority (or any entity authorized by such Governmental Authority).

“GAAP” means generally accepted accounting principles for financial reporting in the United States, consistently applied.

“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), as of the Early Termination Date resulting from the termination of this Agreement, expressed in dollars and determined in a commercially reasonable manner. Factors used in determining the gain of economic benefit to a Party may include:

- (a) Reference to information supplied by one or more third parties, which shall exclude Related Entities of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets;
- (b) Comparable transactions;

- (c) Forward price curves based on economic analysis of the relevant markets; and
- (d) Settlement prices for comparable transaction at liquid trading hubs (e.g., NYMEX);

All of which should be calculated for the remaining Term and shall include the value of Related Products.

Only if the Non-Defaulting Party is unable, after using commercially reasonable efforts, to obtain third party information to determine the gain of economic benefits, then the Non-Defaulting Party may use information available to it internally.

“Gas Index” or “GI” has the meaning set forth in Section 2(c) of Exhibit D.

“Generating Facility” means the Generating Unit(s) comprising Seller’s power plant, as more particularly described in Section 1.02 and Exhibit B, including all other materials, equipment, systems, structures, features and improvements necessary to produce electric energy and thermal energy, excluding the Site, land rights and interests in land.

“Generating Unit” means one or more generating equipment combinations typically consisting of prime mover(s), electric generator(s), electric transformer(s), steam generator(s) and air emission control devices.

“Generation Operations Center” means the location of Buyer’s real-time operations personnel.

“Generator Operator” means the Person that Operates the Generating Facility and performs the functions of supplying electric energy and interconnected operations services within the meaning of the NERC Reliability Standards.

“Generator Operator Obligations” means the obligations of a Generator Operator as set forth in all applicable NERC Reliability Standards.

“Generator Owner” means the Person that owns the Generating Facility and has registered with the NERC as the Person responsible for complying with all NERC Reliability Standards applicable to the owner of the Generating Facility.

“Generator Owner Obligations” means the obligations of a Generator Owner as set forth in all applicable NERC Reliability Standards.

“GHG Compliance Costs” means [____], as determined in accordance with Exhibit S.

{Buyer Comment: To be completed by Seller as part of its offer in this CHP-only RFO.}

“GHG EPS” means the Greenhouse Gas Emissions Performance Standard set forth in D.07-01-039 and in subsequent CPUC rulings implementing D.07-01-039, and any subsequent CPUC-established precondition to the execution of this Agreement (including any precondition set forth the Settlement Agreement), in each case as in effect as of the Effective Date.

“Governmental Authority” means (a) any federal, state, local, municipal or other government, (b) 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, or (c) any court or governmental tribunal.

“Governmental Charges” has the meaning as set forth in Section 8.02.

“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:

- (1) Any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants;
- (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
- (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

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.

- 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.

“Greenhouse Gas” or “GHG” means emissions released into the atmosphere of carbon dioxide (CO₂), nitrous oxide (N₂O) and methane (CH₄), which are produced as the result of combustion or transport of fossil fuels. Other greenhouse gases may include hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF₆), which are generated in a variety of industrial processes. Greenhouse gases may be defined or expressed in terms of a MT of CO₂-equivalent, in order to allow comparison between the different effects of gases on the environment; *provided, however*, that the definition of the term “Greenhouse Gas”, as set forth in the immediately preceding sentence, shall be deemed revised to include any update or other change to such term by the CARB or any other Governmental Authority.

“Guarantor” is that certain guarantor of Seller set forth in Section 1.07(b)(i).

“Guarantor Cross Default Amount” is the dollar amount set forth in Section 1.07(b)(iii).

“Guaranty Agreement” means a guaranty agreement substantially in the form of Exhibit O.

“Heat Rate” means, for purposes of this Agreement, the value obtained, in BTU per kWh, when the fuel input, on a Higher Heating Value basis, in BTU is divided by generation, net of Station Use, in kWh.

“Higher Heating Value” means the high or gross heat content of the fuel with the heat of vaporization included (the water vapor is assumed to be in a liquid state).

“Host Site” means the site at which the Site Host Load is consumed, including real property, facilities and equipment owned or operated by the Site Host or its Related Entities located at such site.

“Hour-Ahead Scheduling Deadline” means 30 minutes before the deadline established by the CAISO for the submission of schedules for the applicable hour.

“Hourly Credit Value” is determined, as applicable, in Section 3(b) of Exhibit D-1, Section 3(b) of Exhibit D-2, Section 3(b) of Exhibit D-3, and Section 9(b)(i) of Exhibit E.

“Hourly Debit Value” is determined in Section 9(b)(ii) of Exhibit E.

“Hourly Location Adjustment”, or “LA”, has the meaning set forth in Section 2(a) of Exhibit D.

“Hourly Power Output” means an hourly rate of electric energy delivery, in kWh per hour, that is equal to the Metered Energy for one hour, in kWh, divided by one hour.

“IFM” (i.e., the Integrated Forward Market) has the meaning set forth in the CAISO Tariff.

“IFM Load Uplift Obligation” means the obligation of a Scheduling Coordinator to pay its share of unrecovered IFM Bid Costs (as defined in the CAISO Tariff) paid to resources through Bid Cost Recovery (as defined in the CAISO Tariff).

“IFRS” has the meaning set forth in Section 3.20(b)(iii).

“Incipient Event of Default” has the meaning set forth in Section 9.05(a).

“Interconnection Study” means a study prepared by or on behalf of the Transmission Provider or the CAISO to evaluate the impact of the interconnection of the Generating Facility to the Transmission Provider’s electric system or the applicable Control Area operator’s electric grid.

“Interest Rate” means an annual rate equal to the rate published in The Wall Street Journal as the “Prime Rate” (or, if more than one rate is published, the arithmetic mean of such rates) as of the date payment is due plus two percentage points; *provided, however*, that in no event shall the Interest Rate exceed the maximum interest rate permitted by Applicable Laws.

“Inter-SC Trade” means a trade between Scheduling Coordinators of electric energy, Ancillary Service (as defined in the CAISO Tariff), or IFM Load Uplift Obligation in accordance with the CAISO Tariff.

“JAMS” means the Judicial Arbitration and Mediation Services, Inc. or any successor entity.

“kW” means a kilowatt (1,000 watts) of electric capacity or power output.

“kWh” means a kilowatt-hour (1,000 watt-hours) of electric energy.

“LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional load serving entities by the CPUC pursuant to the Resource Adequacy Rulings, or by another Local Regulatory Authority having jurisdiction over the load serving entity. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.

“LAR Showings” means the LAR compliance showings (or similar or successor showings) a load serving entity is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, or to a Local Regulatory Authority having jurisdiction over the load serving entity.

“Lease” means one or more agreements whereby Seller leases the Site(s) described in Section 1.02 and Exhibit B from a third party, the term of which lease begins on or before the Term Start Date and extends at least through the Term End Date.

“Lender” means any third-party institution or entity or successor in interest or assignees that either (i) purchases the Generating Facility and then leases it to Seller under a Sale-Leaseback Transaction, or (ii) provides development, bridge, construction, or permanent debt or tax equity financing or refinancing (including an Equity Investment) for the Generating Facility to Seller or credit support in connection with this Agreement.

“Letter of Credit” means an irrevocable, nontransferable standby letter of credit provided by Seller and 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) “A-” from S&P and Fitch, and “A3” from Moody’s, if such entity is rated by all three rating agencies, or (b) “A-” from S&P or Fitch, or “A3” from Moody’s, if such entity is rated by only one or two of the ratings agencies, in each case, substantially in the form of Exhibit P. All costs to establish and maintain the Letter of Credit shall be borne by Seller.

“Letter of Credit Default” means with respect to a Letter of Credit, the occurrence of any of the following events:

- (a) The issuer of such Letter of Credit fails to maintain a Credit Rating of at least “A-” by S&P and Fitch, and “A3” by Moody’s;
- (b) The issuer of the Letter of Credit fails to comply with or perform its obligations under such Letter of Credit;
- (c) The issuer of such Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges 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) Seller fails to provide an extended or replacement Letter of Credit within 30 days before such Letter of Credit expires or terminates; or
- (f) The issuer of such Letter of Credit becomes Bankrupt;

provided, however, that no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Agreement.

“LGIA” (i.e., Large Generator Interconnection Agreement or Standard Large Generator Interconnection Agreement) has the meaning set forth in the CAISO Tariff.

“Limited TOD Energy”, or “LE”, has the meaning set forth in Section 3(e) of Exhibit D.

“LMP_{QF}” has the meaning set forth in Section 2(a) of Exhibit D.

“LMP_{Trading Hub}” has meaning set forth in Section 2(a) of Exhibit D.

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

“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), as of the Early Termination Date, resulting from the termination of this Agreement, expressed in dollars and determined in a commercially reasonable manner. Factors used in determining the loss of economic benefit to a Party may include:

- (a) Reference to information supplied by one or more third parties, which shall exclude Related Entities of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets;
- (b) Comparable transactions;
- (c) Forward price curves based on economic analysis of the relevant markets; and
- (d) Settlement prices for comparable transaction at liquid trading hubs (e.g., NYMEX);

All of which should be calculated for the remainder of the Term and must include the value of Related Products. Only if the Non-Defaulting Party is unable, after using commercially reasonable efforts, to obtain third party information to determine the loss of economic benefits, then the Non-Defaulting Party may use information available to it internally.

“MAE_m” has the meaning set forth in Section 3(a) of Exhibit I.

“MAE Failure” has the meaning set forth in Section 3(b) of Exhibit I.

“Maintenance Credit Value”, or “MCV”, is the adder applied to the Earned Capacity Hours to account for the time during which Seller is not able to meet the Firm Contract Capacity obligation due to a Maintenance Outage or a Major Overhaul which has been properly scheduled in accordance with Exhibit E.

“Maintenance Debit Value” is a value indicating how much allowance is used when Seller requests credit for a Maintenance Outage or a Major Overhaul in accordance with Exhibit E.

“Maintenance Outage” means a time period during which Seller plans to reduce the Power Output of the Power Product, in full or in part, in order to facilitate maintenance work on the Generating Facility, other than a Major Overhaul.

“Major Overhaul” means a time period during which Seller plans to remove the Generating Facility from Operation in order to dismantle the Generating Facility’s equipment for inspections, repairs or replacement, with the goal that such equipment will be reassembled and made available for Operation.

“Major Overhaul Allowance” is a value indicating a Term-Year maximum allowance with which Seller can request credit for a Major Overhaul in accordance with Exhibit E.

“Maximum Allowed Capacity”, or “MAC”, is determined in Section 3(d) of Exhibit D.

“Maximum Firm Capacity Payment”, or “MFCP”, means the maximum payment that Seller can earn during a year for the delivery of Firm Contract Capacity that is calculated in accordance with the procedure set forth in Section 3(h) of Exhibit D.

“Mediator” has the meaning set forth in Section 10.02.

“Metered Amounts” means the quantity of electric energy, expressed in kWh, as recorded by (i) the CAISO-Approved Meter(s), which quantity may include compensation factors introduced by the CAISO into the CAISO-Approved Meter(s), or (ii) Check Meter(s), as applicable.

“Metered Energy” means the quantity of electric energy, expressed in kWh, as measured by (i) the CAISO-Approved Meter(s), which quantity will be adjusted so as not to include compensation factors, if any, introduced by the CAISO into the CAISO-Approved Meter(s) other than (x) electric energy consumed within the generator collection system as losses between the generator(s) and the high voltage side of the Generating Facility output transformer(s) and, (y) if applicable, the Generating Facility’s radial line losses, or (ii) Check Meters, as applicable, in each case for the specified Metering Interval.

“Metering Interval” means the smallest measurement time period over which data are recorded by the CAISO-Approved Meters or Check Meters.

“Milestone Schedule” means Seller’s milestone schedule, the form of which is attached to this Agreement as Exhibit Q.

“Monthly Contract Payment” has the meaning set forth in Section 4.01.

“Monthly Scheduling Fee” is described in Section 4(b) of Exhibit G.

“Moody’s” means Moody’s Investor Services, Inc.

“MT” means metric ton(s).

“MW” means a megawatt (1,000,000 watts) of electric capacity or power output.

“MWh” means a megawatt-hour (1,000,000 watt-hours) of electric energy or power output.

“MW Target” means the number of MWs that Buyer must procure as part of meeting its obligations under the Settlement Agreement, pursuant to and as further described in the Settlement Agreement.

“Negative Pricing Hours” has the meaning set forth in Section 3(a) of Exhibit U.

“NERC” means the North American Electric Reliability Corporation, or any successor entity.

“NERC Reliability Standards” means the most recent version of those reliability standards applicable to the Generating Facility, or to the Generator Owner or the Generator Operator with respect to the Generating Facility, that are adopted by the NERC and approved by the applicable regulatory authorities, which are available at http://www.nerc.com/files/Reliability_Standards_Complete_Set.pdf, or any successor thereto.

“NERC Standards Non-Compliance Penalties” means any and all monetary fines, penalties, damages, interest or assessments by the NERC, the CAISO, the WECC, a Governmental Authority or any Person acting at the direction of a Governmental Authority arising from or relating to a failure to perform the obligations of Generator Operator or Generator Owner as set forth in the NERC Reliability Standards.

“Net Contract Capacity”, or “NCC”, means the sum of Firm Contract Capacity and As-Available Contract Capacity, as set forth in Section 1.02(d), as may be adjusted in accordance with Section 3.07(c), Section 3.13(b) and Exhibit C, as applicable. Net Contract Capacity may not exceed PMax.

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

“New CHP Facility” means a CHP Facility that commenced Parallel Operation for the first time on or after the Settlement Effective Date.

“Non-Availability Charges” has the meaning set forth in the CAISO Tariff.

“Non-Defaulting Party” has the meaning set forth in Section 6.02.

“Notice” means notices, requests, statements or payments provided in accordance with Section 9.07 and Exhibit N.

“OMAR” means the Operational Metering Analysis and Reporting System operated and maintained by the CAISO as the repository of settlement quality meter data, or any successor thereto.

“Operate” means to provide (or the provision of) all the operation, engineering, purchasing, repair, supervision, training, inspection, testing, protection, use management, improvement, replacement, refurbishment, retirement, and maintenance activities associated with operating the Generating Facility in order to produce the Power Product in accordance with Prudent Electrical Practices.

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

“Outage Schedule” has the meaning set forth in Section 2(a) of Exhibit R.

“Outage Schedule Submittal Requirements” describes the obligations of Seller to submit maintenance and planned outage schedules (as defined in the CAISO Tariff under WECC rules) to Buyer 24 months in advance, as set forth in Exhibit R.

“Parallel Operation” means the Generating Facility’s electrical apparatus is connected to the Transmission Provider’s system and the circuit breaker at the point of common coupling is closed. The Generating Facility may be producing electric energy or consuming electric energy at such time.

“Party” has the meaning set forth in the Preamble.

“Peak Months” means [].

{Buyer Comment: For SCE and PG&E, the Peak Months are June, July, August and September. For SDG&E, the Peak Months are May, June, July, August and September.}

“Penalized As-Available Contract Capacity” has the meaning set forth in Section 3(b)(ii) of Exhibit I.

“Penalized Firm Contract Capacity” has the meaning set forth in Section 3(b)(i) of Exhibit I.

“Performance Assurance” means collateral (in the amount of the Performance Assurance Amount) for Seller’s performance under this Agreement in the form of cash, Letter(s) of Credit, or the Guaranty Agreement. Performance Assurance is only required to be posted by Seller if the Generating Facility is a New CHP Facility, a Repowered CHP Facility, or an Expanded CHP Facility that has elected in Section 1.02(a) to comply with the credit and collateral requirements set forth in this Agreement.

“Performance Assurance Amount” has the meaning set forth in Section 1.07(a)(ii).

“Performance Tolerance Band Lower Limit” is determined in Section 1 of Exhibit K.

“Performance Tolerance Band Upper Limit” is determined in Section 1 of Exhibit K.

“Permits” means all applications, approvals, authorizations, consents, filings, licenses, orders, permits or similar requirements imposed by any Governmental Authority, or the CAISO, in order to develop, construct, Operate, maintain, improve, refurbish or retire the Generating Facility or to Forecast or deliver the electric energy produced by the Generating Facility to Buyer.

“Person” means an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a Governmental Authority.

“PGA” (i.e., Participating Generator Agreement) has the meaning set forth in the CAISO Tariff.

“Physical Trade” has the meaning set forth in the CAISO Tariff.

“Physical Trade Settlement Amount” means the dollar amount calculated in accordance with Exhibit L.

“PIRP” (i.e., Participating Intermittent Resource Program) means the CAISO’s intermittent resource program initially established pursuant to Amendment No. 42 of the CAISO Tariff in Docket No. ER02-922-000, or any successor program that Buyer determines accomplishes a similar purpose.

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

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

“Power Output” means the average rate of electric energy delivery during one Metering Interval, converted to an hourly rate of electric energy delivery, in kWh per hour, that is equal to the product of Metered Energy for one Metering Interval, in kWh per Metering Interval, times the number of Metering Intervals in a one-hour period.

“Power Product” means (a) the Net Contract Capacity and (b) all electric energy produced by the Generating Facility, net of all Station Use and any and all of the Site Host Load.

“Power Rating” means the electrical power output value indicated on the generating equipment nameplate.

“Power Rating Notice” has the meaning set forth in Section 9.03(1).

“PPT” means Pacific Daylight time when California observes Daylight Savings Time and Pacific Standard Time otherwise.

“Primary Fuel” means the fuel or combination of fuels that are provided for in the Permits applicable to the Generating Facility.

“Product” means the Power Product and the Related Products.

“Project” means the Generating Facility.

“Prudent Electrical Practices” means those practices, methods and acts that would be implemented and followed by prudent operators of electric generating facilities in the Western United States, similar to the Generating Facility, 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 a decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety.

Prudent Electrical Practices includes, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with the manufacturer's warranties, restrictions in this Agreement, and the requirement of Governmental Authorities, WECC standards, the CAISO and Applicable Laws. Prudent Electrical Practices shall include taking reasonable steps to ensure that:

- (a) Equipment, materials, resources and supplies, including spare parts inventories, are available to meet the Generating Facility's needs;
- (b) Sufficient operating personnel are available at all times and are adequately experienced, trained and licensed as necessary to Operate the Generating Facility properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions at the Generating Facility and Emergencies whether caused by events on or off the Site;
- (c) Preventative, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe operation of the Generating Facility, and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment and tools;
- (d) Appropriate monitoring and testing are performed to ensure equipment is functioning as designed;
- (e) Equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public or the Transmission Provider's electric system, or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and
- (f) Equipment and components designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy generation operations in the Western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.

"PTSA," has the meaning set forth in Section 2 of Exhibit L.

"PURPA" means the Public Utility Regulatory Policies Act of 1978, Public Law, 95-617, as amended from time to time.

"QF PGA" (i.e., Qualifying Facility Participating Generator Agreement) has the meaning set forth in the CAISO Tariff.

"Qualifying Cogeneration Facility" means an electric energy generating facility that:

- (a) Complies with the “qualifying cogeneration facility” definition and other requirements (including the requirements set forth in 18 CFR Part 292, Section 292.205) established by PURPA and any FERC rules as amended from time to time implementing PURPA, as set forth in 18 CFR Part 292, Section 292.203 et seq.; and
- (b) Has filed with the FERC (i) an application for FERC certification, pursuant to 18 CFR Part 292, Section 292.207(b)(1), which the FERC has granted, or (ii) a notice of self-certification pursuant to 18 CFR Part 292, Section 292.207(a).

“RAR” means the resource adequacy requirements established for load serving entities by the CPUC pursuant to the Resource Adequacy Rulings, or by a Local Regulatory Authority or other Governmental Authority having jurisdiction.

“RAR Showings” means the RAR compliance showings (or similar or successor showings) a load serving entity is required to make to the CPUC (or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Resource Adequacy Rulings, or to a Local Regulatory Authority having jurisdiction.

“Real-Time” has the meaning set forth in the CAISO Tariff.

“Real-Time Forced Outage” means a Forced Outage which occurs only after 5:00 p.m. PPT on the day before the Trading Day.

“Real-Time Market” has the meaning set forth in the CAISO Tariff.

“Real-Time Price” means the Real-Time Market price for Uninstructed Imbalance Energy (as defined in the CAISO Tariff) or any successor price for short-term imbalance energy, as such price or successor price is defined in the CAISO Tariff, that would apply to the Generating Facility, which values are, as of the Effective Date, posted by the CAISO on its website. The values used in this Agreement will be those appearing on the CAISO website on the eighth Business Day of the calendar month following the month for which such prices are being applied.

“Related Entity” means, with respect to a party, any Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such party. For purposes of this Agreement, “control” means the direct or indirect ownership of 50% or more of the outstanding capital stock or other equity interests having ordinary voting power.

“Related Products” means (i) with respect to Resource Adequacy Benefits (a) that portion of the Resource Adequacy Benefits that are associated with the Firm Contract Capacity, and (b) to the extent that there are Resource Adequacy Benefits associated with the generating capacity of the Generating Facility other than the Firm Contract Capacity, that portion of the Resource Adequacy Benefits that are not associated with the Firm Contract Capacity and that are in excess of those Resource Adequacy Benefits used by Seller or by a Site Host, both in connection with the Host Site, to meet a known and established resource adequacy obligation under any Resource

Adequacy Ruling at the point in time when the Resource Adequacy Benefits are to be used, and (ii) any Green Attributes, Capacity Attributes and all other attributes associated with the electric energy or capacity of the Generating Facility (but not including any Financial Incentives) that are in excess of those Green Attributes, Capacity Attributes or other attributes used, or retained for future use, by Seller or a Site Host, both in connection with the Host Site, to meet a known and established, at the point in time when the relevant attribute(s) are to be used or retained, obligation under Applicable Law.

“Renewable Energy Credit” has the meaning set forth in Public Utilities Code Section 399.12(g), as may be amended from time to time or as further defined or supplemented by Applicable Law.

“Reportable Capacity” means the Power Rating, in MW, minus Station Use, in MW.

“Repowered CHP Facility” means a CHP Facility that, on or after the Settlement Effective Date, has had its prime mover(s) replaced or refurbished, as follows:

- (a) If the CHP Facility contains combustion turbines, then each combustion turbine must be replaced with:
 - (i) A new combustion turbine that has been sold and certified as new by the original manufacturer; *provided, however*, that the CHP Facility that has replaced its combustion turbines with a substantially identical engine (e.g., as is common during major overhauls of aeroderivative combustion turbines or as part of a spare engine program), does not qualify as a Repowered CHP Facility; or
 - (ii) A refurbished combustion turbine, so long as such refurbished combustion turbine has been certified by the entity that refurbished such combustion turbine (which may be the original manufacturer) to achieve Heat Rate and total power output performance guarantees comparable to a new combustion turbine, prior to operational degradation; or
- (b) If the CHP Facility contains only steam turbines, then each steam turbine must be replaced with a refurbished steam turbine, which refurbishment must have been accomplished with new or near-new condition parts, and which include (i) a replacement of all stop and throttle control valves, seals, bearings, rotors, and turbine blades of each steam turbine, and (ii) a replacement or rebuilding of the stationary part of each steam turbine back to new condition, including seal system, lube oil system and all associated piping and auxiliary equipment.

In addition to the above requirements, (1) the repowering of the Generating Facility as described in this definition must be completed before the Term Start Date, (2) Section 1.02(a) must provide that the Generating Facility will be a Repowered CHP Facility on the Term Start Date, and (3) Seller must provide to Buyer a written certification, including all supporting data, from a qualified independent engineer, which certification must provide that the total useful life of the CHP Facility (including, as applicable, the combustion turbine(s), the steam turbine(s), the

electrical generator(s) and the heat recovery steam generator) will operate for at least the Term, subject to industry standard maintenance practices.

“Resource Adequacy Benefits” means the rights and privileges attached to the Generating Facility that satisfy any Person’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and shall include any local, zonal or otherwise locational attributes associated with the Generating Facility.

“Resource Adequacy Resource” has the meaning set forth in the CAISO Tariff.

“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-024, 06-07-031 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, as such CPUC decisions, rulings, laws, rules or regulations may be amended or modified from time to time during the Term.

“Responsible Officer” means the chief financial officer, treasurer or any assistant treasurer of a Party or its Guarantor or any employee of a Party or its Guarantor designated by any of the foregoing.

“S&P” means the Standard & Poor’s Rating Group.

“Sale-Leaseback Transaction” means a transaction in which Seller (i) sells the Generating Facility to a Lender providing tax equity financing to Seller and (ii) leases the Generating Facility from Lender under an agreement authorizing Seller to act in all matters relating to the control and Operation of the Site and the Generating Facility for the Term, subject to Lender’s right to terminate the lease in the event of a default by Seller as set forth in the agreement between Seller and Lender.

“Schedule” means the action of the Scheduling Coordinator, or its designated representatives, of notifying, requesting, and confirming to the CAISO, the CAISO-Approved Quantity of electric energy.

“Scheduled Amount” means the Day-Ahead Schedule comprised of the quantity (in MWh) of electric energy expected to be produced by the Generating Facility that is scheduled from Seller or Seller’s Scheduling Coordinator to Buyer in a Physical Trade in the IFM.

“Scheduled Power Offline” is described in Section 3(b)(v) of Exhibit E.

“Scheduling Coordinator” means a Person certified by the CAISO for the purposes of undertaking the functions specified in Exhibit G.

“Scheduling Fee” means the Monthly Scheduling Fee and the SC Set-Up Fee.

“SC Replacement Date” has the meaning set forth in Section 7(b) of Exhibit G.

“SC Set-Up Fee” is described in Section 4(a) of Exhibit G.

“SC Trade Settlement Amount” means the amount(s) determined in accordance with Exhibit M.

“SC Trade Tolerance Band” means the greater of (a) three percent of the Scheduled Amount or (b) one MW.

“SDD Administrative Charge” has the meaning set forth in Section 2 of Exhibit K.

“SDD Adjustment” means the adjustment, if any, to the Monthly Contract Payment, as determined in accordance with Exhibit K.

“SDD Energy Adjustment” has the meaning set forth in Section 1 of Exhibit K.

“SEC” means the United States Securities and Exchange Commission, or any successor entity.

“Security Interest” has the meaning set forth in Section 3 of Exhibit F.

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

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

“Seller's Curtailment Election Notice” has the meaning set forth in Section 3(b) of Exhibit U.

“Seller's Day-Ahead Forecast” means the most recently updated Forecast submitted by 5:00 p.m. PPT on the day before the Trading Day.

“Seller's Energy Forecast” means Seller's most recently updated Forecast submitted in accordance with Exhibit I.

“Seller's Final Energy Forecast” means Seller's Energy Forecast as may be updated for Forced Outages that occur after the Hour-Ahead Scheduling Deadline, but not for Ambient Outages.

“Settlement Agreement” has the meaning set forth in Recital C.

“Settlement Effective Date” has the meaning set forth in the Recital D.

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

“Settling Parties” has the meaning set forth in Recital B.

“SGIA” (i.e., Small Generator Interconnection Agreement) means the form of Interconnection Request (as defined in the CAISO Tariff) pertaining to a Small Generating Facility (as defined in the CAISO Tariff), which is attached to the CAISO Tariff as Appendix T.

“Simple Interest Payment” means a dollar amount calculated by multiplying the:

- (a) Dollar amount on which the Simple Interest Payment is based; by
- (b) Federal Funds Effective Rate or Interest Rate as applicable; by
- (c) The result of dividing the number of days in the calculation period by 360.

“Site” means the real property on which the Generating Facility is located, as further described in Section 1.02(b) and Exhibit B.

“Site Control” means that Seller (a) owns the Site, (b) is the lessee of the Site under a Lease, (c) is the holder of a right-of-way grant or similar instrument with respect to the Site, or (d) is managing partner or other Person authorized to act in all matters relating to the control and Operation of the Site and Generating Facility.

“Site Host” means the Person or Persons purchasing or otherwise using the Site Host Load or thermal energy output from the Generating Facility.

“Site Host Load” means the electric energy and capacity produced by or associated with the Generating Facility that serves electrical loads (that are not Station Use) of Seller or one or more third parties conducted pursuant to California Public Utilities Code Section 218(b).

“Six-Hour Demonstration” has the meaning set forth in Section 4 of Exhibit C.

“SLIC” means Scheduling and Logging system for the CAISO.

“Station Use” means the electric energy produced by the Generating Facility that is (a) used within the Generating Facility to power the lights, motors, control systems and other electrical loads that are necessary for Operation, and (b) consumed within the Generating Facility’s electric energy distribution system as losses needed to deliver electric energy to the Site Host Load, and (c) consumed within the generator collection system as losses between the generator(s) and the high voltage side of the Generating Facility output transformer(s).

“Successor” has meaning set forth in Section 3.20(b)(iii).

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

“System Emergency” has the meaning set forth in the CAISO Tariff.

“System Marginal Energy Cost” has the meaning set forth in the CAISO Tariff.

“Tariff Rule 21” means the interconnection standards of the Transmission Provider for distributed generation adopted by the CPUC in Decisions 00-11-001 and 00-12-037, as modified by the CPUC.

“Telemetry System” means a system of electronic components that interconnects the CAISO and the Generating Facility in accordance with the CAISO’s applicable requirements as set forth in Section 3.09.

“Term” has the meaning set forth in Section 1.01.

“Term End Date” has the meaning set forth in Section 1.01.

“Termination Payment” has the meaning set forth in Section 6.03.

“Term Start Date” has the meaning set forth in Section 1.01.

“Term Year” means a 12-month period beginning on the first day of the Term and each successive 12-month period thereafter.

“TOD Period” means the time of delivery period used to calculate the Monthly Contract Payment set forth in Section 4 of Exhibit D.

“TOD Period Capacity Payment” means the monthly payment to be calculated and made by Buyer to Seller for Power Product capacity during each TOD Period for the month for which a calculation is being performed, as set forth in Section 3(a) of Exhibit D, in dollars.

“TOD Period Energy Payment” means the monthly payment to be calculated and made by Buyer to Seller for the Metered Energy during each TOD Period for the month for which a calculation is being performed, as set forth in Section 2(a) of Exhibit D, in dollars.

“TOD Period Energy Price” means the price used to calculate the TOD Period Energy Payment, as set forth in Section 2(b) of Exhibit D, in dollars per kWh.

“Trade Organizations” means the California Cogeneration Council, the Cogeneration Association of California, the Energy Producers and Users Coalition, and the Independent Energy Producers Association.

“Trading Day” means the day in which Day-Ahead trading occurs in accordance with the WECC Preschedule Calendar (as found on the WECC’s website).

“Transmission Curtailment Credit Value” or “TCV” is the adder applied to the Earned Capacity Hours to account for the time during which Seller is not able to meet the Firm Contract Capacity obligation due to a curtailment of Power Product requested by the Transmission Provider, the CAISO or otherwise, as determined in accordance with Section 3 of Exhibit D-2.

“Transmission Provider” means any Person responsible for the interconnection of the Generating Facility with the interconnecting utility’s electrical system or the CAISO Controlled Grid or transmitting the Metered Energy on behalf of Seller from the Generating Facility to the Delivery Point.

“Transportation Service Rate” or “TSR” has the meaning set forth in Section 2(d) of Exhibit D.

“Uninstructed Deviation GMC Rate” means the administrative grid management charge applied by the CAISO to Uninstructed Deviations (as defined in the CAISO Tariff) using the absolute value for the Uninstructed Deviations by Settlement Interval.

“Uninstructed Deviation Penalty” means the penalty set forth in the CAISO Tariff.

“Useful Thermal Energy Output” has the meaning set forth in 18 CFR §292.202(h) and modified by the Energy Policy Act of 2005, or any successor thereto.

“Variable Charge” or “VC” has the meaning set forth in Section 2(b) of Exhibit D.

“Web Client” has the meaning set forth in Section 2(a) of Exhibit R.

“Web Scheduler” has the meaning set forth in Section 2 of Exhibit E.

“WECC” means the Western Electricity Coordinating Council, the regional reliability council for the western United States, northwestern Mexico, and southwestern Canada, or any successor entity.

“WREGIS” means the Western Renewable Energy Generation Information System, or any successor thereto.

*** End of Exhibit A ***

EXHIBIT B
Generating Facility and Site Description

1. Generating Facility Description.

{Buyer Comment: Provide description of the Generating Facility equipment, systems, electric metering and the Seller's measurement of the Useful Thermal Energy Output, control systems and features, including a site plan drawing and a one-line diagram, and the generator nameplate(s).}

2. Site Description.

{Buyer Comment: Provide a legal description of the Site, including the Site map.}

*** End of Exhibit B ***

EXHIBIT C
Capacity Demonstration Test for Firm Contract Capacity

1. **Introduction.** This Exhibit C only applies if the Generating Facility provides Firm Contract Capacity and is a New CHP Facility, an Expanded CHP Facility, a Repowered CHP Facility, or, as set forth in Section 5.2.4.4 of the Settlement Agreement, an Existing CHP Facility that is Operating in California but that has never entered into an agreement for the purchase and sale of electric energy with Buyer or any other California investor-owned utility. The results of the Capacity Demonstration Test set forth in this Exhibit C will be used (i) to verify and adjust as necessary the Firm Contract Capacity set forth in Section 1.02(d), and (ii) to determine the Reportable Capacity, as further described in Section 10 of Exhibit C. If this Exhibit C is applicable, then Seller shall:
 - (a) Perform the 20-Day and Six Hour Demonstration; or
 - (b) Elect to perform one of the following Capacity Demonstration Tests: (i) the 20-Day Demonstration and Six Hour Demonstration adjusted utilizing the Ambient Factors (1) employed in the Commissioning Test, so long as Buyer is informed of and permitted to attend the Commissioning Test and subject to Buyer's reasonable satisfaction that such Ambient Factors are applicable to the Capacity Demonstration Test, or (2) obtained pursuant to the Performance Test Code on Overall Plant Performance (PTC 46-1996) established by the American Society of Mechanical Engineers, or any successor thereto, or (ii) the Commissioning Test, subject to Buyer's reasonable satisfaction that the Commissioning Test accurately demonstrates the Firm Contract Capacity.
2. **Capacity Demonstration Test Dates.** The 20-Day Demonstration shall commence at noon on a mutually agreed upon date which follows or is coincident with the Term Start Date and shall be completed no later than the Firm Operation Date, and shall extend for a total period of 20 consecutive non-holiday weekdays (the "20-Day Demonstration"). The Six-Hour Demonstration must be scheduled for a non-holiday weekday within the 20-Day Demonstration period.

Concurrently with the selection of the commencement date for the 20-Day Demonstration, Seller shall select which Generating Units will be the Generating Units for the Capacity Demonstration Test, if applicable. This selection may not be changed for any reason during the Capacity Demonstration Test or the Capacity Demonstration Test will be repeated in its entirety.

Buyer and Seller may each, upon three Business Days advance Notice, make up to two requests to reschedule the commencement date for either the 20-Day Demonstration or the Six-Hour Demonstration.

The commencement date for the Six-Hour Demonstration may only be rescheduled to a

different date within the 20-Day Demonstration, if applicable.

Neither the 20-Day Demonstration nor a Six-Hour Demonstration may be rescheduled once it has commenced, except as set forth under Section 5 of this Exhibit C.

3. 20-Day Demonstration. In order to pass the 20-Day Demonstration, the Generating Facility must achieve a Capacity Demonstration Factor of *greater than or equal* to 0.95. The Capacity Demonstration Factor is calculated as follows:

$$\text{CAPACITY DEMONSTRATION FACTOR} = A / (B \times C)$$

Where A = The number of Capacity Measurement Intervals during the test period when the Demonstration Rate of Metered Energy equals or exceeds the Firm Contract Capacity specified in Section 1.02(d).

B = The total number of hours during the 20 consecutive non-holiday weekday test period that begin at noon and end at 6:00 p.m. (i.e., 120 hours).

C = The number of Capacity Measurement Intervals within each hour.

4. Six-Hour Demonstration. For the Six-Hour Demonstration, Seller shall demonstrate the ability of the Generating Facility to Operate for a six consecutive hour period, starting at noon and ending at 6:00 p.m. (the "Six-Hour Demonstration"). The Generating Facility shall be deemed to have satisfied the Six-Hour Demonstration if the Power Output in each and every Metering Interval during the six-hour period equals or exceeds the Firm Contract Capacity set forth in Section 1.02(d).

5. Remedial Action for Seller's Failing a Capacity Demonstration Test.

- (a) If, during the initial Capacity Demonstration Test, the Generating Facility fails to Demonstrate the Firm Contract Capacity during either the 20-Day Demonstration or the Six-Hour Demonstration, Seller may request one additional 20-Day Demonstration or one additional Six-Hour Demonstration within the first 20-Day Demonstration upon providing three Business Days advance Notice sent by facsimile transmission or e-mail.

Any new 20-Day Demonstration must include another Six-Hour Demonstration.

- (b) If, during the second Capacity Demonstration Test, the Generating Facility fails to Demonstrate the Firm Contract Capacity during either the 20-Day Demonstration or the Six-Hour Demonstration due to an abnormal and unforeseeable operating condition, as verified and determined in Buyer's sole judgment, one additional and final Capacity Demonstration Test may be scheduled.

6. Demonstrated Firm Contract Capacity.

- (a) If the Generating Facility passes both the 20-Day Demonstration and the Six-Hour Demonstration, the Demonstrated Firm Contract Capacity shall be deemed to be equal to the Firm Contract Capacity in Section 1.02(d).
- (b) If the Generating Facility fails to meet the minimum requirements of either the 20-Day Demonstration or the Six-Hour Demonstration during the initial Capacity Demonstration Test and, if one or two additional Capacity Demonstration Tests are conducted at Seller's request pursuant to the procedure described above and Seller fails in both of these additional Capacity Demonstration Tests to meet the minimum requirements of either the 20-Day Demonstration or the Six-Hour Demonstration, *then* the Demonstrated Firm Contract Capacity shall be deemed to be the lowest of:
 - (i) The lowest Power Output achieved in 95% of the Capacity Measurement Intervals during the 20-Day Demonstration;
 - (ii) The lowest Power Output in any Capacity Measurement Interval during the Six-Hour Demonstration; and
 - (iii) A Firm Contract Capacity amount, designated by Seller and approved by Buyer, that represents a Power Output that the Generating Facility can achieve during all hours of the entire Term while conforming with Prudent Electrical Practices.

In all instances, the Firm Contract Capacity for Seller shall either (1) be reduced pursuant to the applicable Capacity Demonstration Test(s), or (2) increased pursuant to the applicable Capacity Demonstration Test(s), provided that such increase may not exceed the limits for Firm Contract Capacity set forth in Section 1.02(d). The Net Contract Capacity and As-Available Contract Capacity may also be adjusted by Buyer based on the results of the Capacity Demonstration Test and the circumstances under which a Capacity Demonstration Test was required.

7. Representation and Access. Buyer representatives may attend the Capacity Demonstration Test and, if Seller relies upon the Commissioning Test for the purposes of this Exhibit C, the Commissioning Test or any portion thereof, including the setup, start-up, ramp-up, ramp-down and shutdown of the Generating Facility related to the Capacity Demonstration Test and, if applicable, the Commissioning Test. Buyer's representatives may, as part of their observation of the Capacity Demonstration Test and the Commissioning Test, conduct a site visual inspection of the Generating Facility and the Site; *provided, however*, that Buyer's representatives follow the requirements set forth in Section 3.19.

Seller shall provide Buyer access to and copies of control room logs, control system display screens, and instrumentation data during and after any Capacity Demonstration Test or, if Seller relies upon the Commissioning Test for the purposes of this Exhibit C, Commissioning Test.

8. Cost of Capacity Demonstration Test. Buyer is responsible for all costs associated with witnessing the Capacity Demonstration Test. Buyer shall pay for the electric energy and electric capacity produced during the Capacity Demonstration Test using the Firm Contract Capacity existing at the time of the Capacity Demonstration Test pursuant to Exhibit D.
9. Ambient Factors. Seller may elect to apply corrections to the Demonstrated Rate of Metered Energy or Power Output to adjust for Ambient Factors. The corrections to be applied (including, if requested by Seller, any adjustments to the Demonstrated Firm Contract Capacity for each monthly Firm Contract Capacity number set forth in Section 1.02(d), other than the Firm Contract Capacity number for the month in which the Capacity Demonstration Test is completed) shall be agreed upon in writing in advance of any Capacity Demonstration Test during technical discussions between representatives of Buyer and Seller that are professional engineers registered in California. Corrections shall be based on Prudent Electrical Practices and obtained pursuant to the applicable Performance Test Code established by the American Society of Mechanical Engineers, or any successor thereto, for the equipment under the Capacity Demonstration Test.
10. Determination of Reportable Capacity. In addition to the other procedures set forth in this Exhibit C, Buyer shall, as part of the Capacity Demonstration Test, determine the Reportable Capacity of the Generating Facility. Seller shall provide Buyer with reasonable access to the Generating Facility and to records, reports and other applicable data in order for Buyer to determine the Reportable Capacity during the Capacity Demonstration Test.

*** End of Exhibit C ***

EXHIBIT D
Monthly Contract Payment Calculation

1. Introduction. Each Monthly Contract Payment is calculated on a calendar month basis as follows:

MONTHLY CONTRACT PAYMENT, in dollars =

TOD Period Energy Payment 1st TOD Period +
TOD Period Energy Payment 2nd TOD Period +
TOD Period Energy Payment 3rd TOD Period +
TOD Period Energy Payment 4th TOD Period +
TOD Period Capacity Payment 1st TOD Period +
TOD Period Capacity Payment 2nd TOD Period +
TOD Period Capacity Payment 3rd TOD Period +
TOD Period Capacity Payment 4th TOD Period

All TOD Period Energy Payments shall be calculated as set forth in Section 2 of this Exhibit D.

All TOD Period Capacity Payments shall be calculated as set forth in Section 3 of this Exhibit D.

The “1st TOD Period,” “2nd TOD Period,” “3rd TOD Period” and “4th TOD Period” subscripts refer to the four TOD Periods that apply for the calculation month, as set forth in Section 4 of this Exhibit D.

2. TOD Period Energy Payment Calculation.

- (a) Each monthly TOD Period Energy Payment is calculated as follows:

$$\text{TOD PERIOD ENERGY PAYMENT, in dollars} = \sum_{\text{FirstHour}}^{\text{LastHour}} [\text{EP} \times \text{APE} + \text{LA} \times \text{MA}]$$

Where:

EP = TOD Period Energy Price, stated in Section 2(b) of this Exhibit D, in dollars per kWh.

APE = The sum of the Allowed Payment Energy from the Generating Facility for each hour of the TOD Period, in kWh, as determined in accordance with Section 2(e) of this Exhibit D.

LA (i.e., Hourly Location Aadjustment) = $LMP_{QF} - LMP_{\text{Trading Hub}}$

Where the Hourly Location Adjustment will be based on the hourly Day-Ahead Prices and actual hourly generation by the Generating Facility for delivery to Buyer as follows:

LMP_{QF} = The hourly Day-Ahead Locational Marginal Price, in dollars

per kWh, at the point of interconnection with the CAISO-controlled electric system associated with the Generating Facility; and

LMP_{Trading Hub} = The hourly Day-Ahead Locational Marginal Price, in dollars per kWh, of the trading hub where the Generating Facility is located (i.e., SP15 Existing Zone Generation Trading Hub (formerly SP15), NP15 Existing Zone Generation Trading Hub (formerly NP15), or ZP26 Existing Zone Generation Trading Hub (formerly ZP26), as applicable, or any successor thereto).

MA = Metered Amounts for each hour of the applicable TOD Period, in kWh. Metered Amounts for any hour is equal to the sum of Metered Amounts for all Metering Intervals in that hour.

First Hour = First hour of the applicable TOD Period.

Last Hour = Last hour of the applicable TOD Period.

Once 120% of the Expected Term Year Net Energy Production is achieved, no further electric energy payments will be calculated for the remaining TOD Periods within any remaining months of the current Term Year.

- (b) Factor “EP” in Section 2(a) of this Exhibit D. For each day during the Term, the TOD Period Energy Price, in dollars per kWh, for any TOD Period shall be calculated as follows:

$$\text{TOD PERIOD ENERGY PRICE, in dollars} = \text{CHR} \times (\text{GI} + \text{TSR})/10^6 + \text{VC}$$

Where:

CHR = Contract Heat Rate per Table 1 below for the TOD Period, in BTU per kWh.

GI = Gas Index as stated in Section 2(c) of this Exhibit D, in dollars per million BTU.

TSR = Transportation Service Rate as stated in Section 2(d) of this Exhibit D, in dollars per million BTU.

VC = Variable Charge, if any, in dollars per kWh.

Table 1 Contract Heat Rate

<u>Contract Heat Rate, BTU per kWh</u>		
<i>Season</i>	<i>TOD Period</i>	<i>Heat Rate</i>
Summer	On-Peak Period	[]
	Mid-Peak	[]
	Off-Peak	[]
Winter	Mid-Peak	[]
	Off-Peak	[]
	Super-Off-Peak	[]

(c) Factor “GI” in Section 2(a) of this Exhibit D. Means:

The index price (expressed in dollars per million BTU) for the applicable flow date published by Platts Gas Daily (in the internet publication currently accessed through www.platts.com) in the table entitled “Daily Price Survey” under the subsection heading “Citygates” for the “SoCal Gas, city-gate” listing in the “Midpoint” index column. If any determination, ruling or decision by the CPUC significantly affects the SoCalGas system, and the Gas Index ceases to be published, or either Party reasonably believes that the Gas Index is substantially changed so that it does not adequately reflect the balance of economic benefits and burdens that the Parties agreed to, then either Party may provide the other with notice to such effect and the Parties shall negotiate in good faith to determine an alternative method or methods for determining the Gas Index in order to maintain the balance of economic benefits and burdens that the Parties agreed to with respect to the Gas Index as of the Effective Date. Any substitute index or indices must be recognized in the industry as a measure of average daily prices for gas delivered to the various receipt points on the SoCalGas system. If the Parties are unable to agree on a successor market, index, or methodology within 30 days of the date of the notice, the dispute resolution procedures of Article Ten of this Agreement shall apply.

(d) Factor “TSR” in Section 2(a) of this Exhibit D. Means:

The Transportation Service Rate, in dollars per million BTU, within the SoCalGas system applicable for delivering natural gas to the Generating Facility.

{Buyer Comment: References to “SoCalGas” throughout this Section may be modified if the applicable natural gas transporter is other than SoCalGas and should be replaced with references to PG&E Citygate for PG&E service area}

(e) Factor “APE” in Section 2(a) of this Exhibit D. The Allowed Payment Energy for each hour of each TOD Period of any month is calculated as follows:

APE = The sum of the Metered Energy when Buyer is Scheduling Coordinator or Scheduled Amounts when Buyer is not Scheduling Coordinator from the Generating Facility for each hour of the TOD Period, in kWh.

3. TOD Period Capacity Payment Calculation.

(a) Each monthly TOD Period Capacity Payment is calculated on a calendar month basis as follows:

TOD PERIOD CAPACITY PAYMENT in dollars = (ACP + FCP) x CAF

Where:

ACP = As-Available Capacity Payment for the TOD Period, as determined in accordance with Section 3(b) of this Exhibit D, in dollars per year.

FCP = Firm Capacity Payment for the TOD Period, as determined in

accordance with Section 3(g) of this Exhibit D, in dollars per year.

CAF = The CPUC approved Capacity Payment Allocation Factor for the TOD Period in the year, based upon the formula adopted by the CPUC in D.01-03-067 [and D.97-03-017. For purposes of this Agreement, the CPUC approved Capacity Payment Allocation Factors are as provided in the table below, allocated to each month of the season based on the proportion of the month's hours in the TOD Period to the season's hours in TOD Period, and may be updated per subsequent CPUC decision]:

Capacity Payment Allocation Factors		
Season	TOD Period	Factor
Summer	Peak	0.7619
	Partial Peak	.0238
	Off Peak	.0002
	Super Off Peak	0.00000
Winter	Peak	N/A
	Partial Peak	0.2125
	Off Peak	0.0015
	Super Off Peak	0.00000

{Buyer Comment: Use the Capacity Payment Allocation Factors set forth in the table immediately above if Buyer is PG&E. Additionally, the bracketed text is only applicable if Buyer is PG&E, and should otherwise be deleted.}

Capacity Payment Allocation Factors		
Season	TOD Period	Factor
Summer	On-Peak Period	0.1792
	Mid-Peak	0.0310
	Off-Peak	0.0006
Winter	Mid-Peak	0.0178
	Off-Peak	0.0011
	Super-Off-Peak	0.0007

{Buyer Comment: Use the Capacity Payment Allocation Factors set forth in the table immediately above if Buyer is SCE.}

Capacity Payment Allocation Factors		
Season	TOD Period	Factor
Summer	On-Peak	0.098096
	Semi-Peak	0.006146
	Off-Peak	0.000000
	Super Off-Peak	0.000000
	Non TOU	0.002088
Winter	On-Peak	0.013237
	Semi-Peak	0.008118
	Off-Peak	0.000000
	Super Off-Peak	0.000000
	Non TOU	0.002008

{Buyer Comment: Use the Capacity Payment Allocation Factors set forth set forth in the table immediately above if Buyer is SDG&E.}

- (b) Factor “ACP” in Section 3(a) of this Exhibit D. The As-Available Capacity Payment shall be calculated pursuant to the following formula:

AS-AVAILABLE CAPACITY PAYMENT, in dollars = AAC x AACP

Where:

AAC = As-Available Capacity for the TOD Period, as determined in accordance with Section 3(c) of this Exhibit D, in kWh per hour.

AACP= The As-Available Capacity Price is set forth in Section 1.06(b), in dollars per kW-year

- (c) Factor “AAC” in Section 3(b) of this Exhibit D. The As-Available Capacity for each TOD Period of each month is calculated as follows:

AS-AVAILABLE CAPACITY, in kWh per hour = MAC – FCC (but not less than zero)

Where:

MAC = The Maximum Allowed Capacity for the TOD Period as determined in Section 3(d) in this Exhibit D, in kWh per hour.

FCC = The Firm Contract Capacity for all TOD Periods during a month.

- (d) Factor “MAC” in Section 3(c) of this Exhibit D. The Maximum Allowed Capacity for each monthly TOD Period is calculated as follows:

MAXIMUM ALLOWED CAPACITY, in kWh per hour = LE / PH

Where:

LE = The sum of the Limited TOD Energy from the Generating Facility for all hours of the TOD Period, as determined in Section 3(e) of this

Exhibit D, in kWh.

PH = The total number of hours in the TOD Period (period hours).

- (e) Factor “LE” in Section 3(d) of this Exhibit D. The Limited TOD Energy for each TOD Period of any month is calculated as follows:

$$\text{LIMITED TOD ENERGY, in kWh} = \sum_{\text{FirstHour}}^{\text{LastHour}} (\text{E})_{\text{Hour}}$$

Where:

E = The lesser of: (i) Metered Energy for the applicable hour, in kWh; and (ii) Allowed Hourly Energy, as determined in Section 3(f) of this Exhibit D, in kWh.

First Hour = First hour of the applicable TOD Period.

Last Hour = Last hour of the applicable TOD Period.

Metered Energy for any hour is equal to the sum of Metered Energy for all Metering Intervals in that hour.

- (f) Factor “E” in Section 3(e) of this Exhibit D. The Allowed Hourly Energy is calculated as follows:

$$\text{ALLOWED HOURLY ENERGY in kWh} = 1 \text{ hour} \times \text{NCC}$$

Where:

NCC = The Net Contract Capacity, as set forth in Section 1.02(d), in kW.

- (g) Factor “FCP” in Section 3(a) of this Exhibit D. Each monthly Firm Capacity Payment is calculated as follows:

$$\text{FIRM CAPACITY PAYMENT in dollars} = \text{MFCP} \times \text{AF}$$

Where:

MFCP = Maximum Firm Capacity Payment for the TOD Period, as determined in accordance with Section 3(h) of this Exhibit D, in dollars.

AF = (i) One (1), if the Availability Credit Factor, as calculated in Section 3(i) of this Exhibit D is greater than or equal to 95%; or

(ii) Zero (0), if the Availability Credit Factor, as calculated in Section 3(i) of this Exhibit D is less than 60%; or

(iii) If neither (i) nor (ii) are true, then AF is the Availability Penalty Factor, as calculated in Section 3(n) of this Exhibit D.

- (h) Factor “MFCP” in Section 3(g) of this Exhibit D. The Maximum Firm Capacity Payment for each TOD Period of each month is calculated as follows:

MAXIMUM FIRM CAPACITY PAYMENT, in dollars = FCC x CP

Where:

FCC = The Firm Contract Capacity for all TOD Periods during a month is the amount in Section 1.02(d), in kWh per hour.

CP = Firm Capacity Price, as set forth in Section 1.06(a), in \$/kW-year.

- (i) Factor “ACF” in Section 3(g) of this Exhibit D. The Availability Credit Factor for each monthly TOD Period is calculated as follows:

AVAILABILITY CREDIT FACTOR = (ECH + CCH) / PH

Where:

ECH = The total number of Earned Capacity Hours, determined in accordance with Section 3(j) of this Exhibit D.

CCH = The total number of Capacity Credit Hours, determined in accordance with Section 3(m) of this Exhibit D.

PH = The total number of hours in the TOD Period (period hours).

- (j) Factor “ECH” in Section 3(i) of this Exhibit D. The Earned Capacity Hours for each monthly TOD Period is calculated as follows:

EARNED CAPACITY HOURS = FE / FCC

Where:

FE = The sum of the Firm TOD Energy from the Generating Facility for all hours of the TOD Period, as determined in Section 3(k) of this Exhibit D, in kWh.

FCC = The Firm Contract Capacity for all TOD Periods during a month is the amount in Section 1.02(d) in kWh per hour.

- (k) Factor “FE” in Section 3(j) of this Exhibit D. The Firm TOD Energy for each TOD Period of any month is calculated as follows:

FIRM TOD ENERGY in kWh =
$$\sum_{\text{FirstHour}}^{\text{LastHour}} (E)_{\text{Hour}}$$

Where:

E = The lesser of: (i) Metered Energy for the applicable hour in kWh; and (ii) Allowed Firm Energy, as determined in Section 3(l) of this Exhibit D, in kWh.

First Hour = First hour of the applicable TOD Period.

Last Hour = Last hour of the applicable TOD Period.

Metered Energy for any hour is equal to the sum of Metered Energy for all Metering Intervals in that hour.

- (l) Factor “E” in Section 3(k) of this Exhibit D. The Allowed Firm Energy is calculated as follows:

$$\text{ALLOWED FIRM ENERGY in kWh} = 1 \text{ hour} \times \text{FCC}$$

Where:

FCC = The Firm Contract Capacity set forth in Section 1.02(d).

- (m) Factor “CCH” in Section 3(i) of this Exhibit D. The total number of Capacity Credit Hours for each monthly TOD Period is determined as follows:

$$\text{CAPACITY CREDIT HOURS} = \text{TCV} + \text{FCV} + \text{MCV} + \text{ECV}$$

Where:

TCV = The total Transmission Curtailment Credit Value during the TOD Period, determined in accordance with Section 3 of Exhibit D-2, when the Metered Energy was curtailed by either the CAISO or the Transmission Provider.

FCV = The total Force Majeure Credit Value during the TOD Period, determined in accordance with Section 3 of Exhibit D-1, when the Metered Energy was curtailed by a Force Majeure event claimed by Buyer to the extent the Generating Facility is otherwise available.

MCV = The total Maintenance Credit Value during the TOD Period, determined in accordance with Section 9 of Exhibit E.

ECV = The total Economic Curtailment Credit Value during the TOD Period, determined in accordance with Section 3 of Exhibit D-3, when the Metered Energy was curtailed by Buyer in accordance with Exhibit U.

- (n) Factor “APF” in Section 3(g) of this Exhibit D. The Availability Penalty Factor for each monthly TOD Period is calculated as follows:

$$\text{AVAILABILITY PENALTY FACTOR} = 1.0 - 2.0 \times (\text{CR} - \text{ACF})$$

Where:

APF = The greater of: (i) zero; and (ii) the result of the above equation for APF.

CR = 95%, the minimum Capacity Performance Requirement.

ACF = The Availability Credit Factor determined in accordance with Section 3(i) of this Exhibit D.

4. Time of Delivery Periods.

SEASON AND TIME PERIOD			
Time Period	Period A - Summer	Period B - Winter	
	May 1 - October 31	November 1 - April 30	Applicable Days
Peak	Noon - 6:00 p.m.	NA	Weekdays except Holidays
Partial-Peak	8:30 a.m. - Noon	8:30 a.m. - 9:30 p.m.	Weekdays except Holidays
	6:00 p.m. - 9:30 p.m.		Weekdays except Holidays
Off-Peak	9:30 p.m. - 1:00 a.m.	9:30 p.m. - 1:00 a.m.	Weekdays except Holidays
	5:00 a.m. - 8:30 a.m.	5:00 a.m. - 8:30 a.m.	Weekdays except Holidays
	5:00 a.m. - 1:00 a.m.	5:00 a.m. - 1:00 a.m.	Weekends & Holidays
Super Off-Peak	1:00 a.m. - 5:00 a.m.	1:00 a.m. - 5:00 a.m.	All Days

{Buyer Comment: Use the Time of Delivery Periods set forth set forth in the table immediately above if Buyer is PG&E.}

TOD Period	Summer Jun 1 st – Sep 30 th	Winter Oct 1 st – May 31 st	Applicable Days
On-Peak	Noon – 6:00 p.m.	Not Applicable.	Weekdays except Holidays.
Mid-Peak	8:00 a.m. – Noon	8:00 a.m. - 9:00 p.m.	Weekdays except Holidays.
	6:00 p.m. – 11:00 p.m.		Weekdays except Holidays.
Off-Peak	11:00 p.m. – 8:00 a.m.	6:00 a.m. – 8:00 a.m.	Weekdays except Holidays.
		9:00 p.m. – Midnight	Weekdays except Holidays.
	Midnight – Midnight	6:00 a.m. – Midnight	Weekends and Holidays.
Super-Off-Peak	Not Applicable.	Midnight – 6:00 a.m.	Weekdays, Weekends and Holidays.

{Buyer Comment: Use the Time of Delivery Periods set forth set forth in the table immediately above if Buyer is SCE.}

	Summer	Winter	
Time Period	MAY 1 - SEPTEMBER 30	OCTOBER 1 - APRIL 30	
ON-PEAK	11:00 a.m. - 6:00 p.m.	5:00 p.m. - 8:00 p.m.	Weekdays
SEMI-PEAK	6:00 a.m. - 11:00 a.m.	6:00 a.m. - 5:00 p.m.	Weekdays
	6:00 p.m. - 10:00 p.m.	8:00 p.m. - 10:00 p.m.	Weekdays
OFF-PEAK	10:00p.m. - 12:00 mid.	10:00 p.m. - 12:00 mid.	Weekdays
	5:00 a.m. - 6:00 a.m.	5:00 a.m. - 6:00 a.m.	Weekdays
	5:00 a.m. - 12:00 mid.	5:00 a.m. - 12:00 mid.	Weekends
	5:00 a.m. - 12:00 mid.	5:00 a.m. - 12:00 mid.	Holidays
Super Off-Peak	12:00 mid. - 5:00 a.m.	12:00 mid. - 5:00 a.m.	All Days

{Buyer Comment: Use the Time of Delivery Periods set forth set forth in the table immediately above if Buyer is SDG&E.}

ID #[Number], [Seller's Name]

“Holiday”, as used in the above table, means New Year’s Day, Presidents’ Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day. When a Holiday falls on a Sunday, the following Monday will be recognized as a Holiday. No change will be made for Holidays falling on Saturday.

**** End of Exhibit D ****

EXHIBIT D-1
Force Majeure Credit Value

1. Overview. This Exhibit D-1 describes the methodology for computing Force Majeure Credit Value.
2. Scheduling. Each Curtailment Period shall be scheduled to start and stop at the beginning of an hour. Also, the notification time shall be rounded to the nearest hour. For example: 11:29 becomes 11:00 and 11:30 becomes 12:00.
3. Calculation of Force Majeure Credit Value. For every period of Force Majeure curtailment requested by Buyer, Buyer shall compute the Force Majeure Credit Value following these steps:
 - (a) A Benchmark Capacity shall be determined for every Curtailment Period. For purposes of this Exhibit D-1, "Benchmark Capacity" is defined as the highest Hourly Power Output, not to exceed Firm Contract Capacity, during the first 24-hour period which precedes the Force Majeure event and does not overlap another Curtailment Period, Maintenance Outage, or Major Overhaul.

Notwithstanding this Section 3(a), upon Seller's request, if and to the extent Seller is able to demonstrate to Buyer's reasonable satisfaction that some or all of the Firm Contract Capacity of the Generating Facility available before the Benchmark Capacity was established was not available during the period when the Benchmark Capacity was established but became available during the Curtailment Period, the Benchmark Capacity will be adjusted to include such portion of the Firm Contract Capacity that became available during the Curtailment Period and that would have been able to return to service during the Curtailment Period but for the circumstances constituting the Curtailment Period.

- (b) For each hour in the Curtailment Period, an Hourly Credit Value shall be calculated using following formula:

$$\text{Hourly Credit Value} = (\textit{Delta} / \text{Firm Contract Capacity}) * 1 \text{ hour}$$

where *Delta* is the greater of

Benchmark Capacity minus Hourly Power Output

or

zero

In case of division by zero, the value being calculated shall be zero.

- (c) For each hour in the Curtailment Period, the Hourly Credit Value shall be applied as Force Majeure Credit Value, by TOD Period, to the Capacity Credit Hours in Section 3(m) of Exhibit D, until the Hourly Credit Values for all hours in the Curtailment Period have been applied.
- (d) After all the Hourly Credit Values have been applied, the final monthly Force Majeure Credit Value shall be rounded to the nearest whole number. However, all intermediate computations leading up to the final result shall be carried out with appropriate numeric precision.

*** End of Exhibit D-1 ***

EXHIBIT D-2
Transmission Curtailment Credit Value

1. Overview. This Exhibit D-2 describes the methodology for computing Transmission Curtailment Credit Value.
2. Scheduling. Each Curtailment Period shall be scheduled to start and stop at the beginning of an hour. Also, the notification time shall be rounded to the nearest hour. For example: 11:29 becomes 11:00 and 11:30 becomes 12:00.
3. Calculation of Transmission Curtailment Credit Value. For every period of curtailment of Power Product requested by the Transmission Provider, the CAISO or otherwise, Buyer shall compute the Transmission Curtailment Credit Value following these steps:
 - (a) A Benchmark Capacity shall be determined for every Curtailment Period. For purposes of this Exhibit D-2, "Benchmark Capacity" is defined as the highest Hourly Power Output, not to exceed Firm Contract Capacity, during the first 24-hour period which precedes the curtailment notification and does not overlap another Curtailment Period, Maintenance Outage, or Major Overhaul.

Notwithstanding this Section 3(a), upon Seller's request, if and to the extent Seller is able to demonstrate to Buyer's reasonable satisfaction that some or all of the Firm Contract Capacity of the Generating Facility available before the Benchmark Capacity was established was not available during the period when the Benchmark Capacity was established but became available during the Curtailment Period, the Benchmark Capacity will be adjusted to include such portion of the Firm Contract Capacity that became available during the Curtailment Period and that would have been able to return to service during the Curtailment Period but for the circumstances constituting the Curtailment Period.

- (b) For each hour in the Curtailment Period, an Hourly Credit Value shall be calculated using following formula:

$$\text{Hourly Credit Value} = (\text{Delta} / \text{Firm Contract Capacity}) * 1 \text{ hour}$$

where *Delta* is the greater of:

Benchmark Capacity minus Hourly Power Output

or

zero

In case of division by zero, the value being calculated shall be zero.

- (c) For each hour in the Curtailment Period, the Hourly Credit Value shall be applied as Transmission Curtailment Credit Value, by TOD Period, to the Capacity Credit

Hours in Section 3(m) of Exhibit D, until the Hourly Credit Values for all hours in the Curtailment Period have been applied.

- (d) After all the Hourly Credit Values have been applied, the final monthly Transmission Curtailment Credit Value shall be rounded to the nearest whole number. However, all intermediate computations leading up to the final result shall be carried out with appropriate numeric precision.

*** End of Exhibit D-2 ***

EXHIBIT D-3
Economic Curtailment Credit Value

1. Overview. This Exhibit D-3 describes the methodology for computing Economic Curtailment Credit Value.
2. Scheduling. Each Curtailment Period shall be scheduled to start and stop at the beginning of an hour. Also, the notification time shall be rounded to the nearest hour. For example: 11:29 becomes 11:00 and 11:30 becomes 12:00.
3. Calculation of Economic Curtailment Credit Value. For every period of curtailment of Power Product requested by Buyer and where Seller curtailed to its Economic Curtailment Limit Schedule, as set forth in Exhibit U, Buyer shall compute the Economic Curtailment Credit Value following these steps:
 - (a) A Benchmark Capacity shall be determined for every Curtailment Period. For purposes of this Exhibit D-3, "Benchmark Capacity" is defined as the Seller's Day-Ahead Forecast for that hour.
 - (b) For each hour in the Curtailment Period, an Hourly Credit Value shall be calculated using following formula:
$$\text{Hourly Credit Value} = (\text{Delta} / \text{Firm Contract Capacity}) * 1 \text{ hour}$$
where *Delta* is the greater of:
 - Benchmark Capacity minus Hourly Power Output
 - or
 - zeroIn case of division by zero, the value being calculated shall be zero.
 - (c) For each hour in the Curtailment Period, the Hourly Credit Value shall be applied as Economic Curtailment Credit Value, by TOD Period, to the Capacity Credit Hours in Section 3(m) of Exhibit D, until the Hourly Credit Values for all hours in the Curtailment Period have been applied.
 - (d) After all the Hourly Credit Values have been applied, the final monthly Economic Curtailment Credit Value shall be rounded to the nearest whole number. However, all intermediate computations leading up to the final result shall be carried out with appropriate numeric precision.

*** End of Exhibit D-3 ***

EXHIBIT E

Scheduling and Calculation of Maintenance Outage and Major Overhaul Credits

1. **Overview.** Seller shall follow the protocols established in this Exhibit E for the scheduling of Maintenance Outages and Major Overhauls, and for any subsequent notification that may be required to update a previously scheduled Maintenance Outage or Major Overhaul for which Seller wishes to obtain Maintenance Credit Value. This Exhibit E also describes the methodology for computing Maintenance Credit Value and Maintenance Debit Value.
2. **Notification.** Seller shall direct all Maintenance Outage and Major Overhaul notifications to Buyer's web-based outage scheduling system or an e-mail address designated by Buyer (the "Web Scheduler") and to the Generation Operations Center, whose URL and telephone number(s) can be found in Exhibit N.
3. **Scheduling.**
 - (a) Seller shall schedule all Maintenance Outages and Major Overhauls with Buyer in advance. Seller's failure to schedule an unplanned outage in advance is not a default under this Agreement. The notice requirements for Maintenance Outages and Major Overhauls are as follows:

<i>Outage Duration</i>	<i>Minimum Advance Notice</i>
Maintenance Outage, Less than 1 day	24 Hours
Maintenance Outage, 1 day or more	168 Hours
Major Overhaul	6 Months

- (b) Seller shall provide the following information when scheduling a Maintenance Outage or a Major Overhaul via the Web Scheduler:
 - (i) The identification number set forth on the cover page of this Agreement;
 - (ii) Password (supplied by Buyer);
 - (iii) Generating Unit number*;
 - (iv) Capacity Credit Period, including:
 - (1) The date and time when Seller expects the Capacity Credit Period to begin, and
 - (2) The date and time when Seller expects the Capacity Credit Period to end.

(v) “Scheduled Power Offline”**, in kW, is the Hourly Power Output that is expected to be offline during each hour of the outage period, as such may be updated as set forth in this Exhibit E; and

(vi) Reason for the requested Maintenance Outage or Major Overhaul.

**Unit designation is applicable only when the contract calls for separate tracking of outage allowance for each Generating Unit.*

***If unit designation is applicable, Seller must provide the expected Scheduled Power Offline of the Generating Unit scheduled for maintenance; otherwise, Seller must provide the expected Scheduled Power Offline of the Generating Facility.*

4. Rescheduling.

(a) A Maintenance Outage and the associated Capacity Credit Period may be rescheduled if Seller’s request to reschedule is received by Buyer no later than 5:00 p.m. PPT on the day before the Maintenance Outage was previously scheduled to begin.

(b) A Major Overhaul and the associated Capacity Credit Period may be rescheduled provided:

(i) The rescheduled Major Overhaul begins six months or more after the first outage notification date and time;

(ii) The notification to reschedule is made at least one week before the Major Overhaul was previously scheduled to begin; and

(iii) There is at least a one-month period between the notification to reschedule and the commencement of the rescheduled Major Overhaul.

(c) Maintenance Outages and Major Overhauls may be rescheduled more than once.

5. Extension.

(a) Seller may extend a Maintenance Outage or a Major Overhaul and the associated Capacity Credit Period by notifying Buyer of the extension no later than 5:00 p.m. PPT on the day before the outage was previously scheduled to end. Seller’s failure to provide such notice, to the extent resulting from unexpected circumstances, is not a default under this Agreement.

(b) Maintenance Outages and Major Overhauls and the associated Capacity Credit Periods may be extended more than once.

- (c) For a Maintenance Outage and the associated Capacity Credit Period which is less than 24 hours in duration, the extension cannot result in a total outage duration greater than 23 hours.
6. Cancellation. If Seller cancels a scheduled Maintenance Outage, Major Overhaul or the associated Capacity Credit Period, a cancellation notice must be received by Buyer no later than 5:00 p.m. PPT on the day before such Maintenance Outage or Major Overhaul was scheduled to begin.
7. Updating Scheduled Power Offline.
- (a) If a change in the Hourly Power Output is anticipated or occurs during a Maintenance Outage or a Major Overhaul, the Scheduled Power Offline must be updated on a prospective basis as soon as possible via the Web Scheduler. Scheduled Power Offline cannot be updated once the Maintenance Outage or Major Overhaul is over.
- (b) Multiple updates to the Scheduled Power Offline can be submitted if necessary on a prospective basis.
- (c) If a Maintenance Outage or a Major Overhaul is completed ahead of schedule and Seller's Hourly Power Output has returned to normal output levels earlier than expected, Seller shall advise Buyer of the situation by providing an update to the Scheduled Power Offline as described in Section 7(a) of this Exhibit E.
8. Restrictions.
- (a) Seller shall make reasonable efforts not to schedule a Maintenance Outage or Major Overhaul during the Peak Months. Should an outage be required during the said period, Seller shall abide by the limit as set forth in Section 1.05(d) for minor maintenance work during peak months.
- (b) Each Capacity Credit Period must be scheduled to start and stop at the beginning of an hour. Also, when scheduling an outage, the notification time shall be rounded to the nearest hour. For example: 11:29 becomes 11:00 and 11:30 becomes 12:00.
- (c) Seller may not schedule a Maintenance Outage or a Major Overhaul that overlaps another Maintenance Outage, Major Overhaul, or Curtailment Period already scheduled on the Generating Facility. If unit designation is applicable in Section 3(b)(iii) of this Exhibit E, this restriction applies to the Generating Unit.
9. Maintenance Credit Calculation. For every properly scheduled Maintenance Outage and Major Overhaul, to the extent there is an associated Capacity Credit Period, Buyer shall

compute and apply the associated Maintenance Credit Value and the Maintenance Debit Value following these steps:

- (a) A Benchmark Capacity shall be determined for every scheduled Maintenance Outage and Major Overhaul. For purposes of this Exhibit E, “Benchmark Capacity” is defined as the highest Hourly Power Output, not to exceed Firm Contract Capacity, at or after the time of outage notification, and before the start of the outage. If the outage is rescheduled, the most recent notification time shall be used in defining Benchmark Capacity. If the outage is extended, or its Scheduled Power Offline is updated, the original notification time shall be used in defining Benchmark Capacity, unless the outage has been rescheduled before the extension, in which case the most recent rescheduling notification time shall be used in defining Benchmark Capacity.

In the special case of a less-than-one-day Maintenance Outage that directly follows another less-than-one-day Maintenance Outage, Benchmark Capacity of the outage that follows is defined as the highest Hourly Power Output, not to exceed Firm Contract Capacity, between these two outage time periods. In the event of back-to-back, less-than-one-day Maintenance Outages, Benchmark Capacity for the second outage shall be zero.

Notwithstanding this Section 9(a), upon Seller’s request, if and to the extent Seller is able to demonstrate to Buyer’s reasonable satisfaction that some or all of the Firm Contract Capacity of the Generating Facility available before the Benchmark Capacity was established was not available during the period when the Benchmark Capacity was established but became available during the Capacity Credit Period, the Benchmark Capacity will be adjusted to include such portion of the Firm Contract Capacity that became available during such Capacity Credit Period.

- (b) For each hour in the Capacity Credit Period of the Maintenance Outage or the Major Overhaul, an Hourly Credit Value and Hourly Debit Value shall be calculated using following formulas:

(i) $\text{Hourly Credit Value} = (\text{Delta} / \text{Firm Contract Capacity}) * 1 \text{ hour}$

where *Delta* is the lesser of

Benchmark Capacity minus Hourly Power Output, or
Scheduled Power Offline.

However, in all cases, *Delta* shall never be less than zero.

(ii) $\text{Hourly Debit Value} = (\text{Scheduled Power Offline} / \text{Firm Contract Capacity}) * 1 \text{ hour}$

- (c) For each hour in the Capacity Credit Period, the Hourly Credit Value shall be applied as Maintenance Credit Value, by TOD Period, to the Capacity Credit Hours in Section 3(m) of Exhibit D, until the Hourly Credit Values for all hours in the Capacity Credit Period have been applied, or until the condition described in Section 9(d) of this Exhibit E is met, whichever comes first.
- (d) Simultaneous to Section 9(c) of this Exhibit E, for each hour in the Capacity Credit Period, the Hourly Debit Value shall be accumulated as Maintenance Debit Value in a Term-Year-to-date account whose increasing total is to be compared to the appropriate limit set forth in Sections 1.05(a) or (b). Once the Term-Year-to-date total reaches or exceeds the limit, no more Hourly Credit Values shall be applied.
- (e) After all the Hourly Credit Values have been applied and the Hourly Debit Values accounted for, the final monthly Maintenance Credit Value and the Term-Year-to-date cumulative Maintenance Debit Value shall be rounded to the nearest whole number. However, all intermediate computations leading up to the final result shall be carried out with appropriate numeric precision.

The above description of the evaluation process assumes that the outage was properly scheduled with sufficient advance notice pursuant to this Exhibit E and was approved by Buyer (or the CAISO, if applicable). Any deviation from the proper scheduling protocol can result in reduced Maintenance Credit Value or increased Maintenance Debit Value.

*** End of Exhibit E ***

EXHIBIT F
***Requirements Applicable Solely to New CHP Facilities,
Repowered CHP Facilities and Certain Expanded CHP Facilities***

This Exhibit F is only applicable if the Generating Facility is a New CHP Facility, a Repowered CHP Facility, or an Expanded CHP Facility that has elected in Section 1.02(a) to comply with the credit and collateral requirements set forth in this Agreement.

1. Financial Information.

- (a) If requested by Buyer, Seller shall deliver to Buyer the following financial statements, which in all cases shall be for the most recent accounting period and prepared in accordance with GAAP:
 - (i) Within 120 days following the end of each fiscal year, a copy of Seller's and its Guarantor's annual report containing audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year; and
 - (ii) Within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Seller's and its Guarantor's quarterly report containing consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous fiscal year;

provided, however, that if Seller is not an SEC reporting company or if the financial statements required under Sections 1(a)(i) or (ii) of this Exhibit F are not audited financial statements, a Responsible Officer of Seller will certify such financial statements as being in accordance with all Applicable Laws, prepared in accordance with GAAP and fairly stated in all material respects (subject to normal year-end audit adjustments for the quarterly financial statements); *provided further*, that such information must be provided only to those employees of Buyer that need to know such information for financial risk management purposes and may not be disclosed to third parties except as permitted under Section 9.09.

- (b) For purposes of the requirement set forth in Section 1(a) of this Exhibit F:
 - (i) If Seller or its Guarantor's financial statements are publicly available electronically on the website of Seller, its Guarantor or the SEC, then Seller is deemed to have met this requirement; and

- (ii) Should any such financial statements not be available on a timely basis due to a delay in preparation or certification, such delay is not an Event of Default so long as Seller diligently pursues the preparation, certification and delivery of the statements.

2. Performance Assurance.

- (a) Posting Performance Assurance. On or before the Term Start Date, Seller shall post Performance Assurance with Buyer and shall maintain the Performance Assurance Amount at all times on and after the Term Start Date until such time as Seller has satisfied all monetary obligations which survive any termination of this Agreement, not to exceed 365 days following the Term End Date.

The Performance Assurance Amount shall be either in the form of cash or Letter of Credit acceptable to Buyer; *provided, however*, that if, as of the Term Start Date, Seller has posted the Development Security in the form of cash or a Letter of Credit and Buyer has either not returned the Development Security to Seller or given Seller Notice, in accordance with this Exhibit F, of its determination regarding the disposition of the Development Security by such date, then Seller may withhold the portion of the Performance Assurance Amount equal to the Development Security or any portion thereof held by Buyer until three Business Days following the later of Seller's receipt or forfeiture of the Development Security or any portion thereof pursuant to Section 4(c) or (e) of this Exhibit F, after which Seller shall be obligated to post the full Performance Assurance Amount.

In lieu of cash or a Letter of Credit, Buyer may accept a Guaranty Agreement, in accordance with Section 2(c) of this Exhibit F, from a Guarantor acceptable to Buyer, to satisfy Seller's Performance Assurance obligation.

- (b) Letters of Credit. Performance Assurance provided in the form of a Letter of Credit is subject to the following provisions:
 - (i) Each Letter of Credit must be maintained for the benefit of Buyer;
 - (ii) Seller shall:
 - (1) Renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit;
 - (2) If the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide alternative Performance Assurance acceptable to Buyer at least 30 days before the expiration of the outstanding Letter of Credit or within five

Business Days of such indication by the Bank, whichever is later;
and

- (3) If the bank issuing a Letter of Credit fails to honor Buyer's properly documented request to draw on an outstanding Letter of Credit, provide alternative Performance Assurance acceptable to Buyer within three Business Day after such refusal;
- (iii) Upon, or at any time after, the occurrence of a Letter of Credit Default, Seller shall provide to Buyer either a substitute Letter of Credit or alternative Performance Assurance acceptable to Buyer, in each case on or before the 10th Business Day after the occurrence thereof; and
- (iv) Upon the occurrence and continuation of an Event of Default by Seller, or if an Early Termination Date has occurred or been designated as a result of an Event of Default by Seller for which there exist any unsatisfied payment obligations, then Buyer may draw on any undrawn portion of any outstanding Letter of Credit by submitting to the bank issuing such Letter of Credit one or more certificates specifying that such Event of Default or Early Termination Date has occurred and is continuing.

Cash proceeds received by Buyer from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for Seller's obligations to Buyer and Buyer shall have the rights and remedies set forth in Section 3 of this Exhibit F with respect to such cash proceeds.

Notwithstanding Buyer's receipt of cash proceeds of a drawing under the Letter of Credit, Seller shall remain liable for any (1) failure to provide or maintain sufficient Performance Assurance, or (2) any amounts owing to Buyer and remaining unpaid after the application of the amounts so drawn by Buyer.

- (v) In all cases, the costs and expenses of establishing, renewing, substituting, canceling, and increasing the amount of a Letter of Credit shall be borne by Seller.
- (c) Guaranty Agreement. If Seller's Performance Assurance obligation is satisfied by a Guaranty Agreement, such agreement shall be in the form of Exhibit O executed by the Guarantor identified in Section 1.07(b)(i) or other party, in each case acceptable to Buyer and meeting the Credit Rating requirements for the Guarantor set forth immediately below. The Guarantor shall maintain a Credit Rating of at least:
 - (i) "BBB-" from S&P, "Baa3" from Moody's, and "BBB-" from Fitch, if Guarantor is rated by all three ratings agencies;

- (ii) The lower of “BBB-” by S&P, “Baa3” by Moody’s, or “BBB-” by Fitch if Guarantor is rated by only two of the three ratings agencies; or
 - (iii) “BBB-” by S&P, “Baa3” by Moody’s, or “BBB-” by Fitch if Guarantor is rated by only one of the ratings agency.
3. First Priority Security Interest in Cash or Cash Equivalent Collateral. To secure its obligations under this Agreement, and until released as provided herein, Seller grants to Buyer a present and continuing first-priority security interest (“Security Interest”) in, and lien on (and right to net against), and assignment of the Development Security (if applicable), Performance Assurance, any other cash collateral and cash equivalent collateral posted pursuant to Sections 2 and 4 of this Exhibit F and any and all interest thereon or proceeds resulting therefrom or from 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 as Buyer reasonably requires in order to perfect Buyer’s Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of, and during the continuation of, an Event of Default caused by Seller or an Early Termination Date resulting from an Event of Default caused by Seller, Buyer may do any one or more of the following:

- (a) Exercise any of its rights and remedies with respect to all Development Security and Performance Assurance, including any such rights and remedies under law then in effect;
- (b) Draw on any outstanding Letter of Credit issued for its benefit; and
- (c) Liquidate all Development Security and 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 shall remain 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 may, in its sole discretion, draw all or any part of such amounts due to it from any form of security to the extent available, and from all such forms, and in any sequence Buyer may select; *provided, however*, that to the extent multiple instruments of credit support are provided by or on behalf of Seller, Buyer shall draw on each such instrument of credit support proportionately based on the maximum aggregate liability under each such instrument, such that, for the avoidance of doubt, Buyer must draw proportionately on all of such outstanding instruments in order to obtain its full claim for payment.

4. Development Security.

- (a) Introduction. If Seller is required to post Development Security, such Development Security shall be held by Buyer as security for Seller meeting the Term Start Date and: (i) if Seller designates only Firm Contract Capacity, successful completion of the Capacity Demonstration Test as set forth in Exhibit C; (ii) if Seller designates only As-Available Contract Capacity, Seller delivers to Buyer the As-Available Contract Capacity Confirmation Certificate in accordance with Section 3.13(b), which As-Available Contract Capacity Confirmation Certificate must provide that Seller has installed the equipment sufficient to provide the As-Available Contract Capacity designated by Seller in Section 1.02(d) on the Effective Date; or (iii) if Seller designates both Firm Contract Capacity and As-Available Contract Capacity, both (i) and (ii) of this Section 4(a) are required.
- (b) Development Security. If Seller is required to post Development Security, Seller shall post such Development Security in accordance with the following terms and conditions:
- (i) Seller shall post a development fee (the “Development Security”) in the amount of \$20 per kW of Net Contract Capacity on or before the 30th day following the Effective Date. Seller shall post additional Development Security in the amount of \$40 per kW of Net Contract Capacity (for a total posted amount of \$60 per kW of Development Security) at the end of the 18th month following the Effective Date. The Development Security shall be held by Buyer and shall be in the form of either a cash deposit or a Letter of Credit; and
- (ii) If Seller establishes the Development Security by means of a Letter of Credit, such Letter of Credit shall be substantially in the form of Exhibit P.
- (c) Forfeiture of Development Security for Failure to Commence Term by the Term Start Date; Extension of the Term Start Date.
- (i) Failure to Meet the Term Start Date. Subject to Seller’s right to extend the Term Start Date as provided in Section 4(c)(ii) of this Exhibit F or as a result of a Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03), if the Term does not commence on or before the Term Start Date, Buyer may retain the entire Development Security (if applicable) and, if not already terminated, terminate this Agreement, and neither Party shall have liability for damages for failure to deliver or purchase the Product after the effective date of such termination.
- (ii) Daily Delay Liquidated Damages to Extend Term Start Date. Subject to limitations set forth in Section 1.01(a), Seller may elect to delay the Term

Start Date by paying to Buyer liquidated damages in an amount equal to one percent of the Development Security per day for each day (or portion thereof) from and including the original Term Start Date to and excluding the actual Term Start Date (“Daily Delay Liquidated Damages”).

To extend the Term Start Date, Seller must, at the earliest possible time, but no later than 6 a.m. on the first day of the proposed extension, provide Buyer with Notice of its election to extend the Term Start Date along with its estimate of the duration of the extension and its payment of Daily Delay Liquidated Damages for the full estimated Term Start Date extension period.

Seller may further extend the Term Start Date beyond the original Term Start Date extension period subject to the same terms applicable to the original Term Start Date extension.

The Daily Delay Liquidated Damages payments applicable to days included in any Term Start Date extension shall be nonrefundable and are in addition to and not to be considered part of the Development Security.

Seller shall be entitled to a refund (without interest) of any estimated Daily Delay Liquidated Damages payments paid by Seller which exceed the amount required to cover the number of days by which the Term Start Date was actually extended.

In no event may Seller extend the Term Start Date for more than a total of [] days by the payment of Daily Delay Liquidated Damages.

{Buyer Comment: To be completed by Seller, and subject to Buyer's acceptance.}

- (d) Full Return of Development Security. The Development Security shall be returned to Seller in accordance with the following procedure:
- (i) Subject to Seller commencing the Term by the Term Start Date, as the Term Start Date may have been extended in accordance with Section 4(c)(ii) of this Exhibit F as a result of a Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03), Seller demonstrates the Net Contract Capacity on or before the Firm Operation Date as follows:
 - (1) If Seller designates only Firm Contract Capacity, successful completion of the Capacity Demonstration Test as set forth in Exhibit C;
 - (2) If Seller designates only As-Available Contract Capacity, Seller delivers to Buyer the As-Available Contract Capacity Confirmation Certificate in accordance with Section 3.13(b),

which As-Available Contract Capacity Confirmation Certificate must provide that Seller has installed the equipment sufficient to provide the entire As-Available Contract Capacity designated by Seller in Section 1.02(d) on the Effective Date; or

- (3) If Seller designates both Firm Contract Capacity and As-Available Contract Capacity, both (1) and (2) of this Section 4(d)(i) are required.
- (e) Deficient Installation of Net Contract Capacity; Partial Forfeiture and Partial Return of the Development Security. If, on or before the Firm Operation Date, Seller does not demonstrate any portion of the Net Contract Capacity or only demonstrates a portion of the Net Contract Capacity:
- (i) If Seller designates only Firm Contract Capacity, based on the Capacity Demonstration Test, if any, as set forth in Exhibit C;
 - (ii) If Seller designates only As-Available Contract Capacity, based on Seller's delivery of the As-Available Contract Capacity Confirmation Certificate in accordance with Section 3.13(b); or
 - (iii) If Seller designates both Firm Contract Capacity and As-Available Contract Capacity, based on both (i) and (ii) of this Section 4(e),

then Seller will only be entitled to a return of the portion of the Development Security posted by Seller equal to the product of either (1) \$20 per kW times the kilowatts of Net Contract Capacity which Seller has demonstrated, if any, if the Term Start Date occurs within 18 months of the Effective Date, or (2) \$60 per kW times the kilowatts of Net Contract Capacity which Seller has demonstrated, if any, if the Term Start Date occurs after the 18th month following the Effective Date.

Seller shall forfeit and Buyer shall be entitled to retain the balance of the Development Security.

In addition, as of the Firm Operation Date, the Performance Assurance Amount for the Performance Assurance required to be posted and maintained pursuant to Section 2 of this Exhibit F shall be calculated using the adjusted Net Contract Capacity, and any amount of Performance Assurance in excess of that required for the adjusted Net Contract Capacity shall be returned to Seller.

- (f) Seller shall provide Notice to Buyer of its request for a refund of the Development Security.

5. Interest Payments on Cash Deposits.

- (a) Buyer shall make monthly Simple Interest Payments, calculated using the Federal Funds Effective Rate, to Seller on cash amounts posted for the Development Security and Performance Assurance.
- (b) Upon receipt of a monthly invoice that sets forth the calculation of the Simple Interest Payment amount due, Buyer shall make payment thereof on or before the third Business Day of the first month after the last month to which the invoice relates, so long as such date is after the day on which such invoice is received; *provided, however*, that:
 - (i) No Event of Default has occurred and is continuing with respect to Seller; and
 - (ii) No Early Termination Date for which any unsatisfied payment obligation of Seller exists, has occurred or has been designated as the result of an Event of Default by Seller.
- (c) On or after the occurrence of an Event of Default by Seller or an Early Termination Date as a result of an Event of Default by Seller, Buyer shall retain any such Simple Interest Payment amount as an additional Development Security amount or a Performance Assurance amount hereunder until:
 - (i) In the case of an Early Termination Date, the obligations of Seller under this Agreement have been satisfied; or
 - (ii) In the case of an Event of Default, for so long as such Event of Default is continuing.

*** End of Exhibit F ***

EXHIBIT G
Scheduling Coordinator Services

This Exhibit G is only applicable when Buyer is Scheduling Coordinator.

1. Designation of Buyer as Scheduling Coordinator.
 - (a) At least 30 days before the Term Start Date, Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer as Scheduling Coordinator with the CAISO effective as of the Term Start Date.
 - (b) During the Term, unless Seller terminates Buyer as Scheduling Coordinator in accordance with Section 7 of this Exhibit G, Seller may not authorize or designate any other party to act as Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller may not revoke Buyer's authorization to act as Scheduling Coordinator unless agreed to by Buyer.
 - (c) Buyer shall submit bids and schedules to the CAISO in accordance with the CAISO Tariff and Seller's QF PGA or PGA, as applicable.
 - (d) Buyer shall submit all required notices and updates regarding each Generating Unit's or the Generating Facility's status, as applicable, to the CAISO in accordance with the CAISO procedures.
 - (e) Seller is not entitled to any Monthly Capacity Payment until Buyer is fully authorized as Scheduling Coordinator for the Generating Facility; *provided, however,* that Buyer may not take, or not refrain from taking, any action if the result would be to delay such authorization.

2. Buyer's Scheduling Responsibilities. Pursuant to the CAISO Tariff, Buyer shall be responsible for the following:
 - (a) Using the Forecast submitted by Seller to Buyer pursuant to Exhibit I, including updated Forecasts to the extent reasonably practicable, to forecast Seller's expected generation using Buyer's forecasting model ("Buyer Projected Energy Forecast") in any given hour;
 - (b) Adjusting Buyer Projected Energy Forecast for forecasted electric energy line losses in accordance with the amount of electric energy Seller is expected to deliver to the Delivery Point;
 - (c) Submitting the adjusted Forecasts to the CAISO as Scheduling Coordinator Schedules (as defined in the CAISO Tariff); and
 - (d) Receiving notification of the final schedules from the CAISO.

3. **Notices.** As Scheduling Coordinator, Buyer shall submit all notices and updates required under the CAISO Tariff and Applicable Laws regarding each Generating Unit's or the Generating Facility's status, as applicable, to the CAISO, including all SLIC Outage requests, SLIC Forced Outages, CAISO Forced Outage Reports, or must offer waiver forms.
4. **Scheduling Fees.** In accordance with Section 4.02, Buyer shall invoice to Seller and Seller shall pay to Buyer the following Scheduling Fees:
 - (a) **SC Set-Up Fee.** The SC Set-Up Fee is equal to the costs Buyer incurs as a result of the Generating Units or the Generating Facility registration, as applicable, as well as installation, configuration, and testing of all equipment and software necessary, in Buyer's sole discretion, to Schedule the Generating Unit or the Generating Facility, as applicable, in accordance with the CAISO Tariff. Buyer's invoice to Seller shall provide a detailed accounting of all costs and charges encompassed in the SC Set-Up Fee, including separate line items for registration charges, equipment costs, software costs, and labor costs (including hourly rate if applicable) itemized for registration, equipment installation, configuration, testing and software related charges. Buyer estimates that the SC Set-up Fee for this Agreement will equal \$[].
 - (b) **Monthly Scheduling Fee.** The Monthly Scheduling Fee will be as forth in the following table.

Net Contract Capacity (kW)	Monthly Scheduling Fee
Less than 10,000	\$2,500
10,000 – 100,000	\$5,000
Greater than 100,000	\$7,500

5. **CAISO Settlements.** As Scheduling Coordinator, Buyer shall be responsible for all settlement functions with the CAISO related to the Generating Units or the Generating Facility, as applicable. Seller shall cooperate with Buyer in Buyer's performance of any settlement functions, and Seller shall promptly deliver to Buyer, or provide Buyer access to, all Generating Unit or the Generating Facility, as applicable, data necessary for CAISO settlements and any correspondence or communications with CAISO related to the Generating Units or the Generating Facility, as applicable, including any invoices or settlement data, in the mutually agreed upon format reasonably requested by Buyer.

Buyer shall render a separate invoice to Seller for all CAISO Charges for which Seller is responsible under this Agreement (“CAISO Charges Invoice”) as described in Sections 1 through 4 of Exhibit J, in accordance with the applicable billing and payment methodologies utilized for the specific CAISO Charge as set forth in the CAISO Tariff.

CAISO Charges Invoices shall be rendered after final settlement information becomes available from the CAISO that identifies any CAISO Charges. At Seller's request, Buyer shall provide Seller with an invoice detailing all Generating Facility CAISO Charges by individual CAISO Charge codes or types used by CAISO to identify individual CAISO Charges including a copy of all supplemental or supporting documentation provided by the CAISO to Buyer in the settlement process.

Seller shall pay the amount of CAISO Charges Invoices on or before the later of the 20th day of each month, or tenth day after receipt of the CAISO Charges Invoice or, if such day is not a Business Day, then on the next Business Day. If Seller fails to pay a CAISO Charges Invoice within such timeframe, Buyer may offset any amounts owing to it for these CAISO Charges Invoices as set forth in Section 4.02.

6. Disputes and Adjustments of CAISO Invoices. The Parties agree that all CAISO Charges Invoices are subject to the CAISO Tariff and may be adjusted by the CAISO, or disputed by Buyer, as Scheduling Coordinator, in accordance with the CAISO Tariff. The Parties agree that all CAISO Charges Invoices are subject to dispute between the Parties in accordance with this Agreement. Notwithstanding anything to the contrary contained in this Agreement, the Parties agree that the obligations under this Exhibit G with respect to the payment of CAISO Charges Invoices, or the adjustment of such CAISO Charges Invoices, shall survive the expiration or termination of this Agreement for a period of 365 days beyond the time period which CAISO may adjust, modify or change any previously issued invoice, or any charges or revenues set forth on such invoice pursuant to the CAISO Tariff.
7. Terminating Buyer's Designation as Scheduling Coordinator.
 - (a) Seller may terminate Buyer as Scheduling Coordinator:
 - (i) In accordance with Section 7(b) of this Exhibit G; or
 - (ii) If Buyer materially fails to fulfill its obligations as Scheduling Coordinator and:
 - (1) Seller provides advance Notice to Buyer setting forth in reasonable detail the nature of such failure and such failure is not remedied within 30 days after such Notice; *provided, however*, that if such failure is not reasonably capable of being remedied within such 30-day period, Buyer shall have such additional time (not to exceed 120 days) as is reasonably necessary to remedy such failure, so long as Buyer promptly commences and diligently pursues such remedy;
 - (2) Seller (A) submits to the CAISO a designation of a new Scheduling Coordinator to replace Buyer effective as of the date of

Buyer's termination as Scheduling Coordinator, and (B) causes its newly designated Scheduling Coordinator to submit a letter to the CAISO accepting the designation; and

- (3) The Parties will take any other action necessary to terminate the designation of Buyer as Scheduling Coordinator, including amending this Agreement; or
- (iii) If Seller is required to elect Buyer as Scheduling Coordinator in accordance with Section 1.08, then, subject to Section 3.06(b) or 3.09(b), as applicable, by (1) providing a Notice to Buyer on or before the 60th day after Seller meets the requirements of Section 3.06(a) and 3.09(a), and (2) at least 30 days before the replacement Buyer as the Scheduling Coordinator, complying with the requirements for designating a different Scheduling Coordinator by taking all necessary actions to terminate the designation of Buyer as Scheduling Coordinator, including those actions set forth in Sections 7(b)(i) and (b)(ii) of this Exhibit G. Seller bears sole responsibility for locating, selecting, and reaching agreement on terms with any replacement Scheduling Coordinator.
- (b) At least 30 days before the expiration of the Term or as soon as an Early Termination Date is declared (regardless of which Party declared it), the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator as of 11:59 p.m. PPT on the Term End Date ("SC Replacement Date"). Such actions include the following:
 - (i) Seller shall:
 - (1) Submit to the CAISO a designation of a new Scheduling Coordinator to replace Buyer effective as of the SC Replacement Date; and
 - (2) Cause its newly designated Scheduling Coordinator to submit a letter to the CAISO accepting the designation; and
 - (ii) Buyer shall submit a letter to the CAISO resigning as Scheduling Coordinator effective as of the SC Replacement Date.
- (c) Seller bears sole responsibility for locating, selecting, and reaching agreement on terms with any replacement Scheduling Coordinator.

*** End of Exhibit G ***

EXHIBIT H
Milestone Progress Reporting Form

1. Introduction. This Exhibit H is only applicable if the Generating Facility is a New CHP Facility.

Seller shall prepare a written milestone progress report as set forth in Section 3.11 on its progress relative to the:

- (a) Installation of the CAISO-Approved Meters and Telemetry System;
- (b) Installation of the Telemetry System as required by the CAISO Tariff; and
- (c) Work on other agreements with the CAISO and the Transmission Provider.

2. Format. The report must be sent via e-mail in the form of a single Adobe Acrobat file or facsimile to Buyer's Contract Administrator, as noted in Exhibit N, on the fifth Business Day of each month. Each such milestone progress report must include the following items:

- (a) Cover page;
- (b) Brief Generating Facility description;
- (c) Site plan of the Generation Facility;
- (d) Description of any planned changes to the Generating Facility and Site Description in Exhibit B;
- (e) Bar chart schedule showing progress on achieving the Milestone Schedule;
- (f) PERT or GANT chart showing critical path schedule of major items and activities;
- (g) Summary of activities during the previous month;
- (h) Forecast of activities scheduled for the current month;
- (i) Written description about the progress relative to the Milestone Schedule;
- (j) List of issues that could potentially impact the Milestone Schedule;
- (k) Enumeration and schedule of any support or actions requested of Buyer;
- (l) Progress and schedule of all material agreements, contracts, Permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages; and
- (m) List of items required under Section 3.11.

*** End of Exhibit H ***

EXHIBIT I

Seller's Forecasting Submittal and Accuracy Requirements

1. General Requirements. The Parties shall abide by the Forecasting requirements and procedures described below and shall agree upon reasonable changes to these requirements and procedures from time to time as necessary to:
 - (a) Comply with the CAISO Tariff;
 - (b) Accommodate changes to their respective generation technology and organizational structure; and
 - (c) Address changes in the Operating and Scheduling procedures of Seller, Buyer and the CAISO, including automated Forecast and outage submissions.

2. Seller's Forecasting Submittal Requirements for all Generating Facilities.
 - (a) 30-Day Forecast.

No later than 30 days before the Term Start Date (or, in the case of a New CHP Facility no later than 30 days before the commencement of Parallel Operation), Seller shall provide Buyer with a Forecast for the 30-day period commencing on the start of the Term (or, if applicable, Parallel Operation) using the Web Client.

In the case of a New CHP Facility, if, after submitting the Forecast pursuant to this Section 2(a), Seller learns that Parallel Operation will occur on a date and time other than that reflected on the Forecast, Seller shall provide an updated Forecast reflecting the new Parallel Operation date at the earliest practicable time but no later than 5:00 p.m. PPT on the Wednesday before the new Parallel Operation date, if Seller has learned of the new Parallel Operation date by that time, but in no event less than three Business Days before the new Parallel Operation date.

If the Web Client becomes unavailable, Seller shall provide Buyer with the Forecast by e-mail or by telephoning Buyer's Generation Operations Center, at the e-mail address or telephone number(s) listed in Exhibit N.

The Forecast, and any updated Forecasts provided pursuant to this Section 2, shall:

- (i) Not include any anticipated or expected electric energy losses between the CAISO-Approved Meter and the Delivery Point; and
- (ii) Limit hour-to-hour Forecast changes to no less than 250 kWh during any period when the Web Client is unavailable. Seller shall have no restriction on hour-to-hour Forecast changes when the Web Client is available.

- (b) Weekly Update to 30-Day Forecast. Commencing on or before 5:00 p.m. PPT of the Wednesday before the first week covered by the Forecast provided pursuant to Section 2(a) of this Exhibit I, and on or before 5:00 p.m. PPT every Wednesday thereafter until the Term End Date, Seller shall update the Forecast for the 30-day period commencing on the Sunday following the weekly Wednesday Forecast update submission. Seller shall use the Web Client, if available, to supply this weekly update or, if the Web Client is not available, Seller shall provide Buyer with the weekly Forecast update by e-mailing or telephoning Buyer's Generation Operations Center, at the e-mail address or telephone number(s) listed in Exhibit N.
- (c) Further Update to 30-Day Forecast. As soon as reasonably practicable and commensurate with Seller's knowledge, Seller shall provide Forecast updates related to Buyer's Scheduled daily, hourly and real-time deliveries from the Generating Facility for any cause, including changes in Site ambient conditions, a Forced Outage, or a Real-Time Forced Outage, any of which results in a material change to the Generating Facility's deliveries (whether in part or in whole). This updated Forecast pursuant to this Exhibit I must be submitted to Buyer via the Web Client by no later than:
- (i) 5:00 p.m. PPT on the day before the Trading Day impacted by the change, if the change is known to Seller at that time;
 - (ii) The Hour-Ahead Scheduling Deadline, if the change is known to Seller at that time; or
 - (iii) If the change is not known to Seller by the timeframes indicated in (i) or (ii) immediately above, no later than 20 minutes after Seller becomes aware of the event which caused the expected electric energy production change.

Seller's updated Forecast must contain the following information:

- (w) The beginning date and time of the event resulting in the availability of the Generating Facility and expected electric energy production change;
 - (x) The expected ending date and time of the event;
 - (y) The expected electric energy production, in MWh; and
 - (z) Any other information required by the CAISO as communicated to Seller by Buyer.
3. Seller's Forecasting Accuracy Requirements. If a (non-zero) Firm Contract Capacity quantity is applicable to this Agreement, then this Section 3 applies to Seller.

- (a) Accuracy Metric. With respect to each calendar month “m”, as soon as practicable after the end of such month, Buyer shall calculate and report to Seller the monthly mean absolute error (“ MAE_m ”) between Seller’s Day-Ahead Forecasts and the respective daily summations of Metered Energy:

$$MAE_m = \frac{\text{Forecast Error}}{\text{Total Forecast}}$$

$$\text{Forecast Error} = \sum_i^n |f_i - a_i|$$

$$\text{Total Forecast} = \sum_i^n f_i$$

where:

- n = the total number of hours in calendar month “m”
- i = an hour within month “m”
- f_i = Seller’s Day-Ahead Forecast for hour “i”
- a_i = the quantity of (i) Metered Energy for hour “i” plus the quantity of electric energy not delivered as a result of a Real-Time Forced Outage or Seller’s actual curtailment of production of the Power Product in accordance with Exhibit U for hour “i” (in MWh) when the Generating Facility is not PIRP-eligible, or when Buyer is not Scheduling Coordinator; or (ii) the actual available total generation capacity of the Generating Facility (in MW) when the Generating Facility is PIRP-eligible and Buyer is Scheduling Coordinator.

Buyer shall report each MAE_m to Seller and, upon Seller’s request, Buyer shall furnish all supporting calculations within a reasonable timeframe.

Notwithstanding anything to the contrary set forth in this Section 3(a), for hour “i” for which the absolute difference between variable “ f_i ” and variable “ a_i ” is a number greater than zero, to the extent that such difference results from the fault or negligence of Buyer in its role as Scheduling Coordinator the value “ $|f_i - a_i|$ ” for that hour shall be deemed to be zero.

- (b) Forecasting Penalty. If the MAE_m for a particular month “m” is greater than 15% or if the average Forecast error for all hours of the month is greater than three MW, then an “MAE Failure” will be deemed to have occurred. An MAE Failure will be waived if Seller demonstrates to Buyer’s reasonable satisfaction that the MAE Failure was the result of unexpected changes in either electrical or steam demand associated with the Site Host Load. If such MAE Failure has been waived, then that month does not count as a month in which there was an MAE Failure.

For each month in which an MAE Failure has occurred, Seller shall pay a fee equal to the applicable Monthly Scheduling Fee in addition to any otherwise applicable Monthly Scheduling Fee.

During each month an MAE Failure occurs, subject to the limitations of the following paragraph, Seller will continue to receive Monthly Capacity Payments for the Firm Contract Capacity based on the Firm Capacity Price and capacity payment calculations for firm capacity as set forth in Section 3 of Exhibit D.

If, however, an MAE Failure occurs three times in any rolling 12-month period, then starting on the first day of the calendar month immediately following the third such occurrence (such month, the “First Penalty Month”):

- (i) The quantity of Firm Contract Capacity specified in Section 1.02(d) will be deemed to be zero (“Penalized Firm Contract Capacity”); and
- (ii) The quantity of As-Available Contract Capacity specified in Section 1.02(d) will be deemed increased by the quantity of Firm Contract Capacity as such quantity existed before the First Penalty Month (“Penalized As-Available Contract Capacity”).

The Penalized Firm Contract Capacity and Penalized As-Available Contract Capacity quantities shall continue to be in effect during every subsequent calendar month until there are two consecutive calendar months without an MAE Failure (including a month in which an MAE Failure has been waived).

Upon such event, starting on the first day of the calendar month immediately following the second consecutive month during which Buyer does not have an MAE Failure, the Penalized Firm Contract Capacity and Penalized As-Available Contract Capacity quantities shall revert to the Firm Contract Capacity and As-Available Contract Capacity quantities existing before the First Penalty Month.

*** End of Exhibit I ***

EXHIBIT J
CAISO Charges

If at any time after the Term Start Date Buyer is not Scheduling Coordinator for the Generating Facility, then Buyer will not be responsible for any CAISO Charges. If at any time after the Term Start Date Buyer is Scheduling Coordinator for the Generating Facility, then Buyer shall pay all CAISO Charges and receive all CAISO Revenues; *provided, however*, if at any time after the Term Start Date:

1. 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 on the Generating Facility or to Buyer as Scheduling Coordinator for the Generating Facility due solely to the actions or inactions of Seller, then such sanctions or penalties will be Seller's responsibility;
2. Seller or any third party dispatches any portion of the Net Contract Capacity for the benefit of any party other than Buyer or a Site host in respect of the Host Site, then Seller shall indemnify, defend, and hold Buyer harmless against any CAISO Charges (except to the extent such CAISO Charges result from the fault or negligence of Buyer in its role as Scheduling Coordinator);
3. Seller does not comply with:
 - (a) The requirements set forth in Section 3.15; or
 - (b) Seller's obligation associated with any CAISO or Transmission Provider notice or instruction (as may be communicated by Buyer as Scheduling Coordinator) to (i) increase output to the Firm Contract Capacity during a System Emergency or an Emergency Condition, or (ii) reschedule a planned outage set to occur during a System Emergency or an Emergency Condition, then

Seller shall indemnify, defend, and hold Buyer harmless against any CAISO Charges associated with any failure set forth in Sections 3(a) or 3(b) of this Exhibit J (except to the extent such CAISO Charges result from the fault or negligence of Buyer in its role as Scheduling Coordinator); or

4. If the Generating Facility is PIRP-eligible and is not certified as a PIRP resource for any reason, then Seller shall indemnify, defend, and hold Buyer harmless against all CAISO Charges associated with the electric energy generated and delivered from the Generating Facility.

If any of Sections 1 through 4 of this Exhibit J apply and the Generating Facility is subject to an Uninstructed Deviation Penalty, Seller will not be required to pay the SDD Energy Adjustment and, instead, shall be responsible for all applicable Uninstructed Deviation Penalty charges for the Generating Facility.

*** End of Exhibit J ***

EXHIBIT K
Scheduling and Delivery Deviation Adjustments

If Buyer is Scheduling Coordinator for the Generating Facility and if the Generating Facility is not PIRP-eligible, then Seller or Buyer, as the case may be, shall be responsible for the following SDD Adjustments with respect to the Generating Facility:

1. **SDD Energy Adjustment.** An Adjustment will be calculated for each Settlement Interval in a month if the Metered Energy is either (a) less than the Performance Tolerance Band Lower Limit in any Settlement Interval or (b) greater than the Performance Tolerance Band Upper Limit in any Settlement Interval. When the SDD Energy Adjustment is negative, Seller shall make a payment to Buyer and when the SDD Energy Adjustment is positive, Seller shall receive a credit from Buyer. The SDD Energy Adjustment is calculated as follows:

$$\text{If } A < D, \text{ then SDD Energy Adjustment} = (D - A) \times (EP - P)$$

or

$$\text{If } A > E, \text{ then SDD Energy Adjustment} = (A - E) \times (P - EP)$$

Otherwise, the SDD Energy Adjustment = 0

where:

A = Metered Energy for the Settlement Interval;

B = Seller's Final Energy Forecast based on the hourly forecasts made pursuant to Exhibit I corresponding to the Settlement Interval;

C = Performance Tolerance Band =

The greater of (a) three percent of the Seller's Final Energy Forecast divided by the number of Settlement Intervals in such hour or (b) one (1) MWh divided by the number of Settlement Intervals in such hour;

D = Performance Tolerance Band Lower Limit = (B - C);

E = Performance Tolerance Band Upper Limit = (B + C);

EP = TOD Period Energy Price applicable to the Settlement Interval specified in Section 2(b) of Exhibit D; and

P = Real-Time Price for the Generator's PNode as published by the CAISO on OASIS for the Settlement Interval.

2. SDD Administrative Charge. Seller shall make a payment to Buyer (the “SDD Administrative Charge”) for each Settlement Interval in a month if Metered Energy (i) exceeds the Performance Tolerance Band Upper Limit or (ii) is less than the Performance Tolerance Band Lower Limit, in any Settlement Interval. The SDD Administrative Charge is calculated as follows:

If $A > (B + C)$ or $A < (B - C)$, then:

$$\text{SDD Administrative Charge} = (\text{Absolute Value } (B - A) - C) \times \text{Uninstructed Deviation GMC Rate.}$$

Otherwise, the SDD Administrative Charge = 0.

*** End of Exhibit K ***

EXHIBIT L
Physical Trade Settlement Amount

This Exhibit L is only applicable when Buyer is not Scheduling Coordinator.

1. Physical Trades Cleared in the IFM. The CAISO Revenue credited to Buyer's account by CAISO as a result of a Physical Trade having cleared in the IFM shall be for Buyer's account.
2. Physical Trades not Cleared in the IFM. With respect to each calendar month "m", as soon as practicable after the end of such month, Buyer shall calculate the Physical Trade Settlement Amount ("PTSA_i") for each hour as follows:

$$PTSA_i = CPT_i \times (CPTP_i - PNode_i)$$

Where:

- i = an hour within month "m"
- CPT = Converted Physical Trade, in MWh
- CPTP = Converted Physical Trade Price, and
- PNode = the Generating Facility's PNode price, in dollars per MWh.

If the PTSA_i is positive *and* Seller submitted the original Physical Trade in accordance with Section 3.14(s)(ii) and Exhibit L, then Buyer shall owe Seller the PTSA_m for month m. In any event the PTSA_i is negative, however, then Seller shall owe Buyer the PTSA_i.

*** End of Exhibit L ***

EXHIBIT M
SC Trade Settlement Amount

This Exhibit M is only applicable when Buyer is not Scheduling Coordinator.

If, in any Settlement Interval, a Generating Facility's Scheduled Amount differs from the Generating Facility's Metered Energy by more than the SC Trade Tolerance Band, then Seller shall be subject to a payment adjustment calculated by Buyer in accordance with the procedures and formulas set forth below.

(1) Under-Scheduling Adjustment.

If during any Settlement Interval the Scheduled Amount plus the SC Trade Tolerance Band is less than the Metered Energy, and the Real-Time Price is greater than the Day-Ahead Price payable during the Settlement Interval, then Seller's monthly payment amount shall be reduced by each Under-Scheduling Settlement Interval Adjustment Amount calculated by the following formula:

UNDER-SCHEDULING SETTLEMENT INTERVAL ADJUSTMENT AMOUNT =

$$[A - B] \times [D - C]$$

- Where A = The Metered Energy in the Settlement Interval being calculated.
B = The Scheduled Amount in the Settlement Interval being calculated.
C = Day-Ahead Price for the Settlement Interval being calculated in \$/kWh.
D = Real-Time Price for the Settlement Interval being calculated in \$/kWh.

No under-scheduling adjustment shall be assessed against Seller for a Settlement Interval in which the Scheduled Amount plus the SC Trade Tolerance Band is less than the Metered Energy if, during such Settlement Interval, the Real-Time Price is equal to or less than the Day-Ahead Price payable during the Settlement Interval.

(2) Over-Scheduling Adjustment.

If during any Settlement Interval the Scheduled Amount is greater than the SC Trade Tolerance Band plus the Metered Energy, and the Real-Time Price is less than the Day-Ahead Price payable during the Settlement Interval;

Then Seller's monthly payment amount shall be reduced by each Over-Scheduling Settlement Interval Adjustment Amount calculated by the following formula:

OVER-SCHEDULING SETTLEMENT INTERVAL ADJUSTMENT AMOUNT =

$$[B - A] \times [C - D]$$

- Where A = The Metered Energy in the Settlement Interval being calculated.
B = The Scheduled Amount in the Settlement Interval being calculated.
C = Day-Ahead Price for the Settlement Interval being calculated in \$/kWh.
D = Real-Time Price for the Settlement Interval being calculated in \$/kWh.

No over-scheduling adjustment shall be assessed against Seller for a Settlement Interval in which the Scheduled Amount is greater than the SC Trade Tolerance Band plus the Metered Energy if, during such Settlement Interval, the Real-Time Price is greater than or equal to the Day-Ahead Price payable during the Settlement Interval.

*** End of Exhibit M ***

EXHIBIT N
Notice List

[SELLER'S NAME]	[BUYER'S NAME]
All Notices are deemed provided in accordance with Section 9.07 if made to the address, facsimile numbers or e-mail addresses provided below:	All Notices are deemed provided in accordance with Section 9.07 if made to the address, facsimile numbers or e-mail addresses provided below:
Contract Sponsor: Attn: Street: City: Phone: Facsimile: E-mail:	
Reference Numbers: Duns: Federal Tax ID Number:	
Contract Administration: Attn: Phone: Facsimile: E-mail:	
Forecasting: Attn: Control Room Phone: Facsimile: E-mail:	
Day-Ahead Forecasting: Phone: Facsimile: E-mail:	
Real-Time Forecasting: Phone: Facsimile: E-mail:	

Payment Statements: Attn: Phone: Facsimile: E-mail:	
CAISO Charges and CAISO Sanctions: Attn: Phone: Facsimile: E-mail:	
Payments: Attn: Phone: Facsimile: E-mail:	
Wire Transfer: BNK: ABA: ACCT:	
Credit and Collections: Attn: Phone: Facsimile: E-mail:	
With additional Notices of an Event of Default or Potential Event of Default to: Attn: Phone: Facsimile: E-mail:	
Guarantor: Attn: Phone: Facsimile: E-mail:	
Lender: Attn: Phone: Facsimile: E-mail:	

*** End of Exhibit N ***

EXHIBIT O
Form of Guaranty Agreement

1. **Guaranty.** For valuable consideration, _____ [Guarantor's legal name] _____, _____ [legal status] (“Guarantor”) guarantees payment to _____ [Buyer's legal name] _____, a California corporation (“Beneficiary”), its successors and assigns, of all amounts owed to Beneficiary by _____ [Seller's legal name] _____, _____ [legal status] (“Principal”) under that certain Power Purchase and Sale Agreement between Beneficiary and Principal dated _____ [date] _____, as amended from time to time (“Agreement”) (said amounts are hereinafter referred to as the “Obligations”).

Initially capitalized words that are used but not otherwise defined in this agreement (“Guaranty”) shall have the meanings given them in the Agreement.

Upon the failure or refusal by Principal to pay all or any portion of the Obligations, the Beneficiary may make a demand upon the Guarantor.

Such demand shall be in writing and shall state the amount Principal has failed to pay and an explanation of why such payment is due, that all cure periods have expired, and with a specific statement that Beneficiary is calling upon Guarantor to pay under this Guaranty.

Guarantor shall promptly, but in no event less than ten Business Days following demand by Beneficiary, pay such Obligations in immediately available funds.

The obligations of Guarantor hereunder is not subject to any counterclaim, setoff, withholding, or deduction unless required by applicable law.

A payment demand satisfying the foregoing requirements shall be deemed sufficient notice to Guarantor that it must pay the Obligations.

2. **Guaranty Limit.** Subject to Paragraph 13, the liability of Guarantor hereunder may not exceed \$ _____ in the aggregate, which amount shall include all interest that has accrued on any amount owed hereunder.
3. **Guaranty Absolute.** Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent and unconditional and is not affected by any circumstance which constitutes a legal or equitable discharge of a guarantor. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees as follows:
- (a) The liability of Guarantor under this Guaranty is a continuing guaranty of payment and not of collectibility, and is not conditional or contingent upon the genuineness, validity, regularity or enforceability of the Agreement or the pursuit by Beneficiary of any remedies which it now has or may hereafter have under the Agreement;

- (b) Beneficiary may enforce this Guaranty upon the occurrence of a default by Principal under the Agreement notwithstanding the existence of a dispute between Beneficiary and Principal with respect to the existence of the default;
- (c) The obligations of Guarantor under this Guaranty are independent of the obligations of Principal under the Agreement and a separate action or actions may be brought and prosecuted against Guarantor whether or not any action is brought against Principal or any other guarantors and whether or not Principal is joined in any such action or actions;
- (d) Beneficiary may, at its election, foreclose on any security held by Beneficiary, or exercise any other right or remedy available to Beneficiary without affecting or impairing in any way the liability of Guarantor under this Guaranty, except to the extent the amount(s) owed to Beneficiary by Principal have been paid; and
- (e) Guarantor shall continue to be liable under this Guaranty and the provisions hereof shall remain in full force and effect notwithstanding:
 - (i) Any modification, amendment, supplement, extension, agreement or stipulation between Principal and Beneficiary or their respective successors and assigns, with respect to the Agreement or the obligations encompassed thereby;
 - (ii) Beneficiary's waiver of or failure to enforce any of the terms, covenants or conditions contained in the Agreement;
 - (iii) Any release of Principal or any other guarantor from any liability with respect to the Obligations or any portion thereof;
 - (iv) Any release, compromise or subordination of any real or personal property then held by Beneficiary as security for the performance of the Obligations or any portion thereof, or any substitution with respect thereto;
 - (v) Without in any way limiting the generality of the foregoing, if Beneficiary is awarded a judgment in any suit brought to enforce a portion of the Obligations, such judgment is not deemed to release Guarantor from its covenant to pay that portion of the Obligations which is not the subject of such suit;
 - (vi) Beneficiary's acceptance and/or enforcement of, or failure to enforce, any other guaranties or any portion of this Guaranty;
 - (vii) Beneficiary's exercise of any other rights available to it under the Agreement;

- (viii) Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of the Principal and to any corresponding restructuring of the Obligations;
 - (ix) Any failure to perfect or continue perfection of a security interest in any collateral that secures the Obligations;
 - (x) [Intentionally omitted;] and
 - (xi) Any other act or thing or omission, or delay to do any other act or thing that might in any manner or to any extent vary the risk of Guarantor as an obligor with respect to the Obligations.
- (f) Guarantor agrees that upon a demand for payment under this Guaranty in accordance with Section 1 hereof, Guarantor shall pay such Obligations as are included in such demand notwithstanding any defenses, setoffs or counterclaims that Principal may allege or assert against Beneficiary with respect to the Obligations, including, without limitation, statute of frauds and accord and satisfaction; provided that Guarantor reserves the right to assert any defenses, setoffs or counterclaims that Principal may allege or assert against Beneficiary (except for such defenses, setoffs or counterclaims as are expressly waived under other provisions of this Guaranty) in a subsequent action for recoupment, restitution or reimbursement.

4. Termination; Reinstatement.

- (a) The term of this Guaranty is continuous until the Term End Date, provided however, the termination of this Guaranty shall not release Guarantor from liability for any Obligations arising prior to the Term End Date.
- (b) This Guaranty shall be reinstated if at any time following the termination of this Guaranty, any payment by Guarantor under this Guaranty or pursuant hereto is rescinded or must otherwise be returned by the Beneficiary or other person upon the insolvency, bankruptcy, reorganization, dissolution or liquidation of Principal, Guarantor or otherwise, and is so rescinded or returned to the party or parties making such payment, all as though such payment had not been made.

If all or any portion of the Obligations are paid by Principal, the obligations of Guarantor hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from Beneficiary as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Obligations for all purposes under this Guaranty.

5. Bankruptcy. So long as any Obligations remain outstanding, Guarantor may not, without the prior written consent of Beneficiary, commence or join with any other person in commencing any bankruptcy, reorganization or insolvency proceedings of or against Principal. The obligations of Guarantor under this Guaranty may not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Principal or by any defense which Principal may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.
6. Subrogation. Guarantor shall be subrogated to all rights of the Beneficiary against Principal with respect to any amounts paid by the Guarantor pursuant to the Guaranty, provided that Guarantor postpones the exercise of such rights until all Obligations have been irrevocably paid in full to the Beneficiary.

If any amount is paid to Guarantor on account of such subrogation, reimbursement, contribution or indemnity rights at any time when all the Obligations guaranteed hereunder have not been indefeasibly paid in full, Guarantor shall hold such amount in trust for the benefit of Beneficiary (provided that no fiduciary duty shall be deemed to arise in connection herewith) and shall promptly pay such amount to Beneficiary.

7. [Intentionally omitted.]

8. Waivers of Guarantor.

- (a) [Intentionally omitted.]
- (b) Guarantor waives any right to require Beneficiary to proceed against or exhaust any security held from Principal or any other party acting under a separate agreement.
- (c) Guarantor waives all of the rights and defenses described in subdivision (a) of Section 2856 of the California Civil Code, including any rights and defenses that are or may become available to the Guarantor by reason of Sections 2787 to 2855 thereof, inclusive. Without limiting the generality of the foregoing waiver:
 - (i) The Guarantor waives all rights and defenses that the Guarantor may have because the Principal's Obligations are secured by real property.

This means, among other things:

- a. The Beneficiary may collect from the Guarantor without first foreclosing on any real or personal property collateral pledged by the Principal.
- b. If the Beneficiary forecloses on any real property collateral

pledged by the Principal:

- (1) The amount of the Obligation may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.
- (2) The Beneficiary may collect from the Guarantor even if the Beneficiary, by foreclosing on the real property collateral, has destroyed any right the Guarantor may have to collect from the Principal.

This is an unconditional and irrevocable waiver of any rights and defenses the Guarantor may have because the Principal's Obligations are secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

- (ii) The Guarantor waives all rights and defenses arising out of an election of remedies by the Principal, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for an Obligation, has destroyed the Guarantor's rights of subrogation and reimbursement against the Principal by the operation of Section 580d of the Code of Civil Procedure or otherwise.
- (d) Guarantor assumes all responsibility for keeping itself informed of Principal's financial condition and all other factors affecting the risks and liability assumed by Guarantor hereunder, and Beneficiary shall have no duty to advise Guarantor of information known to it regarding such risks.
- (e) Guarantor waives any defense arising by reason of the incapacity, lack of authority or any disability of the Principal, failure of consideration or any defense based on or arising out of the lack of validity or enforceability of the Obligations;
- (f) [Intentionally omitted]
- (g) Guarantor waives its right to raise any defenses based upon promptness, diligence, and any requirement that Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto;
- (h) Guarantor waives any other circumstances that limit the liability of or exonerate guarantors generally or provide any legal or equitable discharge of Guarantor's obligations hereunder;
- (i) Other than demand for payment, the Guarantor expressly waives all notices between the Beneficiary and the Principal including without limitation all notices

with respect to the Agreement and this Guaranty, notice of acceptance of this Guaranty, any notice of credits extended and sales made by the Beneficiary to Principal, any information regarding Principal's financial condition, and all other notices whatsoever; and

- (j) Guarantor waives filing of claims with a court in the event of the insolvency or bankruptcy of the Principal.
9. No Waiver of Rights by Beneficiary. No right or power of Beneficiary under this Guaranty shall be deemed to have been waived by any act or conduct on the part of Beneficiary, or by any neglect to exercise a right or power, or by any delay in doing so, and every right or power of Beneficiary hereunder shall continue in full force and effect until specifically waived or released in a written document executed by Beneficiary.
10. Assignment, Successors and Assigns. This Guaranty shall be binding upon Guarantor, its successors and assigns, and shall inure to the benefit of, and be enforceable by, the Beneficiary and its successors and assigns. The Beneficiary shall have the right to assign this Guaranty to any person or entity without the prior consent of the Guarantor; *provided, however,* that no such assignment shall be binding upon the Guarantor until it receives written notice of such assignment from the Beneficiary.

The Guarantor shall have no right to assign this Guaranty or its obligations hereunder without the prior written consent of the Beneficiary.

11. Representations of Guarantor. Guarantor represents and warrants that:
- (a) It is a corporation duly organized, validly existing and in good standing in the jurisdiction of its formation and has full power and authority to execute, deliver and perform this Guaranty;
 - (b) It has taken all necessary corporate actions to execute, deliver and perform this Guaranty;
 - (c) This Guaranty constitutes the legal, valid and binding obligation of Guarantor, enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws effecting creditors' rights generally and to general equitable principles;
 - (d) Execution, delivery and performance by Guarantor of this Guaranty does not conflict with, violate or create a default under any of its governing documents, any agreement or instruments to which it is a party or to which any of its assets is subject or any applicable law, rule, regulation, order or judgment of any Governmental Authority; and

- (e) All consents, approvals and authorizations of governmental authorities required in connection with Guarantor's execution, delivery and performance of this Guaranty have been duly and validly obtained and remain in full force and effect.
12. Financial Statements. If requested by Beneficiary and if Guarantor is otherwise required to prepare the following, Guarantor shall deliver financial statements as describe below, which in all cases shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles:
- (a) Within one hundred-twenty (120) days following the end of each fiscal year that any Obligations are outstanding, a copy of its annual report containing its audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year, setting forth in each case in comparative form the figures for the previous year; and
- (b) Within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year that any Obligations are outstanding, a copy of its quarterly report containing its consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year and: (i) certified in accordance with all applicable laws and regulations, including without limitation all applicable Securities and Exchange Commission ("SEC") rules and regulations, if Guarantor is an SEC reporting company; or (ii) certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year end audit adjustments) if Guarantor is not an SEC reporting company.
- (c) For the purposes of the requirement in this Paragraph 12, if Guarantor's financial statements are publicly available electronically on the website of Guarantor or the SEC, then Guarantor shall be deemed to have met this requirement.
13. Attorneys' Fees. In addition to the amounts for which payment is guaranteed hereunder, Guarantor agrees to pay reasonable attorneys' fees and all other reasonable costs and expenses incurred by Beneficiary in enforcing this Guaranty or in any action or proceeding arising out of or relating to this Guaranty. Any costs for which Guarantor becomes liable pursuant to this Paragraph 13 is not subject to, and does not count toward, the Guaranty limit set forth in Paragraph 2 above.
14. Governing Law. This Guaranty is made under and shall be governed in all respects by the laws of the State of California, without regard to conflict of law principles. If any provision of this Guaranty is held invalid under the laws of California, this Guaranty shall be construed as though the invalid provision has been deleted, and the rights and obligations of the parties shall be construed accordingly.

15. Construction. All parties to this Guaranty are represented by legal counsel. The terms of this Guaranty and the language used in this Guaranty shall be deemed to be the terms and language chosen by the parties hereto to express their mutual intent. This Guaranty shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under this Guaranty. No rule of strict construction will be applied against any party.

16. Amendment; Severability. Neither this Guaranty nor any of the terms hereof may be terminated, amended, supplemented or modified, except by an instrument in writing executed by an authorized representative of each of Guarantor and Beneficiary.

If any provision in or obligation under this Guaranty is invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, is not in any way be affected or impaired thereby.

17. Third Party Rights. This Guaranty may not be construed to create any rights in any parties other than Guarantor and Beneficiary and their respective successors and permitted assigns.

18. Notices. Any demand for payment, notice, request, instruction, correspondence or other document to be given hereunder by any party to another shall be made by facsimile to the person and at the address for notices specified below.

Beneficiary: [Buyer]
 [Street]
 [City, State Zip]
 Attn:
 Phone:
 Facsimile:

with a copy to: [Name]
 [Street]
 [City, State Zip]
 Attn:
 Phone:
 Facsimile:

Guarantor: [Guarantor]
 [Street]
 [City, State Zip]
 Attn:
 Phone:
 Facsimile:

Principal: [Principal]
 [Street]
 [City, State Zip]
 Attn:
 Phone:
 Facsimile:

Such notice shall be effective upon confirmation of the actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next Business Day after receipt if receipt is outside of the recipient's normal business hours. Either party may periodically change any address to which notice is to be given it by providing notice of such change as provided herein.

[signature page follows]

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of _____, _____.

_____ [legal name]

By: _____
Name: _____
Title: _____

*** End of Exhibit O ***

EXHIBIT P
Form of Letter of Credit

IRREVOCABLE NONTRANSFERABLE STANDBY
LETTER OF CREDIT

Reference Number:

Transaction Date:

BENEFICIARY:

Ladies and Gentlemen:

_____ (the "Bank") establishes this Irrevocable Nontransferable Standby Letter of Credit ("Letter of Credit") in favor of _____, a California corporation (the "Beneficiary"), for the account of _____, a _____ corporation, also known as ID# _____ (the "Applicant"), for the amount of XXX AND XX/100 Dollars (\$_____) (the "Available Amount"), effective immediately and expiring at 5:00 p.m., California time, on _____ (the "Expiration Date").

This Letter of Credit shall be of no further force or effect upon the close of business on _____ or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day.

For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in California.

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

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

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at _____ or such other number as specified from time to time by the Bank.

The facsimile transmittal shall be deemed delivered when received. 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 not transferable or assignable. Any purported transfer or assignment shall be void and of no force or effect.

Banking charges shall be the sole responsibility of the Applicant.

This Letter of Credit sets forth in full our obligations and such obligations may 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 may 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 Issuer

Name: _____

Title: _____

ATTACHMENT A
Drawing Certificate

TO [ISSUING BANK NAME]

IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT

No. _____

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Non-transferable Standby Letter of Credit

Reference Number:

The undersigned _____, an authorized representative of _____ (the "Beneficiary"), certifies to [Issuing Bank Name] (the "Bank"), and _____ (the "Applicant"), with reference to Irrevocable Nontransferable Standby Letter of Credit No. { _____ }, dated _____, (the "Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to \$ _____, for the following reason(s) [check applicable provision]:
 - [A]. An Event of Default, as defined in that certain Power Purchase and Sale Agreement between Applicant and Beneficiary, dated as of [Date of Execution] (the "Agreement"), with respect to the Applicant has occurred and is continuing.
 - [B]. An Early Termination Date (as defined in the Agreement) has occurred or been designated as a result of an Event of Default (as defined in the Agreement) with respect to the Applicant for which there exist any unsatisfied payment obligations.
 - [C]. The Letter of Credit will expire in fewer than 30 days from the date hereof, and Applicant has not provided Beneficiary alternative Performance Assurance (as defined in the Agreement) acceptable to Beneficiary.
 - [D]. The Bank has heretofore provided written notice to the Beneficiary of the Bank's intent not to renew the Letter of Credit following the present Expiration Date thereof ("Notice of Non-renewal"), and Applicant has failed to provide the

Beneficiary with a replacement letter of credit satisfactory to Beneficiary in its sole discretion within 30 days following the date of the Notice of Non-renewal.

- []E. The Beneficiary is entitled to retain the entire Development Security (i) as a result of Applicant's failure to commence the Term by the Term Start Date, or (ii) the Agreement has terminated due to an Event of Default by Applicant before the Term Start Date.
 - []F. The Beneficiary is entitled to retain a portion of the Development Security equal to the product of either (1) \$20 per kW of Net Contract Capacity which Seller failed to demonstrate, if the Term Start Date occurs within 18 months of the Effective Date, or (2) \$60 per kW times the kilowatts of Net Contract Capacity which Seller failed to demonstrate, if the Term Start Date occurs after the 18th month following the Effective Date.
2. Based upon the foregoing, the Beneficiary 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: [BENEFICIARY NAME]

By: _____

Name: _____

Title: _____

*** End of Exhibit P ***

EXHIBIT R
Outage Schedule Submittal Requirements

1. General Requirements.

The Parties shall abide by the Outage Schedule Submittal Requirements described below and shall agree upon reasonable changes to these requirements and procedures from time to time, as necessary to:

- (a) Comply with the CAISO Tariff;
- (b) Accommodate changes to their respective generation technology and organizational structure; and
- (c) Address changes in the operating and Scheduling procedures of Seller, Buyer and the CAISO, including automated forecast and outage submissions.

2. Seller's Availability Forecasting Submittal Requirements for all Generating Facilities.

Seller shall submit maintenance and planned outage schedules in accordance with the following schedule:

- (a) No later than January 1st, April 1st, July 1st and October 1st of each Term Year, and at least 60 days before Parallel Operation, Seller shall submit to Buyer its schedule of proposed planned outages ("Outage Schedule") for the subsequent twenty four-month period using a Buyer-provided web-based system or an e-mail address designated by Buyer ("Web Client").
- (b) Seller shall provide the following information for each proposed planned outage:
 - (i) Start date and time;
 - (ii) End date and time; and
 - (iii) Capacity online, in MW, during the planned outage.
- (c) Within 20 Business Days after Buyer's receipt of an Outage Schedule, Buyer shall notify Seller in writing of any request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Electrical Practices, accommodate Buyer's requests regarding the timing of any planned outage.
- (d) Seller shall cooperate with Buyer to arrange and coordinate all Outage Schedules with the CAISO.

- (e) In the event a condition occurs at the Generating Facility which causes Seller to revise its planned outages, Seller shall provide Notice to Buyer, using the Web Client, of such change (including, an estimate of the length of such planned outage) as required in the CAISO Tariff after the condition causing the change becomes known to Seller.

- (f) Seller shall promptly prepare and provide to Buyer upon request, using the Web Client, all reports of actual or forecasted outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with Section 761.3 of the California Public Utilities Code, the CAISO Tariff or any Applicable Law mandating the reporting by investor owned utilities of expected or experienced outages by electric energy generating facilities under contract to supply electric energy.

*** End of Exhibit R ***

EXHIBIT S
***Payment Adjustments if Buyer Assumes GHG Compliance Costs;
GHG Reporting Requirements***

Section 1 of this Exhibit S is only applicable if Section 1.06(d) provides that Buyer has assumed some or all of the GHG Compliance Costs under this Agreement. Section 2 of this Exhibit S is applicable whether or not Section 1.06(d) provides that Buyer has assumed some or all of the GHG Compliance Costs under this Agreement.

1. [As bid by Seller.]

{Buyer Comment: Seller must propose the methodology for allocating GHG Compliance Costs. Seller's proposal is subject to review and acceptance by Buyer. See also the Buyer Comments in Section 1.06.}

2. Reporting Requirements.

- (a) From the Effective Date through the Term End Date (and for any period following the termination of this Agreement to the extent relating back to the Term), Seller shall provide to Buyer the following information (together, the "Annual GHG Reports"):
- (i) On or before the fifth Business Day following Seller's timely submission to the CARB (or any other authorized Governmental Authority having jurisdiction in California) of the CARB Mandatory GHG Emissions Annual Report, or such other annual report submitted to the CARB detailing the Greenhouse Gas emissions of the Generating Facility for the applicable calendar year (as verified by an independent third party, if applicable) (the "CARB Annual Report"), Seller shall deliver such CARB Annual Report to Buyer; and
- (ii) To the extent not set forth in the CARB Annual Report (or if Seller is no longer required to submit the CARB Annual Report for any reason), then Seller shall submit to Buyer, along with the CARB Annual Report (or, if Seller is no longer required to submit the CARB Annual Report for any reason, then on the sixtieth (60th) Business Day following the end of the applicable calendar year), the following information for the applicable calendar year, which, in each case, must be verifiable and of settlement quality: (1) the Useful Thermal Energy Output of the Generating Facility; and (2) total fuel usage of the Generating Facility; and (3) the total amount of Greenhouse Gas emissions attributable to the Generating Facility, the electrical energy used to serve the Site Host Load, and the Useful Thermal Energy Output of the Generating Facility; and (4) the total electrical energy produced by the Generating Facility, the electrical energy used to serve the Site Host Load, and the electric energy delivered to Buyer; and (5) the number of Allowances (including Free Allowances) held or surrendered by Seller for such calendar year.

- (b) If Buyer requires any other information not delineated in Section 2(a) of this Exhibit S in order to comply with any Greenhouse Gas emissions reporting requirements adopted by the CARB or by any other Governmental Authority and imposed on Buyer (other than the information that Seller must provide in accordance with Section 2(c) of this Exhibit S), then Buyer shall promptly meet and confer with the Trade Organizations regarding such other information that Buyer requires and negotiate in good faith to reach a mutually acceptable agreement. Seller agrees and acknowledges that it shall be bound by any agreement between Buyer and the Trade Organizations, in accordance with the foregoing.
- (c) If Section 1.06(d) provides that Buyer has assumed some or all of the GHG Compliance Costs under this Agreement, Buyer will review the Annual GHG Reports described in this Section 2 to determine if there is any discrepancy in the payments made by Buyer to Seller for GHG Compliance Costs during the course of the applicable calendar year. To the extent Buyer determines that there is any such discrepancy, (i) if Buyer owes Seller an additional payment for GHG Compliance Costs, then Buyer shall make such additional payment in a subsequent monthly payment to Seller under this Agreement, or (ii) if Seller owes Buyer a payment refund for GHG Compliance Costs, then Buyer shall offset such payment refund amount in a subsequent monthly payment to Seller under this Agreement. If this Agreement terminates before Buyer is able to make such additional payment for GHG Compliance Costs or offset such GHG Compliance Costs payment refund from Seller's monthly payments, as applicable, then Buyer or Seller, as applicable, shall pay all remaining payment amounts due within the 30-day period after the termination of this Agreement.
- (d) To the extent that the information provided by the disclosing Party in accordance with this Section 2 is Confidential Information, the receiving Party shall treat such Confidential Information with the same degree of care that it currently treats the data and information provided by Qualifying Cogeneration Facilities under the existing Qualifying Cogeneration Facilities monitoring compliance program.

*** End of Exhibit S ***

EXHIBIT T
QF Efficiency Monitoring Program – Cogeneration Data Reporting Form

[Buyer's address]
 Buyer's telephone number and email address]

[PrevYear]

I. Name and Address of Project

Name: _____
 Street: _____
 City: _____ State: _____ Zip Code: _____

ID No.: _____ Generation Nameplate (KW): _____

II. In Operation: Yes No

III. Can your facility dump your thermal output directly to the environment? Yes No

IV. Ownership

	Name	Address	Ownership (%)	Utility
1	_____	_____	_____	Y N
2	_____	_____	_____	Y N
3	_____	_____	_____	Y N
4	_____	_____	_____	Y N
5	_____	_____	_____	Y N

V. [PrevYear] Monthly Operating Data

- Indicate the unit of measure used for your useful thermal output if other than mBTUs:
 BTUs _____ Therms _____ mmBTUs _____
- If Energy Input is natural gas, use the Lower Heating Value (LHV) as supplied by Gas Supplier.

	Useful Power Output (kWh)	Energy Input (Therms)	Useful Thermal Energy Output (mBtu)
JAN			
Feb			
Mar			
Apr			
May			
Jun			
Jul			
Aug			
Sep			
Oct			
Nov			
Dec			
Yearly Total			

**** End of Exhibit T ****

EXHIBIT U

Economic Curtailment Option for Negative Pricing in the Day-Ahead Market

This Exhibit U only applies if Section 1.09 provides that Buyer has the right to request that Seller curtail the Generating Facility’s production the Power Product in accordance with this Exhibit U.

1. **Introduction.** Buyer has the right, but not the obligation, to request that Seller curtail the Generating Facility’s production of the Power Product, in accordance with Section 3 of this Exhibit U, during each calendar quarter of the Term for an amount that is up to and including (but not in excess of) the number of MWhs set forth in the following table for such calendar quarter (each such amount, the “Curtailment Period Cap”) (*provided, however*, that upon reaching the Curtailment Period Cap for either the “On-Peak” TOD Period or the “Off-Peak” TOD Period for the applicable calendar quarter, Buyer shall no longer have the right to request that Seller curtail the Generating Facility’s production of the Power Product in accordance with this Exhibit U for such calendar quarter with respect to such “On-Peak” TOD Period or “Off-Peak” TOD Period):

Curtailment Period Cap			
Calendar Quarter	On-Peak (MWhs)	Off-Peak (MWhs)	Total (MWhs)
January-March	[]	[]	[]
April-June	[]	[]	[]
July-September	[]	[]	[]
October-December	[]	[]	[]
Total (MWhs)	[]	[]	[]

{Buyer Comment: Seller may elect, in its sole discretion, to allow Buyer to curtail Seller’s production of the Power Product, as set forth in Section 1.09. If Seller has elected to allow such curtailment, Seller must insert the number of MWhs during each calendar quarter whereby Buyer may request such curtailment. If Seller has elected not to allow such curtailment, insert “N/A” in each row.}

(For purposes of this Exhibit U, the “On-Peak” TOD Period includes Buyer’s “Peak” and “Partial Peak” TOD Periods, and the “Off-Peak” TOD Period includes Buyer’s “Off-Peak” and “Super Off-Peak” TOD Periods.) *{Buyer Comment: Select this sentence if Buyer is PG&E.}*

(For purposes of this Exhibit U, the “On-Peak” TOD Period includes Buyer’s “On-Peak” and “Mid-Peak” TOD Periods, and the “Off-Peak” TOD Period includes the “Off-Peak” and “Super Off-Peak” TOD Periods.) *{Buyer Comment: Select this sentence if Buyer is SCE.}*

(For purposes of this Exhibit U, the “On-Peak” TOD Period includes Buyer’s “On-Peak” and “Semi-Peak” TOD Periods, and the “Off-Peak” TOD Period includes Buyer’s “Off-Peak” and “Super Off-Peak” TOD Periods.) *{Buyer Comment: Select this sentence if Buyer is SDG&E.}*

Buyer may not carry over from any calendar quarter to any other calendar quarter any of the MWhs set forth in the Curtailment Period Cap table above. Subject to Section 4 of this Exhibit U, for each Negative Pricing Hour where Buyer has provided Seller with a Curtailment Notice, the difference (in MWhs) between the Seller's Day-Ahead Forecast and the Economic Curtailment Limit Schedule will count toward the Curtailment Period Cap for the applicable calendar quarter whether or not Seller chooses to curtail the Generating Facility's production of the Power Product for such Negative Pricing Hour.

2. Seller's Forecasting Submittal Requirements. In addition to complying with the forecasting requirements set forth in Exhibit I, Seller must provide to Buyer the Economic Curtailment Limit Schedule using the Web Client. If the Web Client becomes unavailable, Seller shall provide Buyer with the Economic Curtailment Limit Schedule by e-mail or by telephoning Buyer's Generation Operation Center, at the e-mail address or telephone number(s) listed in Exhibit N.
3. Procedure for Curtailment of the Power Product.
 - (a) If Buyer elects to curtail Seller's production of the Power Product on a date certain, then Buyer shall, by the later of (i) 2 p.m. PPT on the day prior to such date, and (ii) one hour after Buyer's receipt of the published IFM results for such date, provide a notice to Seller (the "Curtailment Notice") instructing Seller to curtail the production of the Power Product to the number of MWhs set forth in the Economic Curtailment Limit Schedule for each hour of such date; *provided, however*, that Buyer shall only provide the Curtailment Notice to Seller with respect to the hour(s) when the published IFM results indicate that (x) the hourly Day-Ahead Locational Marginal Price of the trading hub where the Generating Facility is located (i.e., SP15 Existing Zone Generation Trading Hub (formerly SP15), NP15 Existing Zone Generation Trading Hub (formerly NP15), or ZP26 Existing Zone Generation Trading Hub (formerly ZP26), as applicable, or any successor thereto) is negative, or (y) the System Marginal Energy Cost for such hour(s) is negative (individually or collectively, the "Negative Pricing Hours").
 - (b) No later than one hour after Seller's receipt of the Curtailment Notice, Seller must provide a notice to Buyer (the "Seller's Curtailment Election Notice") informing Buyer that Seller shall either (i) curtail the Generating Facility's production of the Power Product to the number of MWhs for each hour set forth in the Curtailment Notice, or (ii) comply with the Seller's Day-Ahead Forecast during the Negative Pricing Hours. If Seller elects to comply with the Seller's Day-Ahead Forecast during the Negative Pricing Hours, the Seller's Curtailment Election Notice must also include Seller's pricing election, as further described in Section 4(b) of this Exhibit U.
4. Payment Obligations.
 - (a) If Seller elects in the Seller's Curtailment Election Notice to curtail Seller's production of the Power Product in accordance with Section 3(b)(i) of this Exhibit U,

and actually curtails the Generating Facility's production of the Power Product to the Economic Curtailment Limit Schedule, then Buyer shall pay the TOD Period Energy Payment for the quantity of MWhs of the Power Product in the Seller's Day-Ahead Forecast for the applicable Negative Pricing Hours.

- (b) If Seller elects in the Seller's Curtailment Election Notice to comply with the Seller's Day-Ahead Forecast during the Negative Pricing Hours in accordance with Section 3(b)(ii) of this Exhibit U, or to curtail the production of the Power Product for only a portion of the MWhs set forth in the Economic Curtailment Limit Schedule, then, for all deliveries of the Power Product by Seller in excess of the MWhs set forth in the Economic Curtailment Limit Schedule, Seller will not receive the TOD Period Energy Payment and shall select in the Seller's Curtailment Election Notice one of the two payment mechanisms set forth in Section 4(b)(i) or 4(b)(ii) of this Exhibit U for MWh produced in excess of the Economic Curtailment Limit Schedule, as follows:
- (i) If, during the Negative Pricing Hours:
- (A) The hourly Day-Ahead Locational Marginal Price of the trading hub where the Generating Facility is located (i.e., SP15 Existing Zone Generation Trading Hub (formerly SP15), NP15 Existing Zone Generation Trading Hub (formerly NP15), or ZP26 Existing Zone Generation Trading Hub (formerly ZP26), as applicable, or any successor thereto) is negative, then Seller shall be liable to Buyer for, and Buyer shall deduct from a subsequent Monthly Contract Payment, such negative hourly Day-Ahead Locational Marginal Price of the trading hub where the Generating Facility is located (i.e., SP15 Existing Zone Generation Trading Hub (formerly SP15), NP15 Existing Zone Generation Trading Hub (formerly NP15), or ZP26 Existing Zone Generation Trading Hub (formerly ZP26), as applicable, or any successor thereto) for such Negative Pricing Hours; or
 - (B) The System Marginal Energy Cost is negative, then Seller shall be liable to Buyer for, and Buyer shall deduct from a subsequent Monthly Contract Payment, such negative System Marginal Energy Cost for such Negative Pricing Hours; or
 - (C) Sections 4(b)(i)(A) and 4(b)(i)(B) are both applicable, then Seller shall be liable to Buyer for, and Buyer shall deduct from a subsequent Monthly Contract Payment, the average of such negative System Marginal Energy Cost and such hourly negative Day-Ahead Locational Marginal Price of the trading hub where the Generating Facility is located (i.e., SP15 Existing Zone Generation Trading Hub (formerly SP15), NP15 Existing Zone Generation Trading Hub (formerly NP15), or ZP26 Existing Zone Generation Trading Hub (formerly ZP26), as

applicable, or any successor thereto) for such Negative Pricing Hours;
or

- (ii) Buyer shall pay Seller for the Real-Time System Marginal Energy Cost for the number of MWhs of the Power Product delivered by Seller that is above the number of MWhs set forth in the applicable Economic Curtailment Limit Schedule for the applicable Negative Pricing Hours; *provided, however*, that Buyer's obligation to make such payment is capped at, and will not exceed the TOD Period Energy Price; *provided further*, that if such Real-Time System Marginal Energy Cost is negative, then Seller shall be liable to Buyer for, and Buyer shall deduct from a subsequent Monthly Contract Payment, such negative Real-Time System Marginal Energy Cost up to an amount equal to \$50.00 per MWh of the Power Product delivered by Seller that is above the number of MWhs set forth in the applicable Economic Curtailment Limit Schedule for the applicable Negative Pricing Hours.
- (c) If Seller does not make any pricing election in the Seller's Curtailment Election Notice, as set forth in Section 4(b) of this Exhibit U, then Seller shall receive the lower of the prices (including being liable to Buyer for any negative prices) determined pursuant to Sections 4(b)(i) or 4(b)(ii) of this Exhibit U.
- (d) If, after the completion of a calendar quarter, Buyer determines that Seller has not offered to curtail, pursuant to all Economic Curtailment Limit Schedules and corresponding Seller's Day-Ahead Forecasts provided by Seller for such calendar quarter, the total number of MWhs set forth in the Curtailment Period Cap table for the "On-Peak Period" or "Off-Peak Period", as applicable, in Section 1 of this Exhibit U for such calendar quarter, then Buyer shall multiply by \$50.00 the difference between (i) the number of MWhs that Seller has offered to curtail during such calendar quarter pursuant to all Economic Curtailment Limit Schedules and corresponding Seller's Day-Ahead Forecasts provided by Seller for such TOD Period in such calendar quarter, and (ii) the Curtailment Period Cap for such TOD Period in such calendar quarter, and Buyer shall deduct the resulting dollar amount from a subsequent Monthly Contract Payment.

*** End of Exhibit U ***

POWER PURCHASE TOLLING AGREEMENT

between

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

and

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

Table Of Contents

<u>Section</u>	<u>Page</u>
ARTICLE 1. PURCHASE AND SALE OF PRODUCT	1
1.1 Product.....	1
1.2 Project.....	3
1.3 Delivery Points.....	3
ARTICLE 2. TERM; [CONDITIONS PRECEDENT] AND DELIVERY PERIOD	4
2.1 Term.....	4
2.2 Effectiveness of Agreement Prior to CP Satisfaction Date.....	4
2.3 Obligations of the Parties.....	4
2.4 Conditions Precedent.....	5
2.5 Failure to Meet All Conditions Precedent.....	5
2.6 Effectiveness of Agreement on and after CP Satisfaction Date.....	6
2.7 Guaranteed Initial Delivery Date.....	6
2.8 Delivery Period.....	7
2.9 Early Initial Delivery Date.....	8
2.10 Delayed Initial Delivery Date.....	8
ARTICLE 3. EVENTS OF DEFAULT; REMEDIES; TERMINATION	9
3.1 Events of Default.....	9
3.2 Seller Events of Default.....	9
3.3 Remedies.....	12
3.4 Calculation of Termination Payment.....	12
3.5 Notice of Payment of Termination Payment.....	13
3.6 Disputes Regarding Termination Payment.....	13
3.7 Suspension of Performance.....	13
3.8 Bankruptcy Without Early Termination.....	13
3.9 Effect of Termination.....	13
ARTICLE 4. INSURANCE.....	13
4.1 Required Insurance.....	13
4.2 Additional Terms and Conditions.....	15
4.3 Market Practicability.....	16
4.4 Application of Proceeds.....	16
ARTICLE 5. DESIGN AND CONSTRUCTION OF PROJECT	17
5.1 Seller's Obligations.....	17
5.2 Design Review.....	17
ARTICLE 6. CONSTRUCTION PERIOD AND MILESTONES.....	18
6.1 Milestone Schedule.....	18
6.2 Inspection Rights.....	18
ARTICLE 7. COMMISSIONING; TESTING; PERFORMANCE GUARANTEES.....	18
7.1 Testing Costs.....	18
7.2 Commercial Operation Test.....	19
7.3 Contract Capacity, Heat Rate & Ancillary Services Testing.....	19

Table Of Contents

<u>Section</u>	<u>Page</u>
7.4 Operational Readiness Testing	19
7.5 Independent Witness	20
7.6 Performance Guarantees	20
ARTICLE 8. SELLER’S OPERATION, MAINTENANCE AND REPAIR OBLIGATIONS.....	20
8.1 Seller’s Operation Obligations.....	20
8.2 Seller’s Maintenance and Repair Obligations.....	21
ARTICLE 9. CONTRACT CAPACITY, ASSOCIATED ENERGY AND ANCILLARY SERVICES.....	21
9.1 Compensation	21
9.2 Monthly Capacity Payment.....	21
9.3 Variable O&M Charge.....	21
9.4 Start-Up Charge	22
ARTICLE 10. PAYMENT AND BILLING.....	22
10.1 Billing Period.....	22
10.2 Timeliness of Payment.....	22
10.3 Disputes and Adjustments of Invoices.....	22
10.4 Netting of Payments.....	23
10.5 Payment Obligation Absent Netting	23
ARTICLE 11. CREDIT AND COLLATERAL	23
11.1 Financial Information.....	23
11.2 Seller’s Credit Requirements	23
11.3 Form of Performance Assurance	24
11.4 First Priority Security Interest.....	25
11.5 Subordinated Security Interest and Mortgage.....	26
ARTICLE 12. COLLATERAL ASSIGNMENT.....	27
12.1 Consent to Collateral Assignment	27
ARTICLE 13. GOVERNMENTAL AND ENVIRONMENTAL CHARGES	28
13.1 Governmental Charges.....	28
13.2 Compliance with Laws and Indemnification	28
13.3 Environmental Costs.....	28
13.4 Greenhouse Gas Emissions Charges.....	28
ARTICLE 14. FUEL MANAGER	30
14.1 Buyer as Authorized Fuel Manager	30
14.2 Transportation Contracts.....	30
14.3 Contracted Marketer	30
14.4 Natural Gas Imbalances on Transportation Contract.....	31
14.5 Manner of Transporting Natural Gas.....	31
14.6 Gas Delivery Charge.....	31
14.7 Gas Transporter Charges and Penalties; Reimbursement.....	31

Table Of Contents

<u>Section</u>	<u>Page</u>
14.8 Changes to Tariff.....	31
14.9 Seller Gas Events.....	32
14.10 Imbalance Penalties Allocation.....	32
14.11 Shared Access and Meter Data.....	33
14.12 Buyer as Authorized Fuel Manager.....	33
14.13 Transportation Contracts.....	33
14.14 Manner of Transporting Natural Gas.....	33
14.15 Gas Transporter Charges and Penalties; Reimbursement.....	33
14.16 Seller Gas Events.....	34
14.17 Imbalance Penalties Allocation.....	34
14.18 Shared Access and Meter Data.....	34
ARTICLE 15. TOLLING.....	35
15.1 Tolling.....	35
15.2 Title and Risk of Loss.....	35
ARTICLE 16. CAISO AND NON-BUYER DISPATCHES.....	35
16.1 CAISO Dispatch.....	35
16.2 Non-Buyer Dispatch.....	35
ARTICLE 17. SCHEDULING COORDINATOR.....	36
17.1 Buyer Scheduling Coordinator.....	36
17.2 Notices.....	36
17.3 CAISO Costs and Revenues.....	36
17.4 CAISO Settlements.....	37
17.5 Terminating Buyer’s Designation as Scheduling Coordinator.....	37
17.6 CAISO Sanctions.....	37
17.7 Master Data File and Resource Data Template.....	37
ARTICLE 18. DISPATCH NOTICES AND OPERATING RESTRICTIONS.....	38
18.1 Availability Notice.....	38
18.2 Dispatch Notices.....	38
18.3 Start-Up Notices.....	38
18.4 Operating Restrictions.....	38
18.5 Daily Operating Report.....	39
18.6 Writing Requirements.....	39
18.7 Communication Protocols.....	39
ARTICLE 19. METERING, COMMUNICATIONS, and TELEMETRY.....	39
19.1 Electric Metering, Communication, Telemetry, and Access.....	39
19.2 Gas Meter.....	40
19.3 Delivery of Data.....	40
ARTICLE 20. OUTAGES.....	40
20.1 Scheduled Outages.....	40
20.2 No Scheduled Outages During Summer Months.....	41
20.3 Notice of Unscheduled Outages.....	41

Table Of Contents

<u>Section</u>		<u>Page</u>
20.4	Inspection.....	42
20.5	Reports of Outages.....	42
ARTICLE 21.	FORCE MAJEURE	42
21.1	No Default for Force Majeure.....	42
21.2	Force Majeure Claim.	42
21.3	Termination for Force Majeure.....	43
ARTICLE 22.	REPRESENTATIONS, WARRANTIES AND COVENANTS	43
22.1	Representations and Warranties of Both Parties.....	43
22.2	Additional Representations and Warranties of Seller.....	44
22.3	Seller’s Affirmative Covenants.....	45
22.4	Seller’s Negative Covenants.	45
22.5	Additional Representations, Warranties and Covenants of Buyer.....	46
ARTICLE 23.	LIMITATIONS.....	46
23.1	Limitation of Remedies, Liability and Damages.....	46
23.2	No Representation by Buyer.	47
ARTICLE 24.	RECORDS	48
24.1	Performance under this Agreement.	48
24.2	[Sarbanes-Oxley and Securities and Exchange Commission Requirements.	48
24.3	Other Regulatory and Governmental Requirements.....	49
24.4	Audit Rights.....	49
24.5	California Climate Action Registry.	50
ARTICLE 25.	DISPUTES	50
25.1	Intent of the Parties.	50
25.2	Management Negotiations.	50
25.3	Arbitration.....	51
25.4	WAIVER OF JURY TRIAL.....	52
25.5	Attorneys’ Fees.....	52
ARTICLE 26.	INDEMNIFICATION.....	52
26.1	Indemnities.....	52
26.2	Insurance.....	53
26.3	Survival.....	53
ARTICLE 27.	CONFIDENTIALITY/REGULATORY DISCLOSURE.....	53
27.1	Confidentiality.	53
27.2	Ownership of Information.....	54
27.3	Enforcement.....	54
ARTICLE 28.	MISCELLANEOUS	54
28.1	General.....	54
28.2	Notices.	54
28.3	Governing Law; Venue.....	55

Table Of Contents

<u>Section</u>		<u>Page</u>
28.4	Amendment.....	55
28.5	Assignment.....	55
28.6	Further Assurances.....	55
28.7	Waiver.....	55
28.8	Obligations Surviving Termination.....	56
28.9	No Third Party Beneficiaries.....	56
28.10	Entire Agreement.....	56
28.11	Severability.....	56
28.12	Forward Contract.....	56
28.13	Mobile Sierra.....	56
28.14	Independent Contractors.....	56
28.15	Counterparts.....	57
28.16	Interpretation.....	57

APPENDIX A.....	DEFINITIONS
APPENDIX 1.1.....	OPERATING RESTRICTIONS
APPENDIX 1.1.1.....	CONTRACT CAPACITY
APPENDIX 1.3.1.....	ENERGY DELIVERY POINT
APPENDIX 6.1(a).....	MILESTONE SCHEDULE
APPENDIX 6.1(b).....	MONTHLY PROGRESS REPORT
APPENDIX 7.....	TESTING PROTOCOLS
APPENDIX 7.6.....	PERFORMANCE GUARANTEES
APPENDIX 9.2.....	MONTHLY CAPACITY PAYMENT
APPENDIX 9.3.....	VARIABLE O&M CHARGE
APPENDIX 9.4.....	START-UP CHARGE
APPENDIX 11.3.....	LETTER OF CREDIT FORM
APPENDIX 14.1.....	GAS INTERCONNECTION
APPENDIX 18.1.....	AVAILABILITY NOTICE
APPENDIX 18.2.....	DISPATCH AND UPDATED DISPATCH NOTICES
APPENDIX 18.5.....	DAILY OPERATING REPORT
APPENDIX 18.7.....	COMMUNICATION PROTOCOLS

POWER PURCHASE TOLLING AGREEMENT

This Power Purchase Tolling Agreement (“Agreement”) is made and entered into as of this _____ day of _____, 2015 (“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 a natural gas-fired electric generating facility (“Project”), consisting of [insert number] natural gas-fired, [insert type: ie “simple cycle”] gas turbine generating unit(s) (each a “Generating Unit”) to be constructed on an approximately [insert number] acre parcel of land (the “Site”) located adjacent to [insert name of substation] in [enter city and state]. **[NOTE to Bidders: conforming changes needed if multiple Generating Units.]****[Note to Bidders: If the Project is interconnected outside of the CAISO grid, conforming changes will be made.]** **[NOTE to Bidders: for existing facilities, there will be a fixed start date and all facility construction related terms shall be removed.]**
- C. Seller wishes to generate, sell and deliver to Buyer, and Buyer wishes to provide the fuel required for such generation and purchase from Seller, Capacity, Energy, Resource Adequacy Benefits, Ancillary Services and other products 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, generate, deliver, and sell the Product therefrom to Buyer, [and Buyer shall provide to Seller all fuel required to operate the Project]**[CHP RFO: all fuel provisions to be modified.]** and purchase and receive the Product therefrom, when and as the Project is available, subject to the terms and conditions of this Agreement, including the Operating Restrictions set forth in Appendix 1.1. Seller represents and warrants that it will deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances. Seller shall not substitute or purchase any Capacity, Energy, Ancillary Services or Resource Adequacy Benefits from any other generating resource or the market for delivery hereunder, nor shall Seller sell, assign or

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

1.1.1 Capacity. Buyer shall have the exclusive right to the Contract Capacity from the Project. As of the Effective Date, the Contract Capacity shall equal the Expected Contract Capacity of the Project, without adjustment for temperature, pressure, humidity or other adjustment factors. The actual Contract Capacity and Heat Rate of the Project and each Generating Unit will be determined upon the completion of the Commercial Operation Test for the Project and each year of the Delivery Period in accordance with the testing procedures of Sections 7.2 and 7.3, as applicable. Such tests will demonstrate the Capacity and Heat Rate of the Project and each Generating Unit at the actual ambient conditions existing at the time of each such test and those test results will be adjusted to reflect the equivalent Capacity and Heat Rate that would occur at Contract Conditions, and this adjusted Capacity shall be the Contract Capacity; provided, that in no event shall the Contract Capacity of [the Project/each Generating Unit] (i) exceed P_{MAX} for [the Project/each Generating Unit][DISCUSS NQC ISSUES] (i.e. the Contract Capacity shall be limited to P_{MAX} until such time as Seller gets P_{MAX} increased to the tested Contract Capacity), and (ii) exceed 120% of [the Project's/each Generating Unit's] Expected Contract Capacity as identified in Appendix 1.1.1. Upon the completion of the Commercial Operation Test or the periodic Contract Capacity Tests for the Project, as applicable, Appendix 1.1.1 shall be automatically amended to reflect the Contract Capacity as achieved by that test and adjusted to Contract Conditions, subject to the limitations in this Section. In addition, Seller shall cause the P_{MIN} for the Project to be no greater than the Minimum Operating Level. Seller agrees that each Generating Unit is subject to the terms of the Availability Standards.

1.1.2 Energy. Except for Energy resulting from a Non-Buyer Dispatch, Seller commits to make available and sell the Energy of the Project (net of Station Use) to Buyer, and Buyer shall have the exclusive rights to purchase and receive all Energy produced by the Project (net of Station Use), subject to the Operating Restrictions set forth in Appendix 1.1, including pursuant to a forward schedule or a Supplemental Energy instruction from CAISO.

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

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

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

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

1.2 Project.

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

1.2.2 Generating Units. The following table is a description of the Generating Units:

Unit		
Site		
Unit Description		
Unit Serial Number		

Seller will provide all CAISO certification test results for each Generating Unit within three (3) Business Days of Seller’s receipt for any initial or subsequent test throughout the Term of this Agreement.

1.2.3 Station Use. The Project [will/will not] serve Station Use and all Product delivered hereunder will be net of Station Use.

1.3 Delivery Points.

1.3.1 Energy Delivery Point. The Energy Delivery Point shall be [the point of interconnection of the Project to the CAISO Grid at] (as described and set forth in the single-line diagram of grid interconnection attached hereto as Appendix 1.3.1). Title and risk of loss related to Energy shall transfer from Seller to Buyer at 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 Gas Delivery Point. The Gas Delivery Point shall be [IF BUYER HOLDS THE TRANSPORTATION CONTRACT: any receipt point allowed in Seller’s Transportation Contract.] [IF SDG&E HOLDS THE TRANSPORTATION CONTRACT: the point of interconnection of the Project to the Gas Transporter’s gas system, as depicted in the line drawing attached hereto as Appendix 1.3.2.].

**ARTICLE 2.
TERM; [CONDITIONS PRECEDENT] AND 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, 21, 22, 23, 24, 25, 26, 27 and 28, Appendix A and the other appendices referenced in the foregoing Sections.

2.3 Obligations of the Parties. The Parties shall 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 [___], (ii) use commercially reasonable efforts to pursue development of the Project in accordance with Sections 5 and 6, (iii) comply with Section 6 in achieving the applicable milestones in the Milestone Schedule that have due dates occurring prior to the CP Satisfaction Date, (iv) deliver the Monthly Progress Report in accordance with Section 6, and (v) otherwise comply with its obligations, covenants, representations, and warranties under Sections 3, 5, 6, 10-13, and 21-28. 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 amount of the Pre-Construction Security. Buyer may retain such Performance Assurances to pay such liquidated damages. Each Party agrees and acknowledges that (a) the actual damages that Buyer would incur due to an Event of Default of Seller prior to the CP Satisfaction Date would be difficult or impossible to predict with certainty, (b) the liquidated damages set forth in this section are a reasonable and appropriate approximation of such damages, and (c) the liquidated damages set forth in this section are the exclusive remedy for an Event of Default of Seller prior to the CP Satisfaction Date.

2.3.2 [[TO BE UPDATED]Buyer’s Obligations. Prior to the CP Satisfaction Date, Buyer shall (i) use commercially reasonable efforts to pursue satisfaction of the Conditions Precedent set forth in Section 2.4.1, and (ii) otherwise comply with its obligations, covenants, representations, and warranties under Sections 3, 5, 6, 10-13, and 21-28. 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 and Natural Gas Interconnection. [Add Full Capacity Deliverability Status (as defined in the Tariff)]

(a) No later than [insert date], Buyer shall have agreed to and approved of (in its sole discretion) the deliverability of the Product, the in-service interconnection date and the costs to be incurred by Buyer for any required transmission network upgrades and interconnection facilities reasonably necessary to enable the cost-effective and reliable delivery of Energy from the Project to Buyer’s load as is consistent with FERC’s then current orders and rulemakings.

(b) No later than [insert date], Buyer shall have agreed to and approved of (in its sole discretion) the in-service interconnection date and the costs to be incurred by Buyer for any required natural gas interconnection facilities reasonably necessary to enable the cost-effective and reliable delivery of natural gas to the Project.

2.4.3 Other Approvals. No later than [insert date], Seller shall have received each of the following, in each case in form and substance acceptable to Seller in its reasonable discretion:

(a) a final, non-appealable order from the CEC approving the “Application for Certification” and issuance of the license authorizing construction of the Project that, among other things, permits the operation of the project consistent with the terms and conditions of this Agreement, including the Operating Restrictions; and

(b) legally binding commitments from third party financial institution(s) to finance the development, construction and ownership of the Project on terms and conditions that are commercially reasonable to Seller.]

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 [_____], 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.

(b) Buyer shall be the sole beneficiary of the Conditions Precedents set forth in Sections 2.4.1 and 2.4.2, 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.

(c) Seller shall be the sole beneficiary of the Conditions Precedents set forth in Sections 2.4.3, 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.

2.5.2 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)-(b) 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 Sections 2.4.1 or 2.4.2 to be satisfied or waived by Buyer, Seller shall pay to Buyer an amount equal to the Pre-Construction Security. Buyer may retain 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 Sections 2.4.1 or 2.4.2 to be satisfied or waived by Buyer, Buyer shall return to Seller the Pre-Construction Security.

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

2.7 Guaranteed Initial Delivery Date. The Guaranteed Initial Delivery Date for the Project is [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 [Insert Date] of the year in which the [XX] anniversary of the Initial Delivery Date occurs. The “Initial Delivery Date” shall be the date upon which all the following conditions have been satisfied:

- (a) Seller has completed, to Buyer’s satisfaction, Seller’s obligations set forth in Articles 5, 6, and 7 in order to bring the Project into full operation as contemplated by this Agreement;
- (b) The Project has achieved Commercial Operation;
- (c) Seller has received its market based rate authority from FERC to sell Product to Buyer under the terms of this Agreement, and has received all other approvals and authorizations required for Seller to perform its obligations under this Agreement;
- (d) Seller has executed the Participating Generator Agreement, Meter Service Agreement, and any other forms or agreements required by the CAISO with respect to the Project (and delivered true and complete copies of all such forms and agreements to Buyer);
- (e) Seller has taken all actions, including executing all documents and instruments, required to authorize Buyer to act as Scheduling Coordinator, Fuel Manager [and Contractor] for the Project under this Agreement, [including the Transportation Contract required under Section 14.2];
- (f) Seller has entered into and complied with all obligations under all interconnection agreements required to enable parallel operation of the Project with the Participating Transmission Owner’s electric system and CAISO Grid;
- (g) Seller has established a Letter of Credit or deposited with Buyer the required Performance Assurance and related documents and instruments as set forth in Article 11; and
- (h) The Priority Security Interest required under Section 11.5 and the Subordinated Security Interest required under Section 11.6 shall continue to be perfected and in full force and effect.

The Parties agree that, in order for Buyer to dispatch each of the Generating Units for its Initial Delivery Date, the Parties may have to perform certain of their Delivery Period obligations in advance of the Initial Delivery Date, including, without limitation, Seller’s delivering an Availability Notice for the Initial Delivery Date, and Buyer’s delivering a Dispatch Notice and nominating and scheduling each Generating Unit’s Natural Gas Requirements for the Initial Delivery Date, in advance of the Initial Delivery Date. The Parties shall cooperate with each other in order for Buyer to be able to dispatch each Generating Unit for the Initial Delivery Date. Seller shall give Buyer at least [x] days Notice before the Initial Delivery Date.

2.9 Early Initial Delivery Date. If Seller satisfies the conditions precedent 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.

2.10 Delayed Initial Delivery Date.

2.10.1 Daily Delay Damages. If Seller has not satisfied the conditions precedent for the Initial Delivery Date of the Project by the applicable Guaranteed Initial Delivery Date, Seller shall owe to Buyer the applicable Daily Delay Damages for each day of delay, up to a maximum of one hundred and eighty (180) days of delay (the “Cure Period”). 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 altogether.

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

(a) Force Majeure, provided that all extensions of the Guaranteed Initial Delivery Date for the Project due to Force Majeure shall not exceed 90 calendar days in the aggregate (“Maximum Force Majeure Delay”) and any delay by Seller in excess of the Maximum Force Majeure Delay shall be subject to Daily Delay Damages in accordance with Section 2.10.1.

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

(c) Gas Transporter's delay in installing any facilities necessary to reliably deliver gas to the Project in accordance with the schedule set forth in the gas interconnection agreement between Seller and the Gas Transporter. Seller acknowledges and agrees that nothing in this Agreement is intended to abrogate, amend or modify the terms of any gas interconnection agreement between it and the Gas Transporter. Except as may be set forth in such gas interconnection agreements, the Gas Transporter 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 gas 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 gas interconnection for the Project. Seller's sole and exclusive remedy against Buyer under this Agreement for any delay by the Gas Transporter in completing such gas interconnection facilities is an extension of the Guaranteed Initial Delivery Date in accordance with this Section. **[[To be discussed with Bidder.]**

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

ARTICLE 3. EVENTS OF DEFAULT; REMEDIES; TERMINATION

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

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

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

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

(d) Such Party becomes Bankrupt; or

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

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

(a) Seller fails to comply with any of its covenants under Section 22.4;

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

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

(d) Seller makes any material misrepresentation or omission in any report, including status and metering report, or any Milestone Schedule or Availability Notice (including without limitation the log, records and reports required under Sections 8.1.2, 8.1.3, 8.1.4, 20.1, and Appendices 6.1(a) and (b), 18.1, and 18.2) required to be made or furnished by Seller pursuant to this Agreement;

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

(f) During the Delivery Period, the Default Equivalent Availability Factor is below [ninety percent (90%)] (the "Minimum Guaranteed Availability") [each month for twelve (12) or more consecutive months] [on average for a period of twelve (12) consecutive months];

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

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

(i) 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 28.5;

(j) Seller fails to remediate any deficiency in internal controls over financial reporting in accordance with Section 24.2;

(k) 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;

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

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

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

(iii) Guarantor becomes Bankrupt;

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

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

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

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

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

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

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

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

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

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

3.3 Remedies. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the “Non-Defaulting Party”) shall have the right to (a) terminate this Agreement by providing Notice of such termination to the Defaulting Party, which termination shall be effective on a day no later than 20 days after such Notice is effective (“Early Termination Date”), and the Defaulting Party shall pay the Non-Defaulting Party a Termination Payment as set forth below, (b) require immediate payment of all amounts owed but not yet paid by the Defaulting Party under this Agreement, (c) withhold any payments due to the Defaulting Party under this Agreement, (d) suspend performance, and (e) pursue any other remedies available at law or in equity, including where appropriate, specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement. If the Non-Defaulting Party elects to terminate this Agreement under clause (a), 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 determine its Gains and Losses by determining the Market Quotation Average Price for the Product from the Project. In the event the Non-Defaulting Party is not able, after commercially reasonable efforts, to obtain the Market Quotation Average Price for the Product from the Project, then 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 calculating the arithmetic mean of at least three (3) Forward Price Assessments for products substantially similar to the Product from the Project. Such Forward Price Assessments must be obtained assuming that the Party obtaining the quote will provide and obtain the same or substantially similar credit collateral terms as the credit and collateral terms in this Agreement. In the event the Non-Defaulting Party is not able, after commercially reasonable efforts, to obtain at least three (3) Forward Price Assessments for products substantially similar to the Product from the Project, then the Non-Defaulting Party shall calculate its Gains and Losses in a commercially reasonable manner by reference to information supplied to it by one or more third parties including, without limitation, index prices, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information, provided that such third parties shall not be Affiliates of either Party. Only in the event the Non-Defaulting Party is not able, after using commercially reasonable efforts, to obtain such third party information, then the Non-Defaulting Party may calculate its Gains and Losses in a commercially reasonable manner using relevant market data it has available to it. The Termination Payment shall equal (a) in the case where Non-Defaulting Party has Losses, the aggregate Losses of the Non-Defaulting Party plus Costs of the Non-Defaulting Party plus any or all other amounts due to the Non-Defaulting Party netted into a single amount, and the Defaulting Party shall owe such Termination Payment calculated under this clause (a) to the Non-Defaulting Party; or (b) in the case where the Non-Defaulting Party has Gains, the aggregate Gains of the Non-Defaulting Party less Costs of the Non-Defaulting Party less any or all other amounts due to the Non-Defaulting Party netted into a single amount. If the net amount calculated under clause (b) is negative, the Defaulting Party shall owe the absolute value of such

amount to the Non-Defaulting Party. If the net amount calculated under clause (b) is positive, the Termination Payment shall be zero (0) except in the case where the Non-Defaulting Party elects to terminate this Agreement solely as a result of an Event of Default by the Defaulting Party under Section 3.1(d) [Bankruptcy], in which case the Non-Defaulting Party shall owe the positive amount calculated under clause (b) to the Defaulting Party.

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

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

3.7 Suspension of Performance. If an Event of Default occurs and shall be continuing, the Non-Defaulting Party shall have the right to suspend performance under this Agreement upon Notice to the Defaulting Party. At any time prior to or after the receipt of such Notice by the Defaulting Party, the Non-Defaulting Party may exercise any remedies available to it at law or in equity, including without limitation the right to seek damages or injunctive relief to prevent irreparable injury to the Non-Defaulting Party.

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

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

ARTICLE 4. INSURANCE

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

4.1.1 Workers' Compensation insurance or self-insurance in accordance with the laws and regulations of the State of California, providing statutory benefits and covering loss resulting from injury, sickness, disability or death of employees of Seller.

4.1.2 Employer's liability insurance with minimum limits of \$1,000,000 per accident.

4.1.3 Commercial General Liability Insurance against claims 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, with a minimum limit of \$1,000,000 per occurrence and in the annual aggregate for combined bodily injury and property damage.

4.1.4 Commercial or Business Automobile Liability Insurance for coverage of owned, non-owned and hired vehicles, with a minimum limit of \$1,000,000 combined single limit for bodily injury and property damage.

4.1.5 Excess or Umbrella Liability Insurance over and above the insurance required above, except for Workers' Compensation coverage specified in Section 4.1.1, with a minimum limit of Twenty-Five Million Dollars (\$25,000,000.00) per occurrence/Twenty-Five Million Dollars (\$25,000,000.00) 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 Builder's Risk Insurance. 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 Operational Property Insurance. 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 if property is 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, and as additional insureds 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, 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 and summaries of all such insurance documents shall be sent to Buyer.

4.2.8 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 21.3 for the reasonable duration of the repair. Seller shall use commercially reasonable efforts to include in the Lenders' financing documents an obligation on the part of Seller and the Lenders to apply the proceeds of physical damage, and similar insurance obtained by Seller in connection with the Project to repair and maintain the Project in order to effectuate Seller's obligations under this Agreement. In no event shall Seller enter into an agreement with the Lenders respecting the use of insurance proceeds that is not consistent with generally accepted practices in similar financings within the electric industry.

ARTICLE 5. DESIGN AND CONSTRUCTION OF PROJECT

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

- (a) Develop, design procure, construct commission, test, own, operate and maintain the Project as required for Seller to perform its obligations under this Agreement;
- (b) Acquire and maintain all entitlements, permits, licenses and approvals necessary for the design, development, construction, installation, testing, operation, maintenance, 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 natural gas transportation 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.

5.2 Design Review.

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

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

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

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

ARTICLE 6.
CONSTRUCTION PERIOD AND MILESTONES

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

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

ARTICLE 7.
COMMISSIONING; TESTING; PERFORMANCE GUARANTEES

7.1 Testing Costs. Seller will, at times and for durations reasonably agreed to by Buyer, conduct necessary testing to ensure the Project is functioning properly and each Generating Unit is on an individual basis able to respond to Buyer or CAISO dispatch instructions. Such tests shall include (i) the Commercial Operation Test pursuant to Section 7.2, (ii) the annual Contract Capacity, Heat Rate & Ancillary Services Tests pursuant to Section 7.3, and (iii) the operational readiness tests pursuant to Section 7.4. Such tests are required under this Agreement and shall be deemed Buyer instructed dispatches of the applicable Generating Unit. Seller may also conduct other discretionary tests, at times and for durations reasonably agreed to by Buyer, that Seller deems necessary for purposes of reliably operating the Project or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest). If such discretionary testing is conducted during a day in which Buyer has dispatched the Generating Unit being tested (“Buyer Dispatched Test”), Seller shall not be obligated to pay for the fuel, transportation costs and use taxes (including any charges assessed for surcharges, fuel retention, imbalances, penalties, balancing or storage costs) relating to such Buyer Dispatched Test of such Generating Unit, and Energy from such Generating Unit shall be treated as dispatched by Buyer hereunder. If discretionary testing is conducted during a day in which Buyer has not dispatched the Generating Unit being tested (“Seller Initiated Test”), Seller shall pay for all fuel and transportation costs and use taxes relating to such Seller Initiated Test of such Generating Unit and Buyer shall pay to Seller, in the month following Buyer’s receipt of such CAISO revenues and otherwise in accordance with Article 10, the applicable CAISO real-time hourly average energy price (or successor price) and other revenues associated with the Energy generated and delivered from such Generating Unit during such Seller Initiated Test. Moreover, there shall be no Heat Rate

Payment for any period during which a Seller Initiated Test takes place. To the extent a Seller Initiated Test prevents Buyer from dispatching a Generating Unit as it would have absent such test, then, in accordance with Article 9, such Generating Unit will be deemed unavailable; provided, however Buyer shall not dispatch or otherwise schedule such Generating Unit during such Seller Initiated Test. Except as otherwise provided in Sections 7.2 and 7.3 and Appendix 7, Seller shall notify Buyer of any Seller Initiated Test no later than 24 hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Accepted Electrical Practices). For purposes of clarification, any test performed before the Initial Delivery Date, other than the Commercial Operation Test pursuant to Section 7.2, is a Seller Initiated Test.

7.2 Commercial Operation Test. At least seven (7) Business Days prior to its Initial Delivery Date, Seller shall schedule and complete a Commercial Operation test for each Generating Unit (“Commercial Operation Test”). Such Commercial Operation Test shall be scheduled and conducted in accordance with Appendix 7 hereto. Seller shall use commercially reasonable efforts to undertake such activities in sufficient time to achieve Commercial Operation by the Guaranteed Initial Delivery Date and Buyer will reasonably cooperate with Seller to meet such deadline. The Commercial Operation Test shall establish the initial level of Contract Capacity for purposes of calculating the Monthly Capacity Payment under Section 9.2 and Appendix 1.1.1 shall be automatically amended to reflect the Contract Capacity achieved during such test, subject to the limitations in Section 1.1.1.

7.3 Contract Capacity, Heat Rate & Ancillary Services Testing. At least once per Contract Year after the initial Contract Year, upon seven (7) days prior Notice to Buyer, Seller shall schedule and complete a Contract Capacity, Heat Rate & Ancillary Services Test in accordance with Appendix 7. In addition, Buyer shall have the right to require a retest of the Contract Capacity, Heat Rate & Ancillary Services Test at any time upon two (2) days prior written Notice to Seller if Buyer reasonably believes that the actual Contract Capacity, Heat Rate, or Ancillary Services has varied materially from the results of the most recent tests. Such Buyer requested test shall be deemed a Buyer Dispatched Test unless the results of such test demonstrate that the actual Contract Capacity, Heat Rate, or Ancillary Services has varied by more than two percent (2%) from the results of the most recent tests, in which case such Buyer requested test shall be deemed a Seller Initiated Test. Seller shall have the right to run a retest of the Contract Capacity, Heat Rate & Ancillary Services 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). Such Seller requested test shall be deemed a Seller Initiated Test. For all purposes of this Agreement, including Sections 1.1.1, 1.1.3, 1.2.2 and Appendices 7.6 and 9.2, the Contract Capacity and Heat Rate determined pursuant to a Contract Capacity, Heat Rate & Ancillary Services Test shall become the new Contract Capacity and Heat Rate at the beginning of the day following the completion of the test, subject to the limitations in Section 1.1.1.

7.4 Operational Readiness Testing. From time to time but generally no less than every six weeks if the Project has not been operated at full power within such six week period, Seller shall demonstrate operational readiness of each Generating Unit to ensure that it is ready to respond to a Buyer or CAISO dispatch instruction. Such testing will include start-up, ramp to normal power output, stabilization, and shut down.

7.5 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.

7.6 Performance Guarantees. Seller will operate and maintain the Project so as to achieve the Minimum Guaranteed Availability, the Guaranteed Heat Rate, Guaranteed Start-Up Time, and Guaranteed Ramp Rate in accordance with the provisions of Appendix 7.6 (collectively, the “Performance Guarantees”). The sole remedies and consequences of any failure by Seller to fulfill its obligations under this Section 7.6 are set forth in Section 8.2, Section 9.2, Appendix 7.6 and Appendix 9.2 (except to the extent any failure to achieve the Performance Guarantees results in a separate Event of Default under this Agreement, including Sections 3.2(f), 3.2(g), or 8.2).

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”).

8.1.2 Seller shall maintain a daily operations log for the Project and each Generating Unit which shall include but not be limited to information on power production, fuel consumption and efficiency (if applicable), availability, 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 generators and settings or adjustments of the generator control equipment and protective devices. Information maintained pursuant to this Section 8.1.2 shall be provided to Buyer, within 15 days of Buyer’s request.

8.1.3 Seller shall maintain accurate records with respect to the Project’s Commercial Operation Test and annual Contract Capacity, Heat Rate & Ancillary Services Tests; including the outcomes of such Tests.

8.1.4 Seller shall maintain and make available to Buyer and the CPUC, or any division thereof, records including logbooks, demonstrating that the Project is operated and maintained in accordance with Accepted Electrical Practices, Applicable Law and Industry Standards. 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 inform Buyer on a daily basis of the generation capacity of the Project for the following day and any limitations, restrictions, deratings or outages affecting the Project.

8.1.7 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.

8.2 Seller's Maintenance and Repair Obligations.

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

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

ARTICLE 9.

CONTRACT CAPACITY, ASSOCIATED ENERGY AND ANCILLARY SERVICES

9.1 Compensation. Compensation to Seller shall consist of (a) a Monthly Capacity Payment calculated in accordance with Section 9.2, (b) a Variable O&M Charge calculated in accordance with Section 9.3, and (c) a Start-Up Charge calculated in accordance with Section 9.4. The Monthly Capacity Payment, Variable O&M Charge, and Start-Up Charge will be paid each month, in arrears in accordance with Article 10, for each month of the Delivery Period.

9.2 Monthly Capacity Payment. Once the Project has achieved its Initial Delivery Date, Buyer shall pay Seller a monthly capacity payment (the "Monthly Capacity Payment"), except that Buyer shall not be required to pay the Monthly Capacity Payment for any month in which the Equivalent Availability Factor is less than [eighty percent (80%)]. The Monthly Capacity Payment for the Project payable each month of the Delivery Period shall be determined in accordance with the calculation set forth in Appendix 9.2. For the month in which the Initial Delivery Date occurs, the Monthly Capacity Payment will be prorated for the remaining days of that month. For the last month of the Term, the Monthly Capacity Payment will be prorated for the number of days remaining in the Term.

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

9.4 Start-Up Charge. For each Buyer or CAISO dispatch of a Generating Unit, Buyer is required to provide natural gas required for Start-Ups subject to a maximum amount as provided in Appendix 9.4 (“Start-Up Fuel”). Buyer shall also pay Seller the Start-Up Charge set forth in Appendix 9.4 for each Start-Up. All Delivered Energy produced prior to a Generating Unit achieving a Start-Up during the respective start-up cycle shall be for Buyer’s account. If Buyer aborts a start-up before such Generating Unit is released to Buyer for dispatch, then Buyer shall provide any natural gas consumed by such Generating Unit in connection with such aborted start-up, up to the applicable quantity of the Start-Up Fuel. If a Generating Unit is unable to generate or deliver Energy to the Energy Delivery Point after a Start-Up, but before the next scheduled shutdown of such Generating Unit for any reason other than a Force Majeure or a Delivery Excuse, Buyer shall not be responsible for any charges under this Section 9.4 for the next Start-Up.

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 Payments). As soon as practicable after the end of each month (but no later than ten (10) Business Days after the end of each month), each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month, together with all supporting documentation and calculation necessary to evidence all amounts charged thereunder.

10.2 Timeliness of Payment. All undisputed amounts in invoices under this Agreement shall be due and payable in accordance with each Party’s invoice instructions on or before the later of the 20th day of each month, or the 10th day after receipt of the invoice, or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable methods, to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Default Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

10.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice, or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error, within 24 months of the date of invoice or adjustment. Any dispute with respect to an invoice is waived unless the other Party receives Notice under this Section 10.3 within 24 months after the invoice is rendered or any specific adjustment to the invoice is made. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with Notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Default Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Default Rate from and including the date of such

overpayment 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 Performance Assurance in an amount equal to \$[] (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 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 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, such cash shall be deposited in an account bearing interest at the rate per annum equal to the Interest Rate. . Interest shall be compounded monthly 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 11.3.1, 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) 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 (a) for any failure to provide sufficient Performance Assurance or (b) for any amounts owing to Buyer and remaining unpaid after the application of the amounts so drawn by Buyer.

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

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

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

(a) Exercise any of its rights and remedies with respect to all Performance Assurance, including any such rights and remedies under law then in effect;

- Buyer's possession;
- (b) Exercise its rights of setoff against any and all property of Seller in Buyer's possession;
 - (c) Draw on any outstanding Letter of Credit issued for its benefit; or
 - (d) Liquidate all Performance Assurance then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

11.5 Subordinated Security Interest and Mortgage.

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

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

(b) the Lenders shall provide Buyer with (i) an option to purchase from the Lenders at full value the debt (at 100% of the principal balance thereof, plus all accrued interest thereon) and other obligations owing to the Lenders within a period reasonably acceptable to the Lenders (such period to be specified in the Subordination Agreement) prior to the time the Lenders commence any right or remedy to foreclose on their collateral, and (ii) the right to exercise remedies in respect of the Subordinated Security Interest if (A) Buyer shall have guaranteed the debt and other obligations owing to the Lenders in a form acceptable to the Lenders and Buyer satisfies the creditworthiness standards established by the Lenders (all on

such terms and conditions to be specified in the Subordination Agreement) or (B) the Lenders shall not have commenced foreclosure under the Lenders' liens for such period or periods as are specified (along with related conditions) in the Subordination Agreement and are acceptable to the Lenders, after Buyer's notice of its intention to exercise its remedies, provided, however, that in either case (ii)(A) or (ii)(B) under this clause (b), any exercise of any remedies to enforce the Subordinated Security Interest shall be subject to the continued priority of the Lenders' liens; provided, however, that nothing contained therein shall limit Buyer's rights and remedies in respect of the Priority Security Interest or Buyer's right to receive the payment of money or other performance in accordance with this Agreement and Buyer may exercise its rights and remedies in accordance with the terms hereof (other than through the exercise of any remedy relating to any Subordinated Security Interest). The Subordinated Security Interest shall not include the pledge or assignment of any ownership interest in Seller.

11.5.2 Other Actions By Seller. All title insurance policy costs and all costs of executing, delivering, filing, and recording the Security Documents (other than state fees and taxes which shall be at Buyer's expense) in respect of the Subordinated Security Interest shall be at Seller's expense, which in any event shall not include any legal fees of Buyer. The Security Documents in respect of the Subordinated Security Interest shall contain financial and operating covenants ("Covenants") reasonably necessary to preserve and maintain the value of the Subordinated Security Interest and substantially similar to those in favor of Lender in Lender's security documents ("Lender's Security Documents"). In addition, Seller authorizes Buyer to file such Uniform Commercial Code financing statements and to take such further action and execute such further instruments as shall reasonably be required by Buyer to confirm and continue the validity, priority, and perfection of the Subordinated Security Interest. The granting of the Subordinated Security Interest shall not be to the exclusion of, nor be construed to limit the amount of any further claims, causes of action or other rights accruing to Buyer by reason of any Event of Default by Seller or Early Termination Date. The Subordinated Security Interest shall be discharged and released, and Buyer shall take any steps reasonably required by Seller to effect and record such discharge and release, upon the expiration of the Term and satisfaction by Seller of all of its obligations hereunder. Seller shall reimburse Buyer for its reasonable costs associated with the discharge and release of the Subordinated Security Interest.

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

ARTICLE 12. COLLATERAL ASSIGNMENT

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

Collateral Assignment Agreement shall be in form and substance customary in the industry and reasonably agreed to by Buyer, Seller and Lender.

ARTICLE 13.
GOVERNMENTAL AND ENVIRONMENTAL CHARGES

13.1 Governmental Charges. Seller shall pay or cause to be paid all taxes, charges or fees imposed by a Government Authority (“Governmental Charges”) on or with respect to the Product prior to the Energy Delivery Point. For the avoidance of doubt, such Governmental Charges shall include ad valorem taxes of Seller that are related to the Project, and franchise or income taxes that are related to the sale of the Product to Buyer and which arise or are imposed prior to the Energy Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to Product which arise or are imposed at and from the Energy Delivery Point. In the event Seller is required by Applicable Laws to remit or pay Governmental Charges which are Buyer’s responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by Applicable Laws to remit or pay Governmental Charges which are Seller’s responsibility hereunder, Buyer may deduct the amount of any such Governmental Charge from the sum due to Seller under Article 10 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law. This Section shall not apply to CAISO charges, penalties, costs, or revenues associated with operation of the Project or transmission of the Product allocated pursuant to Section 17.3.

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

13.3 Environmental Costs. Seller shall be solely responsible for all Environmental Costs with respect to the Project other than those encompassed in Section 13.4 which are the responsibility of Buyer.

13.4 Greenhouse Gas Emissions Charges. Notwithstanding anything to the contrary in Sections 13.1 through 13.3, inclusive and subject to the limitations and qualifications set forth below in this Section 13.4, Buyer shall reimburse Seller for any taxes, charges, or fees for Greenhouse Gas emissions (x) imposed under California Assembly Bill 32, the Global Warming Solutions Act of 2006, or(y) newly enacted after the Execution Date (“GHG Charges”) and attributable to Buyer’s dispatch of the Project, within forty-five (45) days of Buyer’s receipt from Seller of documentation reasonably establishing: (a) that Seller is actually liable for such GHG Charges during the Delivery Period; (b) that such GHG Charge was not effective or scheduled to become effective as of the Effective Date; (c) the specific amount of such GHG Charge; (d) that such GHG Charge was imposed upon Seller by an authorized Governmental Authority in whose jurisdiction the Project is located, or which otherwise has jurisdiction over

Seller or the Project; (e) that Seller has paid the agency identified under (d) the full amount of such GHG Charge for which Seller seeks reimbursement from Buyer under this Section 13.4, and (f) that Seller took all reasonable steps to mitigate the cost or amount of such GHG Charges, provided, the reasonable steps shall not be deemed to require Seller to make capital improvements to the Project. For avoidance of doubt, the phrase “newly enacted” shall include new interpretations or requirements under pre-existing law (such as the Clean Air Act).

13.4.1 If Seller has the right to obtain allowances or credits attributed to the Project to offset the GHG Charges for the Project, then Seller shall utilize such allowances or credits to mitigate any GHG Charge hereunder resulting from Buyer’s dispatch of the Project. Furthermore, if allowances or credits are not allocated to or otherwise provided for specific generating units but Seller has the right to obtain allowances or credits attributed to its portfolio of generating units (all or some of the generating units owned, managed, or controlled by Seller), then Seller shall utilize a proportional amount of such allowances or credits to mitigate any GHG Charge hereunder resulting from Buyer’s dispatch of each Generating Unit. If Seller is allocated or receives revenues, whether specific to each Generating Unit or to Seller’s portfolio of generating units, associated with any allowance or credit associated with Greenhouse Gas emissions attributable to Buyer’s dispatch of the Project, then Seller shall remit any such revenue or, if allocated to Seller’s portfolio of generating units, the proportional amount of such revenue, to Buyer to mitigate any GHG Charge that Buyer is responsible for hereunder. For the purposes of this Section 13.4.1, the proportional amount of allowances, credits, or revenues, as applicable, shall be calculated based on the historical annual Greenhouse Gas emissions (in terms of tons of CO₂-equivalent) of each Generating Unit under this Agreement that would be subject to GHG Charges compared to the sum of the historical annual Greenhouse Gas emissions (in terms of tons of CO₂-equivalent) of all generating units within Seller’s portfolio that would be subject to GHG Charges.

13.4.2 If a Greenhouse Gas cap and trade scheme is adopted to control the emissions of Greenhouse Gases, where a Governmental Authority establishes a cap on the amount of Greenhouse Gases that can be emitted and market participants, including generators, are issued or purchase emission allowances or credits representing the right to emit Greenhouse Gases in an aggregate amount equal to the cap, then the Parties intend that Buyer shall be responsible for acquiring the emission allowances or credits associated with Greenhouse Gas emissions attributable to Buyer’s dispatch of the Project, less any emission allowances or credits that Seller may have acquired and allocated to the Project under Section 13.4.1 above. Within a reasonable period after the enactment of such a Greenhouse Gas cap and trade scheme, the Parties shall cooperate and take commercially reasonable actions (including amending this Agreement as reasonably necessary, executing such documents or instruments as reasonably necessary, and complying with all Applicable Laws that address such Greenhouse Gas cap and trade scheme) to establish procedures to effectuate this intent; provided, however that the failure to agree on these 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 25.

13.4.3 Notwithstanding the foregoing, in no event shall Buyer be responsible for GHG Charges that exceed the GHG Limit or for GHG Charges that are attributable to any dispatch of the Project that is not a Buyer dispatch.

ARTICLE 14. FUEL MANAGER

[FOR CHP RFO: SELLER IS FUEL MANAGER AND PAYS ALL FUEL COSTS IN THIS SECTION. DISCUSS FRANCHISE FEES]

[USE THESE SECTIONS 14.1-14.11 AND DELETE SECTION 14.12-14.18 IF SELLER HOLDS THE GAS TRANSPORTATION CONTRACTS]

14.1 Buyer as Authorized Fuel Manager. Buyer shall act as Seller's authorized "Fuel Manager" and manage the purchasing, nominating, scheduling, and transporting responsibilities of all natural gas requirements ("Natural Gas Requirements") for the Project to the interconnection between the Project and its meter with the Gas Transporter's natural gas system ("Gas Transporter Gas System") as set forth in this Article 14. A line drawing of such interconnection is attached hereto as Appendix 14.1. As Seller's Fuel Manager, Buyer shall be responsible for managing all of the Natural Gas Requirements of the Project, including natural gas required for any Non-Buyer Dispatches, and natural gas for any other purposes whether operational or otherwise. As Fuel Manager, unless otherwise provided in this Agreement, Buyer shall be responsible for the costs ("Gas Costs") associated with providing the Natural Gas Requirements to the interconnection between the Project and its meter with the Gas Transporter Gas System, including without limitation: (a) the commodity cost of the natural gas, (b) transportation service to the interconnection between the Project and its meter with the Gas Transporter Gas System, as provided in Section 14.2, including any charges assessed for surcharges, fuel retention charges, imbalances, penalties, or balancing or storage costs, and (c) use taxes, if applicable, *provided* that Seller shall be solely responsible for (i) all costs associated with Non-Buyer Dispatches and Seller Gas Events, and (ii) certain Heat Rate Payments as set forth in Appendix 7.6. If Buyer pays any costs which are Seller's responsibility hereunder, Buyer may deduct the amount of such costs from any amounts due to Seller under Article 10 of this Agreement.

14.2 Transportation Contracts. Prior to the Initial Delivery Date, Seller shall enter into a transportation agreement ("Transportation Contract") with Gas Transporter as may be reasonably required by Buyer, and such Transportation Contract shall be maintained in full force and effect during the entire remaining Term as may be reasonably required by Buyer. If the Transportation Contract expires or terminates for any reason during the Term, Seller shall extend the Transportation Contract or enter into a new Transportation Contract under similar terms and conditions for the duration of the Term, subject to Buyer's prior review and approval of the form and substance of such extension or new Transportation Contract. Buyer, as Fuel Manager, shall be responsible for acquiring any interstate gas transportation service, and negotiating and entering into all gas transportation contracts with interstate gas transporters, if applicable.

14.3 Contracted Marketer. Prior to the Initial Delivery Date, Seller shall designate Buyer as contracted marketer ("Contractor") on behalf of Seller in the Transportation Contract as provided for in Rules 1 and 35 of the Gas Transporter Gas Tariff and shall take all actions required by the Gas Transporter to authorize Buyer to act as Seller's authorized Contractor as of the effective date of the Transportation Contract and throughout the remainder of the Term. Buyer shall take all actions required by the Gas Transporter under Rule 35 of the Gas Transporter Gas Tariff to accept Seller's designation and to otherwise qualify as a Contractor,

and Buyer shall comply with the provisions of such Rule applicable to a Contractor. Buyer and Seller shall promptly take all actions required by the Gas Transporter to terminate Buyer's responsibilities as Contractor as of the end of the Term.

14.4 Natural Gas Imbalances on Transportation Contract. Seller shall use commercially reasonable efforts to ensure that there are no natural gas imbalances associated with the Transportation Contract as of the date that Buyer is designated as Contractor, and shall indemnify Buyer for any natural gas imbalances, including all costs or penalties associated with the Transportation Contract that have occurred during the period prior to such designation. As Fuel Manager and Contractor, Buyer shall use commercially reasonable efforts to manage all natural gas imbalances associated with the Project. Upon the expiration of the Term or earlier termination of this Agreement, Buyer shall use commercially reasonable efforts to ensure that there are no natural gas imbalances associated with the Transportation Contract and, except for those natural gas imbalances that are the responsibility of Seller as expressly set forth in this Agreement, shall indemnify Seller for any natural gas imbalances, including all costs and/or penalties, associated with the Transportation Contract that occur during the Buyer's term as Contractor.

14.5 Manner of Transporting Natural Gas. Each gas transporter's tariffs, rules, guidelines, operational procedures and policies, as they may be changed from time to time, shall define and set forth the manner in which the Natural Gas Requirements are to be transported to the Gas Delivery Point. Buyer and Seller agree to provide to each other, in as prompt a manner as reasonable, all information necessary to permit scheduling and compliance pursuant to such requirements.

14.6 Gas Delivery Charge. Seller's Transportation Contract shall be used to transport the Natural Gas Requirements from the Gas Delivery Point to the Project, and Buyer shall make a monthly payment to Seller to cover the Transport Costs. Specifically excluded from the charge shall be the reimbursement for quantities of gas used for a Seller's Initiated Test or a Non-Buyer Dispatch.

14.7 Gas Transporter Charges and Penalties; Reimbursement. If (a) either Party is required under this Agreement to reimburse or pay the other Party for an imbalance charge or penalty imposed by a gas transporter allocated to the first Party under this Agreement or (b) Seller is required under this Agreement to reimburse or pay Buyer for the costs of Non-Buyer Dispatches, then the amount of the charge, penalty or costs to be reimbursed or paid will be adjusted to account for the commodity and Transport Costs of any quantity of gas that has been accounted for and paid as a Heat Rate Payment to avoid double payment.

14.8 Changes to Tariff. If any changes in the Gas Transporter Gas Tariff structure are implemented that (a) restructure the tariff rates or (b) require the acquisition of firm access rights to any particular gas receipt point and those changes (under either (a) or (b)) alter the balance of economic benefits or burdens to either Party under this Agreement as of the Effective Date, then, either Party may provide Notice to such effect and the Parties shall negotiate in good faith to amend this Agreement to implement those changes as necessary to preserve such balance. If the Parties fail to agree upon an appropriate amendment to reflect the changes within thirty (30) days of the date of the Notice, the dispute resolution procedures under Article 25 of this Agreement

shall apply. In the event that such changes in the Gas Transporter Gas Tariff structure require Seller to acquire or bid for firm access rights on the Gas Transporter Gas System to ensure firm delivery into such system, then Seller will use best efforts to acquire such access rights as directed by Buyer with the costs of doing so being deemed a Transport Cost.

14.9 Seller Gas Events. Each Party agrees to cooperate with the other in operating under this Agreement to minimize pipeline and system pool imbalances and associated charges or penalties. Seller shall notify Buyer immediately upon learning of the occurrence of a Seller Gas Event. Upon receiving such notification, Buyer shall use commercially reasonable efforts to manage its gas supply and transportation arrangements for the purpose of minimizing daily or monthly pipeline or system pool imbalance charges or penalties.

14.10 Imbalance Penalties Allocation. Except as otherwise set forth below, all gas imbalance penalties and charges shall be for the account of Buyer. The procedure for allocating imbalance penalties between Seller and Buyer is set forth below. Imbalance penalties allocated to Seller will be aggregated and billed to Seller on a monthly basis.

14.10.1 Schedule G-IMB/Rule 30(F) Daily/Monthly Imbalances. If a Seller Gas Event occurs at any time and causes or contributes to a monthly imbalance penalty pursuant to Schedule G-IMB and/or a daily imbalance penalty pursuant to Rule 30 (Section F, Nominations in Excess of System Capacity) of the Gas Transporter Gas Tariff in effect at the time of the Seller Gas Event, then Seller shall be responsible for any imbalance charges, curtailment charges, or penalties that were incurred by Buyer as a result of such Seller Gas Event. **[NOTE to Bidders: all tariff references in this article will be modified if outside of SDG&E's Natural Gas Service Territory.]**

14.10.2 Rule 14 Curtailment Imbalances. If a Seller Gas Event occurs at any time and causes or contributes to the imposition of a curtailment violation penalty pursuant to Rule 14 (Shortage of Gas Supply, Interruption of Delivery, and Priority of Service) of the Gas Transporter Gas Tariff in effect at the time of the Seller Gas Event, then Seller shall pay Buyer any imbalance charges, curtailment charges, or penalties that were incurred by Buyer as a result of such Seller Gas Event.

14.10.3 Rule 30(G) Winter Imbalances. If a Seller Gas Event occurs at any time and causes or contributes to a daily balancing standby charge pursuant to Section "G. Winter Deliveries" as set forth in Rule 30 (Transportation of Customer-Owned Gas) of the Gas Transporter Gas Tariff in effect at the time of the Seller Gas Event, then Seller shall pay Buyer the resultant daily balancing standby charge that was incurred by Buyer as a result of such Seller Gas Event.

14.10.4 Tariff Changes. If the above Rules and Schedules of the Gas Transporter Gas Tariff are modified or replaced, or if any new Rules or Schedules containing provisions applicable to such penalty or imbalance charges are added, then such modified, replaced or new provisions will govern Buyer's calculation of such penalties or imbalance charges when applicable to a Seller Gas Event.

14.11 Shared Access and Meter Data. The Parties shall each have shared access to gas data (including data regarding gas nominations, confirmation, allocations and usage) through the Gas Transporter's internet-based electronic bulletin board with respect to natural gas required in providing Energy from the Project under this Agreement. Seller shall take all actions and execute all documents reasonably necessary to grant Buyer access to communications with respect to the Transportation Contract with respect to gas delivered by Buyer and received by Seller at the Gas Delivery Point, such as confirmations and upstream contracts. Additionally, prior to the tenth (10th) day of each month, Seller shall provide to Buyer copies of each Generating Unit's Daily Gas Burn for the previous month.

[USE THESE SECTIONS 14.12-14.18 AND DELETE SECTION 14.1-14.18 AND FIX DEFINED TERMS IF SDG&E HOLDS THE GAS TRANSPORTATION CONTRACTS]

14.12 Buyer as Authorized Fuel Manager. Buyer shall act as Seller's authorized "Fuel Manager" and shall itself, or shall contract with third parties on its own behalf to, purchase, nominate, schedule, and transport to the Gas Delivery Point all Acceptable Natural Gas required for the Project ("Natural Gas Requirements"). As Seller's Fuel Manager, Buyer shall be responsible for all of the Natural Gas Requirements of the Project, including natural gas required for any Non-Buyer Dispatches, and natural gas for any other purposes whether operational or otherwise. As Fuel Manager, unless otherwise provided in this Agreement, Buyer shall be responsible for the costs ("Gas Costs") associated with providing the Natural Gas Requirements to the Gas Delivery Point, including without limitation: (a) the commodity cost of the natural gas, (b) transportation service to the Gas Delivery Point, as provided in Section 14.2, including any charges assessed for surcharges, fuel retention charges, imbalances, penalties, or balancing or storage costs, (c) use taxes, if applicable, and (d) all costs, fees, taxes or other charges incurred by Seller as a result of its taking title to fuel delivered to the Project by Buyer; *provided* that Seller shall be solely responsible for (i) all costs associated with Non-Buyer Dispatches and Seller Gas Events, and (ii) certain Heat Rate Payments as set forth in Appendix 7.6. If Buyer pays any costs which are Seller's responsibility hereunder, Buyer may deduct the amount of such costs from any amounts due to Seller under Article 9 of this Agreement.

14.13 Transportation Contracts. Buyer, as Fuel Manager, shall be responsible for acquiring any intrastate or interstate gas transportation service for delivery of the Natural Gas Requirements to the Project, and negotiating and entering into all gas transportation contracts with the Gas Transporter and any interstate gas transporters, if applicable.

14.14 Manner of Transporting Natural Gas. Each gas transporter's tariffs, rules, guidelines, operational procedures and policies, as they may be changed from time to time, shall define and set forth the manner in which the Natural Gas Requirements are to be transported to the Gas Delivery Point. Buyer and Seller agree to provide to each other, in as prompt a manner as reasonable, all information necessary to permit scheduling and compliance by Buyer pursuant to such requirements.

14.15 Gas Transporter Charges and Penalties; Reimbursement. If (a) either Party is required under this Agreement to reimburse or pay the other Party for an imbalance charge or penalty imposed by a gas transporter allocated to the first Party under this Agreement or (b) Seller is required under this Agreement to reimburse or pay Buyer for the costs of Non-Buyer

Dispatches, then the amount of the charge, penalty or costs to be reimbursed or paid will be adjusted to account for the commodity and Transport Costs of any quantity of gas that has been accounted for and paid as a Heat Rate Payment to avoid double payment.

14.16 Seller Gas Events. Each Party agrees to cooperate with the other in operating under this Agreement to minimize pipeline and system pool imbalances and associated charges or penalties. Seller shall notify Buyer immediately upon learning of the occurrence of a Seller Gas Event. Upon receiving such notification, Buyer shall use commercially reasonable efforts to manage its gas supply and transportation arrangements for the purpose of minimizing daily or monthly pipeline or system pool imbalance charges or penalties.

14.17 Imbalance Penalties Allocation. Except as otherwise set forth below, all gas imbalance penalties and charges shall be for the account of Buyer. The procedure for allocating imbalance penalties between Seller and Buyer is set forth below. Imbalance penalties allocated to Seller will be aggregated and billed to Seller on a monthly basis.

14.17.1 Schedule G-IMB/Rule 30(F) Daily/Monthly Imbalances. If a Seller Gas Event occurs at any time and causes or contributes to a monthly imbalance penalty pursuant to Schedule G-IMB and/or a daily imbalance penalty pursuant to Rule 30 (Section F, Nominations in Excess of System Capacity) of the Gas Transporter Gas Tariff in effect at the time of the Seller Gas Event, then Seller shall be responsible for any imbalance charges, curtailment charges, or penalties that were incurred by Buyer as a result of such Seller Gas Event.

14.17.2 Rule 14 Curtailment Imbalances. If a Seller Gas Event occurs at any time and causes or contributes to the imposition of a curtailment violation penalty pursuant to Rule 14 (Shortage of Gas Supply, Interruption of Delivery, and Priority of Service) of the Gas Transporter Gas Tariff in effect at the time of the Seller Gas Event, then Seller shall pay Buyer any imbalance charges, curtailment charges, or penalties that were incurred by Buyer as a result of such Seller Gas Event.

14.17.3 Rule 30(G) Winter Imbalances. If a Seller Gas Event occurs at any time and causes or contributes to a daily balancing standby charge pursuant to Section "G. Winter Deliveries" as set forth in Rule 30 (Transportation of Customer-Owned Gas) of the Gas Transporter Gas Tariff in effect at the time of the Seller Gas Event, then Seller shall pay Buyer the resultant daily balancing standby charge that was incurred by Buyer as a result of such Seller Gas Event.

14.17.4 Tariff Changes. If the above Rules and Schedules of the Gas Transporter Gas Tariff are modified or replaced, or if any new Rules or Schedules containing provisions applicable to such penalty or imbalance charges are added, then such modified, replaced or new provisions will govern Buyer's calculation of such penalties or imbalance charges when applicable to a Seller Gas Event.

14.18 Shared Access and Meter Data. The Parties shall each have shared access to gas data (including data regarding gas nominations, confirmation, allocations and usage) through the Gas Transporter's internet-based electronic bulletin board with respect to natural gas required in

providing Energy from the Project under this Agreement. Each of Buyer and Seller shall take all actions and execute all documents reasonably necessary to grant each Party access to communications with respect to the transportation contract with respect to gas delivered by Buyer and received by Seller at the Gas Delivery Point, such as confirmations and upstream contracts. Additionally, prior to the tenth (10th) day of each month, Seller and Buyer shall cooperate to provide one another copies of the Project's Daily Gas Burn for the previous month.

ARTICLE 15. TOLLING

15.1 Tolling. [Seller's obligation to deliver any Product dispatched from the Project by Buyer or CAISO shall be contingent upon Buyer complying with its obligations as Fuel Manager under this Agreement.][CHP RFO: all fuel provisions to be modified.]

15.2 Title and Risk of Loss. [Title and risk of loss to the natural gas shall remain with Buyer to the Gas Delivery Point, and Seller shall have title and risk of loss to the natural gas at and from the Gas Delivery Point. Notwithstanding the foregoing, Seller shall at all times hold the natural gas quantities required to be converted to produce the Scheduled Energy for the benefit of Buyer, and Buyer shall be entitled to all benefits resulting from the conversion of such natural gas quantities into Scheduled Energy. As between the Parties, Buyer will be deemed to have exclusive control and possession of the natural gas delivered under this Agreement and responsible for any damage or injury caused thereby before the natural gas is delivered to the Gas Delivery Point. At and after delivery of the natural gas to the Gas Delivery Point, as between the Parties, Seller will be deemed to have exclusive control and possession of the natural gas and responsible for any injury or damage caused thereby.][CHP RFO: TO BE MODIFIED.]

ARTICLE 16. CAISO AND NON-BUYER DISPATCHES

16.1 CAISO Dispatch. Any dispatch by the CAISO for any reason, whether pursuant to an RMR Contract, Waiver Denial Period in connection with Seller's must-offer obligations, Energy dispatches, Ancillary Services dispatches or otherwise shall be deemed to be dispatches by Buyer, and the Energy dispatched is for Buyer's benefit hereunder, and Buyer shall pay all associated costs for such CAISO dispatches (including but not limited to the required natural gas quantities, Transport Costs, Variable O&M Charges, and Start-Up Charges) 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. Gas Costs shall be included in any costs recoverable from the CAISO associated with a CAISO dispatch. In no event shall a dispatch by the CAISO be considered a Non-Buyer Dispatch pursuant to this Agreement.

16.2 Non-Buyer Dispatch. During the Term, Seller shall not start-up or operate the Project other than (a) as dispatched by Buyer or CAISO or (b) pursuant to a Non-Buyer Dispatch. Seller shall, to the extent possible, notify Buyer at least 24 hours (or any shorter period reasonably acceptable to Buyer consistent with Accepted Electrical Practices) in advance

of any start-up or operation pursuant to a Non-Buyer Dispatch, and shall, except as otherwise required by Applicable Law, Accepted Electrical Practices, delay such start-up or operation for a reasonable period of time if requested by Buyer. If Seller or any third party starts-up or operates any Generating Unit other than as permitted hereunder, it shall be an Event of Default under Article 3. Seller shall hold Buyer harmless and indemnify Buyer against the actual costs or losses of Buyer resulting from a Non-Buyer Dispatch, including, without limitation, all CAISO Charges and all Gas Costs incurred pursuant to such start-up or operation.

ARTICLE 17. SCHEDULING COORDINATOR

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

17.2 Notices. Provided Buyer provides electronic or other types of access to Seller to do so, Seller shall submit notice and updates required under the Tariff regarding the Project's operating status to the CAISO, including the Outage Management System ("OMS"). In accordance with this Article and Article 18, Buyer will cooperate with Seller to provide such notices and updates.

17.3 CAISO Costs and Revenues. Except as otherwise set forth below or in this Agreement, Seller shall be responsible for all CAISO charges and penalties associated with the operation of the Project and transmission of Energy to the Energy Delivery Point, and Buyer shall be responsible for all CAISO charges and penalties associated with receiving Energy at, and transmitting Energy from, the Energy Delivery Point. Buyer shall be responsible for CAISO costs (including penalties and other charges) and receive all CAISO revenues (including credits and other payments) incurred as a result of providing Scheduling Coordinator services, including costs and revenues associated with CAISO dispatches. Seller shall be responsible for all CAISO charges or payments (in each case, net of Buyer's fuel costs or avoided fuel costs) incurred as a consequence of the Project not being available, the Seller not notifying Buyer of outages in a timely manner (as set forth in Section 20.3), or deviations from Scheduled Energy that are

attributable to the operation of the Project, including, but not limited to Uninstructed Imbalance Energy charges, Uninstructed Deviation Penalties and Ancillary Services No-Pay. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges are the responsibility of the Seller and for Seller's account.

17.4 CAISO Settlements. Buyer shall be responsible for all settlement functions with the CAISO related to the Project. Buyer shall render a separate invoice to Seller for all CAISO charges or payments (in each case, net of Buyer's fuel costs or avoided fuel costs) ("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 (approximately 90 days after each month in the Delivery Period) 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.

17.5 Terminating Buyer's Designation as Scheduling Coordinator. At least 30 days prior to the earlier of the expiration of the Term or as of an Early Termination Date, regardless of which Party designated it, 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 date ("SC Replacement Date"). The necessary actions include the following: (a) Seller shall (i) submit to the CAISO a designation of a new Scheduling Coordinator for the Project to replace Buyer effective as of the SC Replacement Date and (ii) cause its newly designated Scheduling Coordinator to submit a letter to the CAISO accepting the designation; and (b) Buyer shall submit a letter to the CAISO resigning as Scheduling Coordinator for the Project effective as of the SC Replacement Date. Seller bears sole responsibility for locating, selecting and reaching agreement about terms with any replacement Scheduling Coordinator.

17.6 CAISO Sanctions. If during the Delivery Period, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Project or to Buyer as Scheduling Coordinator due to the actions or inactions of Seller, the cost of the sanctions or penalties shall be the Seller's responsibility.

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

ARTICLE 18.
DISPATCH NOTICES AND OPERATING RESTRICTIONS

18.1 Availability Notice. During the Delivery Period, no later than two (2) Business Days before each schedule day for the Day-Ahead Market in accordance with WECC scheduling practices, Seller shall provide Buyer with an hourly schedule of the Available Capacity (for both Energy and Ancillary Services) that each Generating Unit is expected to have for each hour of such schedule day (the “Availability Notice”). Seller will notify Buyer immediately if the Available Capacity of any Generating Unit 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 18.1 by (in order of preference) electronic mail, facsimile transmission or, telephonically to Buyer personnel designated to receive such communications.

18.2 Dispatch Notices. Buyer will have the right to dispatch the Generating Units (individually or together), seven days per week and 24 hours per day (including holidays), by providing Dispatch Notices and Updated Dispatch Notices to Seller electronically (in the forms attached to this Agreement in Appendix 18.2) or as directed by CAISO via ADS, and subject to the requirements and limitations set forth in this Agreement. Subject to Section 18.4, 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 control, Buyer may provide Dispatch Notices by (in order of 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 as specified in the Tariff.

18.3 Start-Up Notices. If a Dispatch Notice or Updated Dispatch Notice includes a Start-Up, Seller shall notify Buyer’s real time contact in Appendix 18.7 by telephone when each applicable Generating Unit is synchronized. When a Dispatch Notice requires a Start-Up or shutdown, Seller will be responsible for coordinating all required switchyard switching with the Buyer Grid Control Center or the Grid Control Center, if applicable.

18.4 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. In providing a Dispatch Notice or an Updated Dispatch Notice, Buyer shall use reasonable efforts to comply with the applicable Operating Restrictions. 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.

18.5 Daily Operating Report. Seller shall provide Buyer the Daily Operating Report, as attached in Appendix 18.5, the day immediately after each operating day, for all Generating Units.

18.6 Writing Requirements. In documenting and confirming Dispatch Notices and Updated 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.

18.7 Communication Protocols. Parties shall agree to the communication protocols outlined in Appendix 18.7 to facilitate exchange of information between the parties.

ARTICLE 19. METERING, COMMUNICATIONS, AND TELEMETRY

19.1 Electric Metering, Communication, Telemetry, and Access. Seller shall install, activate and maintain metering, communication and telemetry equipment as required by the Tariff and Seller's Large Generator Interconnection Agreement, including without limitation, the installation of separate CAISO revenue meters for each Generating Unit to ensure a separate resource ID with the CAISO for each such Generating Unit, separate communication equipment for each Generating Unit, and other requirements as may be necessary to permit separate dispatch and identification of costs for each Generating Unit. Communication equipment must be capable as a minimum of supporting the Communication Protocols in Appendix 18.7. Seller shall provide Buyer access to the information provided to CAISO under the Tariff.

19.1.1 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.

19.1.2 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.

19.1.3 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 10.3.

19.2 Gas Meter. Seller must install a fully functioning Billing Meter at the Project prior to the applicable Initial Delivery Date.

19.2.1 Testing and Calibration. Seller shall perform or cause to be performed, at its expense, annual testing and calibration of the Billing Meters in accordance with Accepted Electrical Practices and Rule 18 of the Gas Transporter Gas Tariff. Seller shall give Buyer reasonable advance notice of any inspection, testing or calibration of the Billing Meters. Buyer shall have the right to have a representative or designee present at such inspection, test or calibration of the Billing Meters. Buyer shall have the right to require, at Buyer's expense, except as required below, a test of any of the Billing Meters not more often than two (2) times every twelve (12) months.

19.2.2 Inaccurate Meters. If any of the Billing Meters is deemed to be inaccurate by more than +1%/-2% , fuel 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 Billing 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.

19.2.3 Gas Adjustments. In the event that, due to correction for inaccurate Billing Meters deemed to be inaccurate by more than +1%/-2%, the revised fuel deliveries 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 fuel deliveries, they shall be recalculated using the revised amount of fuel deliveries. 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.

19.3 Delivery of Data. At least 30 days prior to the Initial Delivery Date for the Project, Seller shall provide Buyer with all facility and metering information as may be reasonably requested by Buyer.

ARTICLE 20. OUTAGES

20.1 Scheduled Outages.

20.1.1 No later than January 15, April 15, July 15 and October 15 of each Contract Year during the Delivery Period, and at least sixty (60) days prior to the Guaranteed Initial Delivery Date, Seller shall submit to Buyer Seller's schedule of proposed Scheduled

Outages (“Outage Schedule”) for the following twelve (12)-month period in a the form reasonably agreed to by Buyer. Within twenty (20) Business Days after its receipt of an Outage Schedule, Buyer shall notify Seller in writing of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Industry Standards, accommodate Buyer’s requests regarding the timing of any Scheduled Outage. Seller may propose changes to any previously scheduled outage 15 days prior to such scheduled outage. Buyer shall review each such change and shall advise Seller within three (3) days of Buyer’s receipt thereof, in Buyer’s sole discretion but consistent with Industry Standards and Accepted Electrical Practices, whether such change is acceptable or Buyer may propose alternate dates for the requested scheduled maintenance. Seller shall cooperate with Buyer to arrange and coordinate all Scheduled Outages with the CAISO. Seller will communicate to Buyer all changes to a Scheduled Outage and estimated time of return of each Generating Unit as soon as practicable after the condition causing the change becomes known to Seller. The total amount of Scheduled Outages pursuant to this Section 20.1.1 for each Contract Year shall not exceed (i) for any Contract Years in which routine maintenance is scheduled in accordance with Accepted Electrical Practices, [_____] (or a prorated amount in the case of the first Contract Year), and (ii) for any Contract Years in which non-routine or major maintenance is scheduled in accordance with Accepted Electrical Practices, an additional [_____] hours (or a prorated amount in the case of the first Contract Year) per Contract Year for a maximum aggregate amount under clauses (i) and (ii) of [_____] hours for a Contract Year in which routine maintenance is scheduled in accordance with Accepted Electrical Practices and non-routine or major maintenance is scheduled in accordance with Accepted Electrical Practices.

20.1.2 If reasonably required in accordance with Accepted Electrical Practices, Seller may perform maintenance at a different time than, maintenance scheduled pursuant to Section 20.1.1. Seller shall provide Notice to Buyer within the time period determined by the CAISO for the Generating Unit, 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 20.1.2 to periods when Buyer does not reasonably believe the Project will be dispatched. Unless otherwise agreed to by the Parties, the total amount of Scheduled Outages scheduled pursuant to this Section 20.1.2 shall count against the hours permitted in Section 20.1.1 and shall not exceed the caps listed in Section 20.1.1.

20.2 No Scheduled Outages During Summer Months. Except as scheduled by the Parties under Section 20.1.2, no outages shall be scheduled or planned from each June 1 through October 31 during 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.

20.3 Notice of Unscheduled Outages. Seller shall notify Buyer by telephoning Buyer’s Generation Operations Center no later than ten (10) minutes following the occurrence of an Unscheduled Outage, or if Seller has knowledge that an Unscheduled Outage will occur, within twenty (20) minutes of determining that such Unscheduled Outage will occur. Seller shall relay outage information to Buyer as required by the Tariff within twenty (20) minutes of the Unscheduled Outage. Seller will communicate to Buyer the estimated time of return of each

Generating Unit as soon as practical after Seller has knowledge thereof. Seller will also report each such outage to the CAISO in accordance with section 17.2, above.

20.4 Inspection. In the event of an Unscheduled Outage, Buyer shall have the option to inspect any Generating Unit 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.

20.5 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 21. FORCE MAJEURE

21.1 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.

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

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

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

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

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

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

21.3 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 21.2(a), then, unless such Force Majeure event was caused by the Event of Default of the other Party or other delay or failure of the other Party in performing a material obligation under this Agreement, such other Party may, at any time following the end of such six (6)-month period, terminate this Agreement upon thirty (30) days prior written Notice to the Claiming Party, without further obligation by the terminating Party, except as to the payment of any costs and liabilities incurred prior to the effective date of such termination. Except to the extent Buyer may be entitled to Daily Delay Damages under Section 2.10.1, if this Agreement is terminated by Buyer under this Section 21.3, then within five (5) days following such termination, Buyer shall return to Seller any and all Letters of Credit, cash deposit, or any other forms of security or credit support previously provided by Seller and held at that time by Buyer.

ARTICLE 22. REPRESENTATIONS, WARRANTIES AND COVENANTS

22.1 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:

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

22.1.2 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;

22.1.3 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 (excluding any Governmental Authority approvals or consents or any Required Permits, which items are covered in Section 22.1.2);

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

22.1.5 It is not Bankrupt and there are not proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or become Bankrupt;

22.1.6 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;

22.1.7 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;

22.1.8 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;

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

22.1.10 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.

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

22.2.1 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;

22.2.2 To the best of Seller's knowledge, each specification and description of the Project and the Product in Article 1 is true and correct. Seller covenants that, throughout the Term, Seller will promptly provide Buyer with Notice of any change in any material respect in any of the specifications or descriptions set forth in Article 1;

22.2.3 Seller will execute a PGA and MSA (with each Generating Unit) 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;

22.2.4 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;

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

22.2.6 Seller has obtained, or will obtain, all necessary Emissions Reductions Credits and/or Marketable Emission Trading Credits required for the Project to operate in conformance with this Agreement and in accordance with Applicable Laws, including any applicable environmental laws, rules, regulations, and permits.

22.3 Seller's Affirmative Covenants.

22.3.1 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.

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

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

22.4 Seller's Negative Covenants.

22.4.1 Seller shall not create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable for, contingently or otherwise, any Seller's Debt, or issue any disqualified stock, in each case, other than Seller's Debt incurred, issued, assumed or guaranteed, or disqualified stock issued, in connection with the financing or refinancing of the development, construction, ownership or operation of the Project.

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

22.4.3 On and after the CP Satisfaction Date, Seller shall not permit the amount of Seller's Debt, to exceed the amount designated in Appendix 22.4.3 as applicable to each period described therein.

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

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

22.4.6 During any period during which a Seller is a Defaulting Party, Seller shall not (i) declare or pay any dividend, or make any other distribution or payment, on account of any equity interest in Seller or (ii) otherwise make any distribution or payment to any Affiliate of Seller (excluding payments to such Affiliates for reasonable expenses related to the operation, maintenance and management of the Project).

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

22.4.8 Seller shall not permit any Lenders that are Affiliates of Seller to have a security interest senior to Buyer's Subordinated Security Interest unless all of the Lenders are Affiliates of Seller.

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

22.5.1 Buyer shall cooperate with Seller to obtain approval(s) from any applicable Governmental Authorities with respect to governmental approvals needed by Seller.

22.5.2 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).

22.5.3 Buyer shall not schedule, or allow the CAISO or any third party to schedule, the Project in violation of the Operating Restrictions or as otherwise permitted in this Agreement.

22.5.4 Buyer, in its role as Scheduling Coordinator and Fuel Manager for the Project, shall not violate the Tariff, the Gas Transporter Gas Tariff, or Industry Standards, or any combination of the foregoing.

ARTICLE 23. LIMITATIONS

23.1 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.

23.2 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 24. RECORDS

24.1 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.

24.2 [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 24.2(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 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.][NOTE: Updates to be provided by SDG&E]

24.3 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 24.1 and 24.2, in order to comply with all Applicable Laws.

24.4 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 24.4 shall survive the termination of this Agreement for a period of 2 years.

24.5 California Climate Action Registry. In accordance with CPUC OIR 06-04-009, upon modification of the protocols of the California Climate Action Registry to allow generation facility-specific registration, Seller shall promptly (a) register with the California Climate Action Registry and (b) send Buyer Notice of such registration and (c) remain a member of the California Climate Action Registry thereafter during the Delivery Period.

ARTICLE 25. DISPUTES

25.1 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 25. 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 25.

25.2 Management Negotiations.

25.2.1 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.

25.2.2 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.

25.2.3 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.

25.2.4 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 25.2.1 above, refuses or does not meet within the ten (10) Business Day period specified in Section 25.2.1 above, either

Party may initiate arbitration of the controversy or claim by providing Notice of a demand for binding arbitration at any time thereafter.

25.3 Arbitration. Any dispute that cannot be resolved by management negotiations as set forth in Section 25.2 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").

25.3.1 Any arbitrator shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. The Parties shall cooperate with one another in selecting the arbitrator within sixty (60) days after Notice of the demand for arbitration. If, notwithstanding their good faith efforts, the Parties are unable to agree upon a mutually-acceptable arbitrator, the arbitrator shall be appointed as provided for in AAA's Commercial Arbitration Rules.

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

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

25.3.4 The arbitrator shall prepare in writing and provide to the Parties an award including factual findings and the reasons on which their decision is based.

25.3.5 The arbitrator's award shall be made within nine (9) months of the filing of the Notice of intention to arbitrate (demand) and the arbitrator shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the arbitrator, if necessary.

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

25.3.7 The prevailing Party in this dispute resolution process is entitled to recover its costs. Until such award is made, however, the Parties shall share equally in paying the costs of the Arbitration.

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

25.3.9 The arbitrator shall not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected on appeal to a court of competent jurisdiction for any such error.

25.3.10 The existence, content, and results of any Arbitration hereunder is confidential information that is subject to the provisions of Section 27.1.

25.4 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.

25.5 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 26. INDEMNIFICATION

26.1 Indemnities

(a) Indemnity by Seller. Seller shall release, indemnify, defend, and hold harmless Buyer, its Affiliates, and its and their directors, officers, employees, agents, and representatives against and from any and all actions, suits, losses, costs, damages, injuries, liabilities, claims, demands, penalties and interest, including reasonable costs and attorneys' fees ("Claims") resulting from, or arising out of or in any way connected with (i) any event, circumstance, act, or incident relating to the Product delivered by Seller under this Agreement up to the Energy Delivery Point or natural gas received by Seller under this Agreement after the Gas 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 (subject to Buyer complying with its obligations as Scheduling Coordinator under Section 17), (iv) a breach of its covenants, representations, or warranties under this Agreement, (v) any Governmental Charges for which Seller is responsible hereunder, or (vi) any liens, security interests, encumbrances, or other adverse claims against the Product delivered hereunder made by, under, or through Seller, in all cases including, without limitation, any Claim for or on account of injury, bodily or otherwise, to or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such Claim to the extent caused by the willful misconduct or gross negligence of Buyer, its Affiliates, and its and their directors, officers, employees, agents, and representatives.

(b) Indemnity by Buyer. Buyer shall release, indemnify, defend, and hold harmless Seller, its Affiliates, and its and their directors, officers, employees, agents, and representatives against and from any and all Claims resulting from, or arising out of or in any way connected with (i) any event, circumstance, act, or incident relating to the Product received by Buyer under this Agreement after the Energy Delivery Point or natural gas delivered by Buyer under this Agreement up to the Gas 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.

26.2 Insurance. The provisions of this Article 26 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.

26.3 Survival. All indemnity rights shall survive the termination of this Agreement.

ARTICLE 27. CONFIDENTIALITY/REGULATORY DISCLOSURE

27.1 Confidentiality.

27.1.1 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 27.1.2 of this Agreement; (v) in order to comply with any Applicable Law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in clause (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 27.1.1 ("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.

27.1.2 Specific Terms. Notwithstanding Section 27.1.1 of this Agreement, at any time on or after the date on which the Buyer makes its filing seeking CPUC Approval of this Agreement, either Party shall be permitted to disclose the following terms with respect to this Agreement: Party names, resource type, Delivery Period, Project location, Contract Capacity, Guaranteed Initial Delivery Date and Energy Delivery Point.

27.1.3 Publicity. Except as otherwise agreed to in this Section 27.1 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.

27.2 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.

27.3 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 Section 27 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 28. MISCELLANEOUS

28.1 General. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. All references to time shall be in PPT unless stated otherwise. The headings used herein are for convenience and reference purposes only. This Agreement shall be binding on each Party’s successors and permitted assigns. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect its obligations under the Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.

28.2 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 28.2.

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:

28.3 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.

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

28.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld. For purposes hereof, the transfer of at least fifty percent (50%) of the equity ownership or voting interest of Seller (or any parent entity holding directly or indirectly at least fifty percent (50%) of the equity ownership or voting interest of Seller if such interest constitutes more than twenty percent (20%) of the value of such parent entity) to a person that is not an Affiliate of Seller shall also constitute an assignment of this Agreement requiring Buyer's prior written consent. Notwithstanding the foregoing, 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.

28.6 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.

28.7 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.

28.8 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.

28.9 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).

28.10 Entire Agreement. Except for the Security Documents, [the gas and electrical interconnection agreements between the Parties, [and the Transportation Contract],][insert any others] this Agreement, when fully executed, constitutes the entire agreement by and between the Parties as to the subject matter hereof, and supersedes all prior understandings, agreements or representations by or between the Parties, written or oral to the extent they have related in any way to the subject matter hereof. Each Party represents that, in entering into this Agreement, it has not relied upon any promise, inducement, representation, warranty, agreement or other statement that is not set forth in this Agreement.

28.11 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.

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

28.13 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* 128 S. Ct. 2733 (2008).

28.14 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.

28.15 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.

28.16 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 this Appendix A, unless otherwise specified. Unless otherwise specified herein, references in the singular shall include references in the plural and vice versa, pronouns having masculine or feminine gender will be deemed to include the other, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal personality). Other grammatical forms of defined words or phrases have corresponding meanings. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. References to a particular article, section, subsection, paragraph, subparagraph, appendix or attachment shall, unless specified otherwise, be a reference to that article, section, subsection, paragraph, subparagraph, appendix or attachment in or to this Agreement. Any reference in this Agreement to any natural person, Governmental Authority, corporation, partnership or other legal entity includes its permitted successors and assigns or to any natural person, Governmental Authority, corporation, partnership or other legal entity succeeding to its functions. All references to dollars are to U.S. dollars.

(Signature page follows)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

[INSERT SELLER NAME]

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

SAN DIEGO GAS & ELECTRIC COMPANY

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

APPENDIX A DEFINITIONS

“AAA” means [the American Arbitration Association.

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

“ADS” means CAISO’s Automatic Dispatching System.

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

“Agreement” means this Power Purchase Tolling Agreement between Buyer and Seller.

“Ancillary Service Capacity” or “A/S Capacity” means Capacity associated with Ancillary Services available to Buyer within the scope of operations allowed Buyer under Section 1.1.3 of this Agreement.

“Ancillary Services” means spinning, non-spinning, regulation up, regulation down, black start, voltage support, and any other ancillary services that the Project is capable of providing 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.]**

“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 25.3.

“Associated Ancillary Services Energy” means the Energy expressed in megawatt-hours (“MWh”) expressly associated with the Ancillary Service Capacity made available from any Generating Unit at the instruction of the CAISO.

“Associated Energy” means the Energy expressed in megawatt-hours (“MWh”) or kilowatt-hours (“KWh”), expressly associated with Capacity dispatched under this Agreement.

“Availability Incentive Payments” shall mean Availability Incentive Payments as defined in the Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the Tariff.

“Availability Notice” means an hourly schedule of the amounts of Available Capacity that each Generating Unit is expected to be available during each hour of the day to which the Availability Notice pertains, pursuant to Section 18.1.

“Availability Standards” shall mean Availability Standards as defined in the Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the Tariff.

“Available Capacity” means the amount of Contract Capacity that is available to Buyer under this Agreement from the Project providing Contract Capacity on average during an hour.

“Bankrupt” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes, or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit or creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

“Billing Meter” means a revenue quality meter accepted by the Gas Transporter.

“Business Day” means any day except a Saturday, Sunday, the Friday immediately following the United States Thanksgiving holiday, or a Federal Reserve Bank holiday.

“CAISO” means the California Independent System Operator, a state chartered, nonprofit, public benefit corporation that controls certain transmission facilities of all Participating Transmission Owners and dispatches certain electric generation units and loads, or any successor entity performing the same functions.

“CAISO Charges Invoice” has the meaning set forth in Section 17.4.

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

“California Energy Commission” or “CEC” means the State Energy Resources Conservation and Development Commission as defined and used in Section 25104 in the California Public Resources Code, Division 15, Energy Conservation and Development (Sections 25000, et seq).

“Capacity” means the maximum dependable operating capability of any generating resource to produce or generate Energy, and shall include, without limitation, Unit Contingent Capacity, Ancillary Services Capacity, Resource Adequacy Benefits, and any other products that

may be developed or evolve from time to time during the Term that relate to the capability of the Project to produce or generate Energy.

“Claiming Party” means the Party claiming a Force Majeure under Article 21. “Claims” has the meaning set forth in Section 26.1.

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

“Commercial Operation” means that (a) the Project has been completed in accordance with the Agreement and is ready for commercial operation in compliance with all Applicable Laws, Required Permits, and Accepted Electrical Practices, and (b) the Project shall have successfully passed all Commercial Operation Tests at a level that demonstrates satisfaction of at least 100%% of the Expected Contract Capacity and at most [insert number in Btu/kWh that is 105% of expected heat rate], and complete test reports have been submitted to Buyer, as set forth in a written Notice from Seller to Buyer specifying the date on which the requirements described in clauses (a) and (b) were satisfied, as confirmed in each case by Buyer and/or Buyer’s engineer; provided, however, that such confirmation must be made within twenty-one (21) days after receipt of complete test reports from Seller required pursuant to clause (b) and, if not made within such twenty-one (21) day period shall be deemed to have been given unless Buyer or Buyer’s engineer shall have provided the reasons for why such requirements have not been satisfied within such twenty-one (21) day period; provided, further, that upon such confirmation, Commercial Operation shall be deemed to have been achieved as of the date set forth in such Notice from Seller to Buyer that the requirements described in clauses (a) and (b) were satisfied.

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

“Conditions Precedent” has the meaning set forth in Section 2.4.

“Confidential Information” means any and all non-public proprietary written information, data, analyses, documents, and materials furnished or made available by a Party or its Representatives to the other Party or its Representatives in connection with this Agreement, and any and all analyses, compilations, studies, documents, or other material prepared by the receiving Party or its Representatives to the extent containing or based upon such information, data, analyses, documents, and materials, but does not include information, data, analyses, documents, or materials that (i) are when furnished or thereafter become available to the public other than as a result of a disclosure by the receiving Party or its Representatives in violation of this Agreement, or (ii) are already in the possession of or become available to the receiving Party or its Representatives on a nonconfidential basis from a source other than the disclosing Party or its Representatives, provided that, to the best knowledge of the receiving Party or its Representatives, as the case may be, such source is not and was not bound by an obligation of confidentiality to the disclosing Party or its Representatives, or (iii) the receiving Party or its Representatives can demonstrate has been independently developed without a violation of this Agreement.

“Construction Period Security” has the meaning set forth in Section 11.2.2.

“Contract Capacity” has the meaning as set forth in Section 1.1.1. [**Note: discuss PMAX, summer conditions, and NQC**]

“Contract Capacity, Heat Rate & Ancillary Services Tests” has the meaning as set forth in Section 7.3 and further described in Appendix 7.

“Contract Conditions” means [XX] degrees Fahrenheit, [XX]% relative humidity and [XX] psi barometric pressure. **[NOTE to bidders: insert conditions which are averages for the site location of the project.]**

“Contract Year” means the months within each calendar year during the Delivery Period. The initial Contract Year would be from the Initial Delivery Date until December 31st of such year. Contract Year #2 would be from January 1st through December 31st of the calendar year immediately following the initial Contract Year. The final Contract Year will be January 1st through the last day of the Delivery Period.

“Contractor” has the meaning set forth in Section 14.3. [DELETE IF SDG&E HOLD THE TRANSPORTATION CONTRACTS]

“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 such other matters as may be requested by Buyer in its application to the CPUC for approval, subject to CPUC review of the Buyer’s administration of the Agreement.

“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 in the months of June, July, August and September and \$[XX,XXX] per day for each day of delay in the other months of the year. **[NOTE to**

Bidders: this is the total security required during development divided by the number of days in the Cure Period]

“Daily Gas Burn” means the actual gas burn for the Gas Day for the applicable Generating Unit, as reported by the Gas Transporter at the Billing Meter for the applicable Generating Unit.

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

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

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

“Default Equivalent Availability Factor” means the percentage calculated according to the formula below:

$$\text{DEAF} = 0.5 \times [(\text{PH} - (\text{DEDH} - \text{DEEDH})) / \text{PH}] + 0.5 \times [(\text{DNSRA}) / (\text{DNSRG})]$$

Where:

PH is the number of period hours;

DEDH is the number of equivalent derate hours (for the DEAF) 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 Expected Contract Capacity divided by the Expected Contract Capacity for the month. For the purposes of this calculation, a derate includes all outages for any reason, including without limitation, Unscheduled Outages, Force Majeure events, Delivery Excuse, forced derates, shortages relative to the Guaranteed Start-Up Time, shortages relative the Guaranteed Ramp Rates, Scheduled Outages, other times when any portion of the Expected Contract Capacity is not available, and when the Delivered Energy of the Project is less than the amount of energy dispatched by Buyer.

DEEDH is the number of equivalent excused derate hours (for the DEAF) solely due to either a Force Majeure event, Scheduled Outage or a Delivery Excuse (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 Expected Contract Capacity, divided by the Expected Contract Capacity for the month.

DNSRA shall be the non-spinning reserve available energy (for the DEAF) and is the sum for all hours in the applicable measurement period of the product of (a) one hour, times (b) the non-spinning reserve capacity available to Buyer in each such hour of the applicable measurement period (which amount includes the non-spinning reserve capacity that is unavailable solely due to either a Force Majeure event, Scheduled Outage, or a Delivery Excuse). For the purposes of this calculation, the non-spinning reserve capacity in each hour of the applicable

measurement period shall be based on the lower of (1) the most current CAISO certification amount, or (2) as stated in the Availability Notice, as each may be adjusted by derates (other than derates due to Force Majeure events, Scheduled Outages, or Delivery Excuses).

DNSRG shall be the non-spinning reserve gross energy (for the DEAF) and is the product of (a) the number of period hours in the applicable measurement period, times (b) the Expected Contract Capacity.

“Default Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the bank prime lending rate as may from time to time be published by the Federal Reserve in their H.15 Statistical Release, Selected Interest Rates (daily) or any successor publication as published by the Board of Governors of the Federal Reserve System, on such date (or if not published on such day on the most recent preceding day on which published), plus two percent (2 percent), and (b) the maximum rate permitted by Applicable Law. The Federal Reserve H.15 Statistical Release, Selected Interest Rates (daily) may be found at the following address: www.federalreserve.gov/releases/H15/update.

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

“Delivered Energy” means, in respect of a Generating Unit, for a period of time, the amount of Energy generated by such Generating Unit and delivered for Buyer’s account during the period at the Energy Delivery Point for such Generating Unit as measured by the Energy Metering Equipment, which for the avoidance of doubt shall be net of Station Use.

“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 natural gas 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 Gas Transporter 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 Gas Transporter 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); [(vii) Capacity derates that are consistent with Accepted Electrical Practices that are the result of ambient conditions differing from Contract Conditions, excluding therefrom any derates due to icing of inlet air to any of the Generating Units].

“Delivery Period” has the meaning set forth in Section 2.3.

“Delivery Period Security” has the meaning set forth in Section 11.2.3.

“Dispatch Notice” means the operating instruction, and any subsequent updates (an “Updated Dispatch Notice”), given by Buyer to Seller, directing the applicable Generating Unit to operate at a specified megawatt output. Dispatch Notices may be communicated electronically (i.e. through ADS or e-mail), via FAX, telephonically or other verbal means, in the case of Dispatch Notices from Buyer, in accordance with the procedures set forth in Section 18.2. Telephonic or other verbal communications shall be documented (either recorded by tape, electronically or in writing) and such recordings shall be made available to both Buyer and Seller upon request for settlement purposes.

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

“Effective Date” is as set forth in the introductory paragraph of this Agreement.

“Emission Reduction Credits” 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 a 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, or any similar federal, state or local Applicable Laws of like effect.

“Energy” means all electrical energy produced, flowing or supplied by a generating resource, measured in kilowatt-hours or multiple units thereof. Energy shall include without limitation, Unit Contingent Energy, Associated Energy, Associated Ancillary Services Energy, Supplemental Energy, reactive power, and any other electrical energy products that may be developed or evolve from time to time during the Term.

“Energy Delivery Point” means the point specified in Section 1.3.1.

“Energy Metering Equipment” means, for each Generating Unit, the meters and measuring equipment recognized by the CAISO at the Energy Delivery Point for such Generating Unit, and which provides the Delivered Energy delivered by such Generating Unit to the Energy Delivery Point.

“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 the costs of all Emission Reduction Credits or Marketable Emission Trading Credits 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 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 entity 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 25.2.1.

“Expected Contract Capacity” means the expected Capacity of the Project, net of Station Use, as measured in megawatts (MW) at the location of the applicable Energy Delivery Point, as shown in Appendix 1.1.1.

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

“Force Majeure” means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under this Agreement but only to the extent (1) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (2) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party’s ability to perform its obligations under this Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (3) such event is not the direct or indirect result of the fault or negligence of the Party seeking to have its performance obligations excused thereby.

(a) Subject to the foregoing, events that could qualify as Force Majeure include, but are not limited to the following:

(i) acts of God, flooding, lightning, landslide, earthquake, fire, drought, explosion, epidemic, quarantine, storm, hurricane, tornado, volcano, other natural disaster or unusual or extreme adverse weather-related events;

(ii) war (declared or undeclared), riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockade, insurrection, revolution, expropriation or confiscation; or

(iii) except as set forth in subpart (b)(vi) below, strikes, work stoppage or other labor disputes (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable).

(b) Force Majeure shall not be based on:

(i) Buyer’s inability economically to use or resell the Product purchased hereunder;

(ii) Seller's ability to sell the Product at a price greater than the price set forth in this Agreement;

(iii) Seller's inability to obtain governmental approvals or other approvals of any type for the construction, operation, or maintenance of the Project;

(iv) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Project, except to the extent Seller's inability to obtain sufficient labor, equipment, materials, or other resources is caused by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iii) above;

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

(vi) a strike, work stoppage or labor dispute that is directed specifically at Seller, Seller's Affiliates, or the Project; or

(vii) any equipment failure except to the extent such equipment failure is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iii) above.

"Forced Outage" has the meaning set forth in the Tariff.

"Forward Price Assessment" means quotations solicited or obtained in good faith from regularly published and widely-distributed forward price assessments from a broker that is not an Affiliate of either Party and who is actively participating in markets for the relevant products.

"Fuel Manager" has the meaning set forth in Article 14.

"GAAP" has the meaning set forth in Section 24.2.

"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.

"Gas Day" has the same definition as in the applicable tariff of the Gas Transporter supplying the Project.

"Gas Delivery Point" has the meaning set forth in Section 1.3.2.

"Gas Index" means the index price expressed in \$/MMBTU for the applicable flow date published by Platt's Gas Daily (in the internet publication currently accessed through www.platts.com) in the table entitled "Daily Price Survey" under the heading "Midpoint" for "SoCalGas".

"Gas Transporter" means the owner and operator of the intrastate gas distribution system to which the Project is interconnected. As of the Effective Date, the Gas Transporter is [San

Diego Gas & Electric Company.][NOTE to Bidders: to be modified if project connected directly to SDG&E's service territory.]

“Gas Transporter Gas System” has the meaning set forth in Section 14.1. [DELETE IF SDG&E HOLD THE TRANSPORTATION CONTRACTS]

“Gas Transporter Gas Tariff” means Gas Transporter’s gas tariff filed with the CPUC, as amended or supplemented from time to time.

“Generating Unit(s)” means the generating unit(s) specified in Recital B and more specifically described Section 1.2.2 and Appendix 1.1.

“Generation Management System” or “GMS” means the automated system employed by Buyer real time operations to remotely monitor and dispatch each Generating Unit.

“Generation Operations Center” or “GOC” means the location of Buyer’s real time operations personnel.

“GHG Limit” means the GHG Rate times the Maximum Natural Gas Quantity associated with a Buyer dispatch.

“GHG Charges” has the meaning set forth in Section 13.4 of this Agreement.

“GHG Rate” means [117 lbs of CO₂/MMBtu], the rate in pounds of CO₂ equivalent Greenhouse Gas emitted per MMBtu of natural gas combusted.

“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.

“Greenhouse Gas” means emissions into the atmosphere of gases that are regulated by one or more Governmental Authorities as a result of their contribution to the greenhouse effect heating of the surface of the earth. Greenhouse gases include carbon dioxide (CO₂), nitrous oxide (N₂O) and methane (CH₄), which are produced as the result of combustion or transport of fossil fuels. Other greenhouse gases may include hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF₆), which are generated in a variety of industrial processes. Greenhouse gases may be defined, or expressed, in terms of a ton of CO₂-equivalent, in order to allow comparison between the different effects of gases on the environment.

“Grid Control Center” or “applicable Grid Control Center” means the location of the personnel responsible for operating the transmission grid and/or coordinating same with the CAISO.

“Guaranteed Heat Rate” means the Guaranteed Heat Rate as set forth with Appendix 7.6.

“Guaranteed Initial Delivery Date” is the date set forth in Section 2.7 for the Project.

“Guaranteed Ramp Rate” means the Guaranteed Ramp Rate as set forth with Appendix 7.6.

“Guaranteed Start-Up Time” means the Guaranteed Start-Up Time as set forth with Appendix 7.6.

“Guarantor” the entity identified as provided in Section 11.4.

“Guaranty Agreement” means, if a Guarantor has been identified as provided in Section 11.4, the guaranty agreement from the Guarantor in a form reasonably acceptable to Buyer.

“Heat Rate” means the rate of conversion of the thermal energy of the natural gas fuel (based on its higher heating value, HHV) into Energy.

“Heat Rate Payment” has the meaning set forth in Appendix 7.6.

“Hour-Ahead” has the meaning set forth in the Tariff.

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

“Industry Standards” has the meaning set forth in Section 8.1.1.

“Initial Negotiation End Date” has the meaning set forth in Section 25.2.1.

“Initial Delivery Date” has the meaning set forth in Section 2.3.

“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 and Associated Energy, including, without limitation, connection, transformation, switching, metering, communications, control, and safety equipment, such as equipment required to protect (a) the Participating Transmission Owner’s electric system (or other system to which the Participating Transmission Owner’s electric system is connection, including the CAISO Grid) and Buyer’s customers from faults occurring at the Project, and (b) the Project from faults occurring on the Participating Transmission Owner’s electric system or on the systems of others to which the Participating Transmission Owner’s electric system is directly or indirectly connected. Interconnection Facilities also include any necessary additions and reinforcements to the Participating Transmission Owner’s electric system or CAISO Grid required as a result of the interconnection of the Project to the Buyer electric system, the CAISO Grid or electric systems of others to which the Buyer electric system is directly or indirectly connected.

“Interest Rate” means for any date the rate per annum equal to the Commercial Paper (prime, 3 months) rate as published the prior month in the Federal Reserve Statistical Release, H.15. Should publication of the interest rate on Commercial Paper (prime, 3 months) be discontinued, then the interest rate on commercial paper, which most closely approximates the

discontinued rate, published the prior month in the Federal Reserve Statistical Release, H.15, or its successor publication.

“Lender” means any bank, financial institution or other entity (or any agent thereof) that provides development, bridge, construction, permanent debt, tax equity or other financing or refinancing for the Project to Seller consistent with Section 22.4.3 (subject to the Subordination Agreement and the Collateral Assignment Agreement).

“Letter of Credit” means an irrevocable, nontransferable standby letter of credit issued by a U.S. commercial bank or a U.S. branch of a foreign bank with such bank having a Credit Rating of at least “A-” from S&P and “A3” from Moody’s, substantially in the form of Appendix 11.3 and reasonably acceptable to Buyer.

“Losses” means with respect to either Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination and liquidation of the Agreement, determined in a commercially reasonable manner.

“Manager” has the meaning set forth in Section 25.2.1.

“Market Quotation Average Price” means ‘the arithmetic mean of the quotations solicited in good faith at a specific point in time from not less than three Reference Market-Makers; *provided, however,* that the Party obtaining the quotes shall use reasonable efforts to obtain good faith, then-current quotations from at least five Reference Market-Makers and, if at least five such quotations are obtained, the Market Quotation Average Price shall be determined by disregarding the highest and lowest quotations and taking the arithmetic mean of the remaining quotations. The quotations shall be based on the midpoint (average) of firm and transactable offers to sell and bids to buy, which offers and bids are substantially similar to this Agreement. The quotations must be obtained assuming that the Party obtaining them will provide sufficient credit support for the proposed transaction.’

“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, 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)), or any similar federal, state or local Applicable Laws of like effect.

“Maximum Force Majeure Delay” has the meaning set forth in Section 2.10.2.

“Maximum Natural Gas Quantity” means, for any Buyer dispatch, the quantity of fuel (expressed in MMBtu) equal to the sum of (i) the maximum quantity of natural gas required for each CAISO settlement period of the Buyer dispatch, calculated by multiplying (a) the MWh of Delivered Energy in such CAISO settlement interval by (b) the Guaranteed Heat Rate; plus (ii) the Start-Up Fuel specified in Appendix 9.4 for each Start-Up in the relevant Buyer dispatch.

“Meter Service Agreement” or “MSA” has the meaning set forth in the Tariff.

“Milestone Schedule” means the schedule in the form of Appendix 6.1(a), setting forth Seller’s development, design, procurement, construction, commissioning and testing milestones, as set forth in Section 6.1.

“Minimum Guaranteed Availability” has the meaning set forth in Section 3.2(f).

“Minimum Operating Level” means the minimum operating level of a Generating Unit as specified in Appendix 1.1.

“Monthly Capacity Payment” has the meaning set forth in Section 9.2.

“Monthly Progress Report” means a monthly progress report, sent by Seller to Buyer no later than the tenth day of each month while the Project has not yet met its Initial Delivery Date, and within five (5) days of Buyer’s request, substantially in the form set forth in Appendix 6.1(b) and describing Seller’s compliance with the Milestone Schedule, including projected time to complete any milestones, for the Project, as set forth in Section 6.1.

“Moody’s” means Moody’s Investor Services, Inc. or its successor.

“MW” means mega-watt or mega-watts.

“Natural Gas Requirements” means all of the Project’s natural gas requirements, including natural gas for any Non-Buyer Dispatch and any other purpose, whether operational or otherwise.

“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-Buyer Dispatch” means a dispatch by Seller pursuant to a Seller Initiated Test (as defined in Section 7.1).

“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).

“Off-Peak Period” means any hour that is not an On-Peak Period.

“On-Peak Period” means the time from hour ending 07:00 PPT through hour ending 22:00 PPT in any day.

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

“Pacific Prevailing Time” or “PPT” means Pacific Daylight Time when California observes Daylight Savings Time and Pacific Standard Time otherwise.

“Participating Generator Agreement” or “PGA” has the meaning set forth in the Tariff.

“Participating Transmission Owner” means the transmission owner that has released to the CAISO operational control of its transmission facilities to which the Project is interconnected. As of the Effective Date, the Participating Transmission Owner is [San Diego Gas & Electric Company.] **[NOTE to Bidders: to be modified if project 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 Guarantees” has the meaning set forth in Section 7.6.

“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 fuel combustion or heat input throughput, limitations on operational levels or operational time; limitations on any specified operating constraint, requirements for acquisition and provision of any Emission Reduction Credit or Marketable Emission Trading Credit; or any other operational restriction or specification related to compliance with any laws or regulations applicable to the Project.

“Permitted Liens” means liens and encumbrances (a) imposed by the Priority Security Interest and the Subordinated Security Interest (including pursuant to any Security Document) or (b) imposed by any Lender.

“PMAX” means the applicable CAISO-certified maximum operating level of a Generating Unit.

“PMIN” means the applicable CAISO-certified minimum operating level of a Generating Unit, provided.

“Pre-Construction Security” has the meaning set forth in Section 11.2.1.

“PRG” has the meaning set forth in Section 27.2.

“Priority Security Interest” has the meaning set forth in Section 11.5.

“Product” means the Capacity, Energy, Ancillary Services, and Resource Adequacy Benefits of each of the Generating Units at 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 (net of Station Use) in accordance with the terms hereof.

“Project” has the meaning set forth in the Recitals.

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

“Reference Market-Maker” means a leading dealer in the relevant market that is not an Affiliate of either Party and that is selected by a Party in good faith among dealers of the highest credit standing which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit. Such dealer may be represented by a broker.

“Referral Date” has the meaning set forth in Section 25.2.1.

“Reliability Must-Run Contract” or “RMR Contract” means a Must-Run Service Agreement between the owner of an RMR Unit (or the output therefrom) and the CAISO.

“Representatives” means the officers, directors, members, employees, legal counsel, accountants, lenders, advisors, or ratings agencies and other agents or representatives of a Party or of its Affiliates and in the case of Buyer, includes any Independent Evaluator (as such term is used in CPUC Decision 04-12-048) used by Buyer in connection with the Request for Offers from which this Agreement arose.

“Required Permits” has the meaning set forth in Section 5.1(b).

“Resource Adequacy Benefits” means the rights and privileges attached to any generating resource that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings.

“Resource Adequacy Rulings” means CPUC Decisions D.04-10-035, D.05-10-042 and D.06-06-0064 and CPUC Resource Adequacy Rulemakings (R.)04-04-003 and (R.)05-12-013 and any subsequent CPUC ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, as such Decisions, rulings, laws, rules or regulations may be amended or modified from time to time during the Term. **[NOTE TO BIDDERS: to be updated for flexible RA rulings.]**

“S&P” means Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

“Scheduled Energy” means the Energy from a Generating Unit expected to be delivered to the Energy Delivery Point pursuant to (a) the latest Buyer 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 any Generating Unit is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 20.1.

“Scheduling Coordinator” or “SC” means an entity certified by the CAISO for the purposes of undertaking the functions specified in Article 17.

“SEC” means the Securities and Exchange Commission.

“Security Documents” means those agreements, documents, instruments, or certifications in a form reasonably acceptable to Buyer that grant and perfect Buyer’s Priority Security Interest and/or Subordinated Security Interest.

“Seller’s Debt” means, without duplication, each of the following: (i) all indebtedness of Seller for borrowed money; (ii) all obligations of Seller for the deferred purchase price of property or service, which purchase price is due more than six (6) months after the date of placing such property in service or taking delivery or title thereto or the completion of such services (other than trade payables not overdue by more than ninety (90) days incurred in the ordinary course of Seller’s business); (iii) all obligations of Seller evidenced by notes, bonds, debentures, disqualified stock or other similar instruments; (iv) all obligations of Seller created or arising under any conditional sale or other title retention agreement with respect to property acquired by Seller (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property); (v) all monetary obligations of Seller under (a) a lease of any property (whether real, personal, or mixed) by Seller as lessee that, in conformity with GAAP, is accounted for as a capital lease on the balance sheet of Seller, (b) a so-called synthetic, off-balance sheet or tax retention lease, or (c) an agreement for the use or possession of property creating obligations which do not appear on the balance sheet of Seller but which, upon the insolvency or bankruptcy of Seller, would be characterized as indebtedness of Seller (without regard to accounting treatment); (vi) all obligations, contingent or otherwise, of Seller under acceptance, letter of guaranty, letter of credit or similar facilities; (vii) all obligations of Seller with respect to any redeemable equity interests in Seller, including in the case of preferred stock, at the greater of the voluntary or involuntary liquidation preference plus accrued and unpaid dividends; (viii) all Swap Obligations of Seller; (ix) all indebtedness of others referred to in clauses (i) through (viii) above guaranteed by Seller, or in effect guaranteed by Seller through an agreement (a) to pay or purchase such indebtedness or to advance or supply funds for the payment or purchase of such indebtedness, (b) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such indebtedness or to assure the holder of such indebtedness against loss; (c) to supply funds to or invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered), or (d) otherwise to assure a creditor against loss; and (x) without duplication of the foregoing, all indebtedness referred to in clauses (i) through (ix) above secured by any lien on property (including amounts and contract rights) owned by Seller. The outstanding amount of indebtedness as described above at any date shall be the outstanding balance at such date of all unconditional obligations as described above and, with respect to contingent obligations as described above, the maximum liability upon the occurrence of the contingency giving rise to the obligation. Notwithstanding the foregoing, the term “Seller’s

Debt” as used herein shall not include Seller’s obligations under this Agreement or the lease of the Site (provided, such Site lease does not constitute an obligation of Seller described in clause (v) of the first sentence of this definition).

“Seller Gas Event” means any event, circumstance, change or condition, including without limitation a Non-Buyer Dispatch or an Unscheduled Outage, that may affect the availability of any Generating Unit, or any other operational constraint affecting any Generating Unit that may increase or decrease the natural gas requirements of such Generating Unit.

“Seller Initiated Test” has the meaning set forth in Section 7.1.

“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.

“Start-Up” means the action of bringing a Generating Unit from shutdown to synchronization at its minimum load and the unconditional release of such Generating Unit for ramping to the Scheduled Energy.

“Start-Up Fuel” has the meaning set forth in Section 9.4.

“Station Use” means Energy produced by the Project that is used to operate the Project’s auxiliary equipment or is lost in transmission losses, transformational losses, or other electrical losses prior to the Energy Delivery Point. The auxiliary equipment includes, but is not limited, to forced and induced draft fans, cooling towers, boiler feed pumps, lubricating oil systems, plant lighting, fuel handling systems, control systems and sump pumps.

“Subordinated Security Interest” has the meaning set forth in Section 11.6.1.

“Subordination Agreement” has the meaning set forth in Section 11.6.1.

“Supplemental Energy” is the Energy from Projects which have uncommitted capacity following finalization of the Hour-Ahead Schedules and which Energy shall be available to CAISO during the Real Time Market.

“Swap Obligations” means obligations in respect of any swaps, caps or collar agreements or similar arrangements to hedge against fluctuations in interest rates or currency exchange rates or the exchange of nominal interest obligations, either generally or under specific contingencies, in each case, valued at the aggregate net mark-to-market value.

“Tariff” means the tariff and protocol provisions, as amended or supplemented from time to time, of the CAISO.

“Term” has the meaning set forth in Section 2.1.

“Termination Payment” has the meaning set forth in Section 3.4.

“Transmission Owners Tariff” means the tariff setting out a Participating Transmission Owner’s rates and charges for transmission access to the CAISO Grid, filed with the CPUC, as it may be amended or superseded and accepted by the CPUC from time to time, or any successor tariff.

“Transport Cost” means the sum of the Gas Transporter’s then current rate components (or any additional, replacement or successor components) for transportation of natural gas to the [interconnection between the Project and its meter with the Gas Transporter system] [Gas Delivery Point] expressed in \$/MMBtu.

“Transportation Contract” has the meaning set forth in Section 14.2. [DELETE IF SDG&E HOLD THE TRANSPORTATION CONTRACTS]

“Uninstructed Deviation Penalty” has the meaning set forth in the Tariff.

“Uninstructed Imbalance Energy” has the meaning set forth in the Tariff.

“Unit Contingent Capacity” means electrical capacity that is dependent upon the availability and operation of a Generating Unit.

“Unit Contingent Energy” means Energy produced by a Generating Unit that is dependent upon the availability and operation of that Generating Unit.

“Unscheduled Outage” means a period during which a Generating Unit is not capable of providing service due to the need to maintain or repair a component thereof, which period has not been scheduled in advance in accordance with Section 20.1.

“Variable O&M Charge” means a variable operations and maintenance charge calculated in accordance with Appendix 9.3.

“Waiver Denial Periods” has the meaning set forth in the Tariff.

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

**APPENDIX 1.1
OPERATING RESTRICTIONS**

<u>Type</u>	<u>Measurement Units For Limit</u>	<u>Period Of Applicability*</u>	<u>Unit 1 Limit</u>	<u>Unit 2 Limit</u>	<u>Project Limit</u>
Start-Up Time	Minutes from cold start to reach Contract Capacity	Term of Agreement			
Maximum Number Of Daily Start-Ups	Number per day	Term of Agreement			
Maximum Number Of Annual Start-Ups	Number per year	Term of Agreement			
Minimum Run Time	Minutes per dispatch	Term of Agreement			
Minimum Down Time	Minutes from shutdown to next start	Term of Agreement			
Minimum Operating Level	MW	Term of Agreement			
Maximum Annual Run Time (excluding start-ups)	Hours per year	Term of Agreement			
Maximum Annual Run Time that Generating Unit can be Dispatched at Less than its Full Availability (excluding start-ups)	Hours per year	Term of Agreement			

**APPENDIX 1.1.1
CONTRACT CAPACITY**

Generating Unit	Expected Contract Capacity	Contract Capacity
Unit 1	[xxx]MW	To be determined by Commercial Operation Test and periodic Contract Capacity Tests and corrected to Contract Conditions, subject to the limitations in Section 1.1.1.
Unit 2		
Project		

APPENDIX 1.3.1
ENERGY DELIVERY POINT

Single-line diagram depicting grid interconnection and contract Energy Delivery Point

APPENDIX 6.1(a)
MILESTONE SCHEDULE

Milestone

Milestone Date

Receipt of Air Quality Permit

Execution of Large Generator
Interconnection Agreement

Commencement of Construction
Activities

Completion of Combustion Turbine
Foundation(s)

Completion of Setting Combustion
Turbine(s) on Foundation(s)

Synchronization of all Generating Units
to [CAISO] Transmission System

Achievement of Delivery Date

[Note to bidders: may include additional milestones based on project]

APPENDIX 6.1(b)
MONTHLY PROGRESS REPORT

Monthly Progress Report
of
[INSERT SELLER'S NAME]
provided to
San Diego Gas & Electric Company

[Date]

Instructions.

All capitalized terms used in this report shall have the meanings set forth below and any capitalized terms used in this report which are not defined below shall have the meanings ascribed thereto in the Power Purchase Tolling 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 any Generating Unit 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 any Generating Unit by the Initial Delivery Date ;
- (iii) The status of any matter or issue identified as outstanding in any prior Monthly Progress Report and any material change in the Seller's proposed actions to remedy or overcome such matter or issue.

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

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

Please provide a brief summary of the Major¹ activities to be performed for each of the following aspects of the Project during the current calendar month:

¹ For Purposes of this Report, "Major" shall mean any activity, event, or occurrence which may have a material adverse impact on the construction of the Project or completion of the Project on a timely basis if such activity, event, or occurrence occurs or if such activity, event, or occurrence fails to occur as anticipated or scheduled, which material adverse impact includes, but is not limited to, Seller's inability to achieve a Milestone Date.

Design

Engineering

Major Equipment procurement

Construction

Milestone report

Permitting

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

Please provide a brief summary of the Major activities which were scheduled to be performed in the previous calendar month and their status, including those activities that were not completed as scheduled:

Design

Engineering

Major Equipment procurement

Construction

Milestone report

Permitting

Overall assessment of the Project status.

Please provide a brief summary of your assessment of the status and progress of each of the following aspects of the Project:

Design

Engineering

Major Equipment procurement

Construction

Milestone report

Permitting

Exhibit 1: Progress Curve.

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

Exhibit 2: Photos.

The photos included with this Exhibit 2 indicate construction progress to-date at the Project site.

Safety and Health Reports

Any work stoppage from the previous calendar month:

Work stoppage impact on construction of the Project:

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

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX 7 TESTING PROTOCOLS

[DISCUSS WHETHER TESTING IS ONLY ON A PROJECT LEVEL OR IS ALSO ON A
GENERATING UNIT BASIS]

Seller shall develop detailed test procedures for the Commercial Operation Tests and for the Contract Capacity, Heat Rate, and Ancillary Services Testing and submit them to Buyer for review and approval prior to use. Each procedure shall define the object, scope, criteria, and methods (including correction curves and an analysis of test uncertainty) applicable to the test. Test corrections shall include ambient temperature, relative humidity, barometric pressure, and natural gas fuel conditions. The test procedures shall be submitted at least four (4) months prior to the commencement of testing. Buyer shall review and comment on proposed test procedures within thirty (30) calendar days of receipt.

Seller and Buyer shall cooperate to schedule Commercial Operation Tests at reasonable times in light of Seller's need to achieve Commercial Operation and Buyer's need to manage delivery of test energy to load. The Contract Capacity, Heat Rate, and Ancillary Services Testing shall be conducted at mutually agreed times prior to June of each calendar year after the Initial Delivery Date.

Buyer reserves the right to witness the tests.

Project instrumentation will be used during the performance tests whenever practical. The accuracy of Project instrumentation shall be verified within 30 days of the performance of any tests. No corrections for equipment degradation or test tolerances will be included in the test results.

Certified test reports for all tests shall be submitted to Buyer for review and approval as a condition of the Project reaching Commercial Operation status.

The Commercial Operation Tests required pursuant to Section 7.2 shall consist of the following tests:

- Contract Capacity Test
- Heat Rate Test
- Reliability/Availability Test
- Ancillary Services Tests
 - Start-up Time Test
 - Ramp Rate Test
- Generator Capability Test

Contract Capacity Test

The Contract Capacity Test shall be conducted for the purpose of determining each Generating Unit's and the Project's net capacity corrected to Contract Conditions. The Contract Capacity shall be based on each of the Generating Units operating under steady state operation at one

hundred percent (100%) capacity. The Contract Capacity Test shall be conducted generally in accordance with the ASME Performance Test Code (PTC) 22.

The Project's Delivered Energy shall be measured at the Energy Delivery Point, net of plant auxiliary loads, using the installed CAISO metering. The Contract Capacity Test shall consist of a four-hour test with all Generating Units at 100 percent capacity, steady-state operation. All auxiliary systems shall be operating as normally required for one hundred percent (100%) capacity at Contract Conditions. Emissions shall be in compliance as monitored by the CEMS.

Electronic data shall be taken at time increments of no more than one minute and shall be corrected to the Contract Conditions. Manual data shall be taken at time increments of no more than ten minutes and shall be corrected to the Contract Conditions.

The capacity of the Project during the Contract Capacity Test shall be determined as follows: the average Delivered Energy during each hour shall be corrected from test conditions during that hour to the Contract Conditions using performance correction curves and methods contained in the test procedures. The corrected hourly readings shall then be averaged to determine the Contract Capacity of the Project.

Heat Rate Test

The Heat Rate Test shall be conducted for the purpose of determining the Project's actual Heat Rate, corrected to Contract Conditions, based on higher heating value of the fuel. The Heat Rate Test shall be performed generally in accordance with ASME Performance Test Code (PTC) 22. The Heat Rate Test shall be based on Contract Conditions at one hundred percent (100%) capacity.

The Heat Rate Test shall consist of three tests whose length shall be thirty (30) minutes each, the results of which shall be averaged. The Generating Unit shall be operating at one hundred percent (100%) capacity, steady state operation during the Heat Rate Test. Data shall be taken at time increments of no more than one minute and shall be corrected to the Contract Conditions. All auxiliary systems shall be operating as normally required for one hundred percent (100%) capacity at Contract Conditions. Emissions shall be in compliance as monitored by the CEMS.

Electronic data shall be taken at time increments of no more than one (1) minute and shall be corrected to the Contract Conditions. Manual data shall be taken at time increments of no more than ten (10) minutes and shall be corrected to the Contract Conditions.

The tested Heat Rate of the Project during the Heat Rate Test shall be determined as follows: the total Gas use (in MMBtu on a HHV basis measured at the Gas Meter) measured during the test period shall be divided by the Delivered Energy, net of plant auxiliary loads, using the installed CAISO metering. The resultant value shall be corrected from test conditions during that hour to the Contract Conditions using performance correction curves and methods contained in the test procedures. The readings shall be averaged to determine the tested heat rate. A minimum of three natural gas samples shall be taken during the test for analysis by an independent laboratory.

The Heat Rate Test shall be performed concurrently with the Contract Capacity Test. If Seller reruns either the Heat Rate Test or the Contract Capacity Test, then the concurrent test must also be rerun.

Reliability/Availability Test

Seller shall demonstrate to Buyer the Generating Unit's reliability and availability as follows:

- Each Generating Unit shall start, run without tripping at one hundred percent (100%) Contract Capacity for four (4) hours and perform a normal shutdown five (5) consecutive times within three (3) days.
- The testing sequence shall be restarted:
 - If the Generating Unit fails to start, run without tripping for four (4) hours and perform a normal shutdown during any of the five (5) consecutive tests; or
 - If maintenance or corrective action is performed during or between any of the five (5) tests.

Ancillary Services Tests

Seller shall conduct a Start-up Time Test to confirm for Buyer the Guaranteed Start-Up Time in Appendix 7.6 for each Generating Unit.

Seller shall conduct a Ramp Rate Test to confirm for Buyer the Guaranteed Ramp Rate of the Generating Unit in Appendix 7.6 for each Generating Unit.

Generator Capability Test

To the extent not addressed in the testing described above, Seller shall conduct appropriate tests to demonstrate the Generating Unit's capability to operate within the Operating Restrictions specified in Appendix 1.1.

The Contract Capacity, Heat Rate, and Ancillary Services Testing required pursuant to Section 7.3 shall consist of the following tests:

- Contract Capacity Test
- Heat Rate Test
- Ancillary Services Tests
 - Start-up Time Test
 - Ramp Rate Test

These tests will be conducted in a similar manner to that described above.

[NOTE to Bidders: black start testing to be inserted if black start is bid.]

APPENDIX 7.6
PERFORMANCE GUARANTEES

[DISCUSS WHETHER GUARANTEES ARE ON A PROJECT LEVEL OR ON A
GENERATING UNIT BASIS]

1. Guaranteed Heat Rate.

The Guaranteed Heat Rate of the Project at Contract Capacity is [_____] Btu per kWh (HHV) at the Contract Conditions, when tested in accordance with the procedures set forth in Appendix 7. The results of the most recent test shall determine the Heat Rate until the next test is performed in accordance herewith.

The “Heat Rate Percentage” for the Project shall be the Heat Rate of the Project divided by the Guaranteed Heat Rate, expressed as a percentage. The Heat Rate Percentage will remain in effect until another Heat Rate for the Project is established through a Heat Rate test described above.

If the Heat Rate Percentage of the Project during a month of the Delivery Period is lower than 98% or higher than 102%, the Monthly Capacity Payment payable in respect of such month shall be adjusted as set forth in Appendix 9.2 by the resultant Heat Rate Payment for such month, which shall be calculated as follows:

$$HRP = (GHR - THR) \times DE \times ICF$$

Where:

HRP is the Heat Rate Payment for such month in respect of the Project.

GHR is the Guaranteed Heat Rate of the Project.

THR is Test Heat Rate during such month for the Project at the Contract Capacity determined in accordance with Appendix 7.

DE is Delivered Energy during such month.

ICF is Indexed Cost of Fuel per Btu during such month which shall be (a) if *GHR* is greater than *THR*, the Gas Index, or (b) if *THR* is greater than *GHR*, the sum of the Gas Index and the Transport Cost.

A positive value for the Heat Rate Payment represents a payment to be made from Buyer to Seller, and a negative value represents a payment to be made from Seller to Buyer.

If, for any reason, the Gas Index ceases to be published, or either Party reasonably believes that the Gas Index is substantially changed so that it does not adequately reflect the aggregate market price of gas at various receipt points on the Buyer system, then either Party may provide the other with Notice to such effect and the Parties shall

negotiate in good faith to determine an alternative method or methods for determining the Gas Index in order to maintain the balance of economic benefits and burdens that the Parties agreed to with respect to the Gas Index as of the “Effective Date”. Any substitute index or indices must be recognized in the industry as a measure of aggregate daily prices for gas delivered to the various receipt points on the Buyer system. If the Parties are unable to agree on a successor market, index or methodology within thirty (30) days of the date of the Notice, the dispute resolution procedures of Article 25 shall apply.

2. Guaranteed Start-Up Time.

Each Generating Unit shall be brought to full capacity from a cold start within [] minutes. For a failure to achieve the Guaranteed Start-Up Time (except to the extent caused by a Delivery Excuse), Seller shall reimburse Buyer for imbalance charges, other charges, or penalties imposed by the CAISO upon Buyer as a result thereof.

3. Guaranteed Ramp Rate.[To be discussed with bidders.]

The ramp rate at specific energy outputs of each Generating Unit shall be as set forth in the following table: [DISCUSS]

Load	Ramp Rate for each Generating Unit individually	Ramp Rate for Project as a whole

For a failure to achieve the Guaranteed Ramp Rate (except to the extent caused by a Delivery Excuse), Seller shall reimburse Buyer for imbalance charges, other charges, or penalties imposed by the CAISO upon Buyer as a result thereof and for any costs associated with replacing any Ancillary Services.

APPENDIX 9.2
MONTHLY CAPACITY PAYMENT

The Monthly Capacity Payment for each month of the Delivery Period shall be determined as follows:

$$MCP = (CC \times CR \times SF \times AAF) + HRP - RRA$$

Where:

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

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

CR is the Capacity Rate expressed in Dollars per kW-year,

$$CR = \$[XXX]/kW\text{-yr}$$

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 $EAF / 0.99$.

HRP is the Heat Rate Payment, which is calculated in accordance with Appendix 7.6.

RRA is the Reliability Reduction Adjustment, which equals [\$XXX] for each minute a Generating Unit is late in synchronizing to the CAISO Grid beyond the time when such Generating Unit was scheduled to be delivering Energy as set forth in the Dispatch Notice; provided, however, that this RRA shall only apply to start-ups dispatched by Buyer in the Day-Ahead Market.

The Equivalent Availability Factor (EAF), which shall be computed monthly, is the equivalent availability factor computed as follows:

$$EAF = 0.5 \times [(PH - (EDH - EEDH)) / PH] + 0.5 \times [(NSRA) / (NSRG)]$$

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, Unscheduled Outages, Force Majeure events, Delivery Excuse, forced derates, shortages relative to the Guaranteed Start-Up Time, shortages relative the Guaranteed Ramp Rates, Scheduled Outages, 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.

EEDH is the number of equivalent excused derate hours solely due to either a Scheduled Outage or a Delivery Excuse (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.

NSRA shall be the non-spinning reserve available energy and is the sum for all hours in the applicable measurement period of the product of (a) one hour, times (b) the non-spinning reserve capacity available to Buyer in each such hour of the applicable measurement period (which amount includes the non-spinning reserve capacity that is unavailable solely due to either a Scheduled Outage or a Delivery Excuse). For the purposes of this calculation, the non-spinning reserve capacity in each hour of the applicable measurement period shall be based on the lower of

(1) the most current CAISO certification amount, or (2) as stated in the Availability Notice, as each may be adjusted by derates (other than derates due to Scheduled Outages or Delivery Excuses).

NSRG shall be the non-spinning reserve gross energy and is the product of (a) the number of period hours in the applicable measurement period, times (b) the Contract Capacity.

APPENDIX 9.3
VARIABLE O&M CHARGE

The Variable O&M Charge for each month of the Delivery Period shall be calculated as follows:

$$\text{VOMP} = \text{RATE} \times \text{Delivered Energy}$$

Where:

$$\text{RATE} = \$[\text{XX}]/\text{MWH}$$

APPENDIX 9.4 START-UP CHARGE

The Start-Up Fuel for each Buyer or CAISO dispatch of a Generating Unit shall not exceed [XXX] MMBtu.

The Start-Up Charge for each Buyer or CAISO dispatch of a Generating Unit shall be calculated as follows:

$$SUC = RATE \times NSU$$

Where:

SUC is the Start-Up Charge payment to be determined for such month.

RATE = \$[XXX] per start-up

NSU is the number of Start-Ups of such Generating Unit in such month.

**APPENDIX 11.3
LETTER OF CREDIT FORM**

IRREVOCABLE NONTRANSFERABLE STANDBY
LETTER OF CREDIT

Reference Number: _____

Transaction Date: _____

BENEFICIARY:

San Diego Gas & Electric Company

Ladies and Gentlemen:

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

This Letter of Credit shall be of no further force or effect upon the close of business on _____ or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day, unless extended in accordance with the terms of this Letter of Credit. For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in San Diego, California.

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

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

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at _____ or such other number as specified from time to time by the Bank. The facsimile transmittal shall be

deemed delivered when received. It is understood that drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

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

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

Banking charges shall be the sole responsibility of the Applicant.

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

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

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

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

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

AUTHORIZED SIGNATURE for Bank

By:

Title: _____

ATTACHMENT A TO APPENDIX 11.3
DRAWING CERTIFICATE
TO [ISSUING BANK NAME]
IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT

Reference Number. _____
(Sample Text)

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Nontransferable Standby Letter of Credit

Reference Number: _____

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

1. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to \$_____, for the following reason(s) [check applicable provision]:
 - []A. An Event of Default, as defined in the Power Purchase Tolling 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.
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:

[CHANGE TO 1.3.2 IF SDG&E HOLDS THE TRANSPORTATION CONTRACTS]
APPENDIX 14.1
GAS INTERCONNECTION

Drawing depicting interconnection of Fuel Transporter Gas System to Project

[to be determined]

**APPENDIX 18.1
AVAILABILITY NOTICE**

Availability Notice

Trading Day: _____

Station: _____

Issued By: _____

Unit: _____

Issued At: _____

Unit 100% Available No Restrictions: _____

Hour Ending	Available Capacity	Minimum Output	Comments
	(MW)	(MW)	
1:00			
2:00			
3:00			
4:00			
5:00			
6:00			
7:00			
8:00			
9:00			
10:00			
11:00			
12:00			
13:00			
14:00			
15:00			
16:00			
17:00			
18:00			
19:00			
20:00			
21:00			
22:00			
23:00			
0:00			

Comments: _____

**APPENDIX 18.2
DISPATCH AND UPDATED DISPATCH NOTICES**

Dispatch Notice

Trading Day: _____

Station: _____

Issued By: _____

Unit: _____

Issued At: _____

Hour Ending	Scheduled Energy	Spinning Reserve	Non-Spinning Reserve	Comments
	(MW)	(MW)	(MW)	
1:00				
2:00				
3:00				
4:00				
5:00				
6:00				
7:00				
8:00				
9:00				
10:00				
11:00				
12:00				
13:00				
14:00				
15:00				
16:00				
17:00				
18:00				
19:00				
20:00				
21:00				
22:00				
23:00				
0:00				

Comments: _____

Updated Dispatch Notice

Trading Day: _____

Station: _____

Issued By: _____

Unit: _____

Issued At: _____

Changes from Scheduled Delivery are highlighted.

Comments: _____

Hour Ending	Scheduled Energy	Spinning Reserve	Non-Spinning Reserves	Comments
	(MW)	(MW)	(MW)	
1:00				
2:00				
3:00				
4:00				
5:00				
6:00				
7:00				
8:00				
9:00				
10:00				
11:00				
12:00				
13:00				
14:00				
15:00				
16:00				
17:00				
18:00				
19:00				
20:00				
21:00				
22:00				
23:00				
0:00				

**APPENDIX 18.5
DAILY OPERATING REPORT**

Daily Operating Report

for MM/DD/YY

Availability – Capacity - Generation

Plant Status at 0600 Hours:

Unit 1	Unit 2	Unit 3
<input type="checkbox"/> Operating <input type="checkbox"/> Available <input type="checkbox"/> Not Available See significant events	<input type="checkbox"/> Operating <input type="checkbox"/> Available <input type="checkbox"/> Not Available See significant events	<input type="checkbox"/> Operating <input type="checkbox"/> Available <input type="checkbox"/> Not Available See significant events

Previous 24 Hours:

Unit 1	Unit 2	Unit 3
Operating Hours: <u>0:00</u> Hrs:Min (0001 – 2400 Total On Line Hours)	Operating Hours: <u>0:00</u> Hrs:Min (0001 – 2400 Total On Line Hours)	Operating Hours: <u>0:00</u> Hrs:Min (0001 – 2400 Total On Line Hours)
Net Generation: <u>0.0</u> MWhr (0001 – 2400 Total Net Generation)	Net Generation: <u>0.0</u> MWhr (0001 – 2400 Total Net Generation)	Net Generation: <u>0.0</u> MWhr (0001 – 2400 Total Net Generation)

Project

Total Availability: 100 %
 ((On Line Hr + Off Line Available Hr)/24)

Total Capacity: 100 %
 ((MW Generated/MW Scheduled) x 100)

Total Generation: 0 MWhr
 (CTG + HP STG + LP STG)

Period Availability:

Unit 1	Unit 2	Unit 3
M(onth)TD Availability <u>100.00</u> % (MTD On Ln Hr + MTD Off Ln Avl Hr)/MTD Hr	M(onth)TD Availability <u>100.00</u> % (MTD On Ln Hr + MTD Off Ln Avl Hr)/MTD Hr	M(onth)TD Availability <u>100.00</u> % (MTD On Ln Hr + MTD Off Ln Avl Hr)/MTD Hr
P(eak)TD Availability <u>100.00</u> % (PTD On Ln Hr + PTD Off Ln Avl Hr)/PTD Hr	P(eak)TD Availability <u>100.00</u> % (PTD On Ln Hr + PTD Off Ln Avl Hr)/PTD Hr	P(eak)TD Availability <u>100.00</u> % (PTD On Ln Hr + PTD Off Ln Avl Hr)/PTD Hr

Significant Events

No significant events, generation losses, major equipment out of service, accidents, injuries or operating anomalies.

Losses of Generation: (Include Date/Time Off Line; Date/Time On Line; Brief Narrative Description of Event.)

List Major Equipment Out of Service; Briefly Describe any Accidents or Injuries; Describe any Operating Anomalies

Number of additional pages: _____ 0 _____ Submitted by: _____

**APPENDIX 18.7
COMMUNICATIONS PROTOCOLS**

Communication Protocols

Dated as of _____

These Communication Protocols have been drafted to assist in the operation of the Power Purchase Tolling 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 Operating Procedures 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 Operating Procedures 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, and 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 and Gas Scheduling. Each Party shall confirm all Intra-day Communication either electronically or via fax as soon as practicable.

2.2 Communication Failure: In the event of a failure of the primary communication link between Seller and Buyer, both Parties will try all available means to communicate, including cell phones or additional communication devices as installed.

2.3 System Emergency: Buyer and Seller shall communicate as soon as possible all changes to the schedule requested by the CAISO as a result of a system emergency.

During Transmission System Emergencies, Seller's operations staff shall communicate with Buyer's Grid Operations Department via established communications devices. Buyer's Grid

Operations Department will periodically test the communications devices to be utilized during system emergencies.

2.4 Verbal Communication: Each Party shall provide confirmation (either electronically or via facsimile) of any telephonic operating notice or communication provided to the other Party as soon as practicable. All telephonic communication shall be subject to recording.

2.5 Confidentiality: Confidential communications between the Parties in discharging their rights and obligations under the Agreements and these Communication Protocols will be subject to the applicable restrictions set forth in the Agreement.

2.6 Staffing: Parties will have available 24 hours a day, seven days a week, personnel available to communicate regarding the implementation of these Communication Protocols.

Contact Information Table

Contacts and Authorized Representatives for Buyer

Outlined below is the contact and communication information for the relevant contact groups. This list may be amended by Buyer with timely Notice to Seller.

Contact	Primary Phone	Secondary Phone	Fax	Email
Real Time	858-650-6160	619-517-5661	858-650-6191	tsched@semprautilities.com
Day-Ahead Scheduling	858-650-6178	858-650-6160	858-650-6191	presched@semprautilities.com
Day-Ahead Trading	858-650-6196	858-650-6148	858-650-6191	slewis@semprautilities.com sread@semprautilities.com
Gas Trading	858-650-6196	858-650-6148	858-650-6191	slewis@semprautilities.com sread@semprautilities.com
Gas Scheduling	858-654-1851	858-650-6196	858-650-6191	JLMarshall@semprautilities.com
Settlements – Power	TBD before IDD	TBD before IDD	TBD before IDD	TBD before IDD
Settlements – Gas	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				

**APPENDIX 22.4.3
CAP ON SELLER'S DEBT**

<u>CONTRACT YEAR</u>	<u>AMOUNT</u>
1 and before	\$[]
2	\$[]
3	\$[]
4	\$[]
5	\$[]
6	\$[]
7	\$[]
8	\$[]
9	\$[]
10	\$[]
11	\$[]
12	\$[]
13	\$[]
14	\$[]
15	\$[]
16	\$[]
17	\$[]
18	\$[]
19	\$[]
20	\$[]

EXHIBIT D

SDG&E WITNESS SUE GARCIA'S 2016 GRC PROCEEDING

(A.14-11-003) TESTIMONY

Company: San Diego Gas & Electric Company (U 902 M)
Proceeding: 2016 General Rate Case
Application: A.14-11-XXX (NOI)
NOI Exhibit: SDGE-08

SDG&E

DIRECT TESTIMONY OF SUE E. GARCIA

ELECTRIC AND FUEL PROCUREMENT

July 2014

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



TABLE OF CONTENTS

I. INTRODUCTION 1
 A. Summary of Costs 1
 B. Summary of Activities 1
II. NON-SHARED COSTS 2
 A. Introduction 2
 B. Long-Term Procurement 2
 1. Description of Costs and Underlying Activities 3
 2. Forecast Method 4
 3. Cost Drivers 5
 C. Trading and Scheduling 5
 1. Description of Costs and Underlying Activities 5
 2. Forecast Method 8
 3. Cost Drivers 8
 D. Middle-Office and Back-Office 9
 1. Description of Costs and Underlying Activities 9
 2. Forecast Method 11
 3. Cost Drivers 11
III. CONCLUSION 12
IV. WITNESS QUALIFICATIONS 13

LIST OF APPENDICES

Glossary of Acronyms SEG-A-1

SUMMARY

O&M	2013 (\$000)	2016 (\$000)	Change
Non-Shared	\$8,569	\$8,757	\$188
Total	\$8,569	\$8,757	\$188

Summary of Requests

- San Diego Gas & Electric Company (“SDG&E”) requests that the California Public Utilities Commission (“CPUC”) adopt its proposal for \$8.8 million of operations and maintenance expenses for the function of procuring electricity for SDG&E’s bundled customers. Bundled customers are those which buy the electric commodity from SDG&E.
- A five year average was used as the base forecast methodology to develop the 2016 forecast.
- One full-time equivalent position (“FTE”)¹ will be added to administer the increasing workload of procurement functions, including the development of energy supply request for offers (“RFOs”) and to negotiate and execute contracts associated with energy storage and conventional generation.
- 2.0 FTEs will be added due to the increasing workload of procurement functions related to new renewable and conventional generation contracts. 0.5 FTE will be subtracted due to a reduction in Cap and Trade activities for electric commodity customers.²

¹ An FTE of 1.0 means that the person is equivalent to a full-time worker, while an FTE of 0.5 means that the worker is only half-time.

² In 2015, Cap and Trade activities for core gas will begin. However, additional FTEs are not forecasted to be needed because existing personnel working on electric Cap and Trade activities will, beginning in 2015, work on both core gas and electric and will allocate their time accordingly between the two functions. Cost recovery of the 0.5 FTE of core gas labor will be addressed in R. 14-03-003, Order Instituting Rulemaking to address Natural Gas Distribution Utility Cost and Revenue Issues Associated with Greenhouse Gas Emissions.

SDG&E DIRECT TESTIMONY OF SUE E. GARCIA
ELECTRIC AND FUEL PROCUREMENT

I. INTRODUCTION

A. Summary of Costs

I sponsor the test year 2016 forecasts for operations and maintenance (“O&M”) costs for non-shared services for the forecast years 2014 and 2015, and test year 2016, associated with the Electric and Fuel Procurement (“E&FP”) function for SDG&E. Table 1 summarizes my sponsored costs.

TABLE 1

Test Year 2016 Summary of Total Costs

SDG&E ELECTRIC & FUEL PROCUREMENT			
Shown in Thousands of 2013 Dollars	2013 Adjusted-Recorded	TY2016 Estimated	Change
Total Non-Shared	\$8,569	\$8,757	\$188
Total Shared Services (Incurred)	\$0	\$0	\$0
Total O&M	\$8,569	\$8,757	\$188

B. Summary of Activities

E&FP is responsible for procuring, managing, planning and administrating SDG&E’s electric and fuel supply for bundled commodity customers. Bundled commodity customers are those customers that buy the commodity of electricity from SDG&E. Annually, since 2011, the bundled commodity costs have been over \$1 billion dollars. The procurement and administration activities conducted by SDG&E’s E&FP department are necessary to ensure that SDG&E plans for and acquires resources so that least-cost supply is available when needed by commodity customers. E&FP meets customer demand by bidding or scheduling energy resources into the wholesale energy and ancillary services markets. SDG&E buys all the electricity it needs from the California Independent System Operator (“CAISO”) market to serve its customers and sells electricity to the CAISO markets to offset its energy procurement expenses. CAISO optimizes the bids and schedules submitted into the market and determines which resources should run for each hour. SDG&E’s daily procurement process of buying and selling electricity in the CAISO market is done according to least cost dispatch requirements set forth by the CPUC.

SDG&E requests that the CPUC adopt its proposal for \$8.8 million of O&M expenses for each of the foregoing functions, which are described in more detail below. My testimony addresses the administrative expenses necessary to operate the E&FP department, but does not include commodity expenses themselves. The commodity expenses are recovered in the Energy Resource Recovery Account (“ERRA”) proceeding and the Greenhouse Gas (“GHG”) costs will be addressed in the core gas GHG proceeding.³ Regarding the administrative fees associated with the implementation of Assembly Bill 32, they are included as a part of Scott Pearson’s Environmental Services testimony, Exhibit SDG&E-18.

II. NON-SHARED COSTS

A. Introduction

SDG&E requests \$8.8 million of O&M expenses for the function of procuring electricity for SDG&E’s commodity customers. Table 2 summarizes the total non-shared O&M forecasts for the listed cost categories.

TABLE 2

Non-Shared O&M Summary of Costs

SDG&E ELECTRIC & FUEL PROCUREMENT			
Shown in Thousands of 2013 Dollars			
Categories of Management	2013 Adjusted-Recorded	TY2016 Estimated	Change
A. Long Term Procurement	\$2,269	\$2,451	\$182
B. Trading & Scheduling	\$2,948	\$2,966	\$18
C. Middle and Back Office	\$3,352	\$3,340	(\$12)
Total	\$8,569	\$8,757	\$188

B. Long-Term Procurement

Long-Term procurement functions include the Origination and Portfolio Design department and Vice President – E&FP.

³ Order Instituting Rulemaking (“OIR”) to address Natural Gas Distribution Utility Cost and Revenue Issues Associated with Greenhouse Gas Emissions (R.14-03-003).

1 **1. Description of Costs and Underlying Activities**

2 Origination and Portfolio Design (“O&PD”)

3 The O&PD department is responsible for negotiation and execution of Power Purchase
4 Agreements (“PPAs”) to meet SDG&E’s long-term energy and capacity requirements. As their
5 title indicates, PPAs are contracts for the purchase of energy and capacity ranging from 1
6 Megawatt (“MW”) to 602 MW with terms ranging from 1 year to 30 years. The parties to these
7 contracts are companies like NRG and CalPine. Through its negotiations with these independent
8 power suppliers, O&PD executes contracts for both long-term renewable and conventional
9 resources needed to supply energy and capacity to SDG&E customers. O&PD also interfaces
10 with various regulatory agencies, including the CPUC, and participates in regulatory proceedings
11 as required to develop procurement policies and implementation of long-term and renewable
12 procurement plans and legislative mandates. For example, the Long Term Procurement Plan
13 (“LTPP”)⁴ is a reoccurring two year CPUC proceeding that integrates all of SDG&E’s activities
14 in carrying out the CPUC’s preferred loading order for resource additions. This includes
15 integrating resources such as renewables, energy efficiencies, demand response, energy storage
16 and conventional resources into a single plan.

17 Regarding how supply contracts are negotiated, the O&PD group procures renewable and
18 conventional resources in accordance with rules established by the CPUC on both a bilateral (one
19 on one with a single party) basis and through solicitations (where SDG&E issues a solicitation or
20 RFO to a group of potential parties who then submit bids). When the procurement involves an
21 RFO, O&PD conducts the RFO process and negotiates with the winning bidder toward execution
22 of a final contract. O&PD also provides input into long-range planning models related to future
23 procurement options for renewable resources. Ultimately, after following the appropriate
24 selection process, all procurement is eventually approved by the CPUC as falling within the
25 authorized need identified in the LTPP, Renewables Portfolio Standard (“RPS”) procurement
26 management plans, and/or Energy Storage plans.

27 SDG&E meets monthly with its Procurement Review Group (“PRG”) to address a variety
28 of SDG&E procurement issues and transactions. The PRG consists of “non-market participants”
29 who sign non-disclosure agreements, and includes The Utility Reform Network, Coalition of

⁴ The last approved LTPP was approved by the CPUC in Resolution E-4543 and was effective October 11, 2012.

1 California Utility Employees, the CPUC Energy Division, and Office of Ratepayer Advocates.
2 The PRG's purpose is to review and assess the details of the Investor Owned Utilities' overall
3 procurement strategy and specific proposed procurement contracts and processes prior to
4 submitting filings to the Commission.⁵

5 The O&PD is responsible for coordination of electric procurement activities related to
6 new conventional and renewable generation. This generation project-related work includes
7 contract management starting after the contract has been executed to completion of the new
8 resource for commercial operation. These responsibilities include verifying that conditions
9 precedent to the agreement have been satisfied and monitoring the project schedule, design and
10 construction to ensure it is being constructed to meet the stated performance in the contract.
11 These performance measures may include contract capacity, heat rate, reliability/availability, and
12 ancillary services. O&PD also coordinates internal SDG&E functions necessary to meet all the
13 terms and conditions of the agreement.

14 *Vice President of E&FP*

15 The Vice President of E&FP provides direction and managerial oversight for Long-Term
16 Procurement, Trading and Scheduling, and Middle-Office and Back-Office functions. This
17 involves overseeing over 60 employees within the four departments. Overall, the Vice President
18 is responsible for ensuring that E&FP plans for and acquires resources so that least-cost supply is
19 available when needed by commodity customers and that all procurement is consistent with
20 internal policies, Commission rules and decisions and CAISO tariffs. In addition, the Vice
21 President is responsible for the development of new policies designed to improve procurement.

22 **2. Forecast Method**

23 The forecast method chosen for this cost category is a five-year average. This is most
24 appropriate because work load can vary from year to year, and by using the five-year average
25 this reduces the variability between years. For example, over the time period of 2009 through
26 2013 this cost category had costs ranging between \$2,140,000 and \$2,723,000. Although using a
27 four-year average would result in a slightly lower value, SDG&E opted to use the longer term for
28 averaging this cost category in order to be consistent with the other forecast methodologies
29 chosen for the other cost categories in my testimony. Specifically, using a five-year average
30 forecast methodology, the underlying forecast is labor of \$1,968,000 and non-labor of \$363,000,

⁵ D.02-08-071

1 with 15.4 FTEs and is forecasted to rise to \$2,077,000 for labor and \$374,000 for non-labor, with
2 16.4 FTEs in 2016 due mainly to an increase in work associated with additional procurement
3 functions needed to procure energy storage and conventional resources, as described in more
4 detail below.

5 **3. Cost Drivers**

6 As noted above, the primary cost driver is the 1.0 FTE that will be added to administer
7 RFOs and to negotiate and execute contracts associated with energy storage and conventional
8 generation. In the CPUC Energy Storage Decision, D. 13-10-040, a procurement target of 165
9 MW for Energy Storage resources was established for SDG&E covering the time period 2014
10 through 2020⁶. In addition, in D.14-03-004, Track 4 of the LTPP proceeding, the CPUC
11 determined that new resources are required to meet local capacity requirement needs resulting
12 from the retirement of the San Onofre Nuclear Generating Station, as well as the mandatory
13 retirement of once-through cooling resources located in Southern California in accordance with
14 State Water Resources Control Board regulations.⁷ In particular, the Track 4 Decision authorizes
15 SDG&E to procure through an all-source RFO or through bilateral negotiations between 500 and
16 800 MW of electrical capacity in its territory to meet long term local capacity requirements by
17 the end of 2021.⁸ Such procurement must include at least 25 MW of energy storage resources as
18 part of 200 MW of preferred resources consistent with the Loading Order of the Energy Action
19 Plan.⁹

20 **C. Trading and Scheduling**

21 **1. Description of Costs and Underlying Activities**

22 Trading and Scheduling involves the following work groups in the Energy Supply &
23 Dispatch (“ES&D”) department, each of which is described in more detail below: Electric
24 Procurement & Trading , Market Operations, and Market & Policy Analysis.

⁶ D.13-10-040 OP. 2 and Appendix A, p.2.

⁷ In May, 2010, the State Water Resources Control Board adopted its statewide *Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling* (Resolution No. 2010-0020), which applies to power plants located along the California coast that rely on Once Through Cooling technology (the “OTC Policy”).- The OTC Policy implements § 316(b) of the federal Clean Water Act, which seeks to minimize the adverse environmental impacts of cooling water intake structures, and requires OTC facilities to meet certain requirements or retire by a specified compliance date.

⁸ D.14-03-004, mimeo, Ordering Paragraphs (“OPs”) 2 and 3.

⁹ *Id.*

1 Electric Procurement & Trading (“EP&T”)

2 EP&T department performs short-term planning and trading functions. EP&T manages
3 the portfolio of assets to serve bundled customers consistent with the Commission-approved
4 procurement plans. As these plans describe, SDG&E manages the portfolio in a least-cost
5 dispatch manner that includes economic dispatch of the combined portfolio of SDG&E assets,
6 purchases and sales of gas and power, and ‘hedging’. Hedging is a risk management strategy
7 used in limiting or offsetting the probability of loss from fluctuations in the prices of
8 commodities. In effect, hedging is a transfer of risk without buying insurance policies.
9 Generally this involves taking market positions that maintain SDG&E’s energy portfolio’s price
10 risk exposure within the customer risk tolerance limits set by CPUC.¹⁰

11 EP&T also plans and implements procurement strategies within a five-year time horizon.
12 They monitor and implement changes in tariffs and regulations and monitor changes to CPUC
13 regulations and requirements governing least-cost dispatch of electric and gas portfolios.

14 EP&T is responsible for management and implementation of short-term electric energy
15 procurement transactions related to dispatchable generation. EP&T conducts and oversees the
16 performance of energy or power planning studies, regulatory analyses, and short-term
17 forecasting methodologies. EP&T is responsible for planning and executing trades and
18 managing the electricity supply portfolio to economically meet customer demand in a manner
19 consistent with SDG&E’s LTPP. They also are responsible for various CPUC compliance
20 reporting functions related to ES&D activities, including the CPUC quarterly compliance report.

21 EP&T is also responsible for the management and implementation of gas procurement
22 transactions related to dispatchable generation resources (i.e., natural gas fuel for conventional
23 power plants such as gas turbines, steam turbines or combined cycle turbines). This group
24 purchases and sells natural gas and performs gas scheduling on the electronic bulletin boards of
25 the interstate and intrastate pipelines it uses to deliver fuel to its gas-fired resources, including
26 SDG&E-owned resources and contracted for tolling resources.

¹⁰ Limits are set in the LTPP. The last approved LTPP was approved by the CPUC in Resolution E-4543 and was effective October 11, 2012.

1 Finally, EP&T is responsible for the GHG compliance activities, including developing
2 procurement policies, for the GHG compliance obligation related to SDG&E's electric portfolio.
3 EP&T procures GHG allowances and GHG offsets in compliance with the limits established in
4 the LTPP.

5 Market Operations

6 Market Operations oversees the real-time scheduling and dispatch functions. SDG&E
7 staffs a Real Time desk to perform these functions around the clock. Market Operations serves
8 as the point of contact for operational administration of approximately 65 SDG&E PPAs. They
9 manage energy transactions with the CAISO of over \$1 billion dollars a year. Market Operations
10 performs CAISO scheduling activities to ensure regulatory compliance, least-cost dispatch, and
11 compliance with other constraints/requirements. Market Operations is also responsible for
12 scheduling SDG&E's own generating capacity into the CAISO's day-ahead, hour-ahead and 15
13 minute markets, and complying with CAISO dispatch instructions in accordance with Federal
14 Energy Regulatory Commission ("FERC") approved tariffs and protocols. They are also
15 responsible for forecasting day-ahead demand. Market Operations conducts analysis of and
16 manages overall performance of the scheduling and bidding strategies of ES&D. Market
17 Operations also is responsible for various regulatory reporting functions related to its least-cost
18 dispatch operations, including the ERRR Compliance regulatory filing.

19 Market & Policy Analysis ("M&PA")

20 M&PA also manages compliance with annual and monthly resource adequacy
21 requirements and purchases short-term resources as needed to satisfy its resource adequacy
22 requirements. "Resource adequacy" is a policy framework designed to provide sufficient
23 resources to the CAISO to ensure the safe and reliable operation of the grid in real time and to
24 provide appropriate incentives for the siting and construction of new resources needed for
25 reliability in the future. Specifically, via Commission decisions (pursuant to P.U. Code §380),
26 all Load Serving Entities within the CPUC's jurisdiction (i.e., investor owned utilities, energy
27 service providers, and community choice aggregators) are required to procure capacity so that
28 capacity is available to the CAISO when and where needed. SDG&E's M&PA group is required
29 to prepare system and local resource adequacy filings at the CPUC demonstrating that they have
30 procured sufficient capacity resources including reserves needed to serve its aggregate system
31 load on a monthly basis.

1 M&PA also participates in CAISO-related meetings and working groups to monitor
2 upcoming changes at the CAISO and how it will impact SDG&E's operations and ultimately
3 SDG&E's ratepayers.

4 **2. Forecast Method**

5 The forecast method chosen for this cost category is five-year average. This is most
6 appropriate because work load can vary from year to year, and by using the five year average this
7 reduces the variability between years. For example, over the time period of 2009 through 2013
8 this cost category had costs ranging between \$2,407,000 and \$3,458,000. Using the 2009-2013
9 time frame is appropriate as in 2009 the CAISO implemented the "New Market." The New
10 Market involved a renovation of the electricity markets administered by the CAISO and
11 implementation of a new network model that integrates both the supply and demand resources
12 operations of the CAISO-controlled grid, to allow for more efficient dispatch of supply resources
13 to meet demand. The five-year average in this instance happens to result in a lesser underlying
14 forecast than either a three year or base year methodology. In addition, SDG&E opted to use the
15 longer term for averaging this cost category in order to be consistent with the other forecast
16 methodologies chosen for the other cost categories in my testimony. Using a five-year average
17 forecast methodology, as described above, the underlying forecast is labor of \$2,157,000 and
18 non-labor of \$737,000, with 20.3 FTEs and is forecasted to rise to \$2,222,000 for labor and
19 \$744,000 for non-labor, with 20.9 FTEs in 2016.

20 **3. Cost Drivers**

21 The primary cost driver is 1.0 FTE that will be added mainly due to increased scheduling activity
22 associated with two new conventional resources and approximately 25 renewable generation
23 resources coming on-line between 2014 and 2016. This cost supports the company's goal of
24 performing compliance and mandated activities efficiently and effectively for SDG&E's
25 commodity customers. In addition, 0.4 FTEs will be subtracted from the average due to a
26 reduction in Cap and Trade activities for electric commodity customers. In 2015, Cap and Trade
27 activities for core gas will begin. However, additional FTEs are not forecasted to be needed
28 because existing personnel working on electric Cap and Trade activities will, beginning in 2015,
29 work on both core gas and electric and will allocate their time accordingly between the two
30 functions. Cost recovery of the 0.4 FTE of core gas labor will be addressed in R. 14-03-003.

1 **D. Middle-Office and Back-Office**

2 Middle-Office and Back-Office functions include the Settlements and Systems
3 department and Energy Risk department of the E&FP department.

4 **1. Description of Costs and Underlying Activities**

5 Settlements and Systems (“S&S”)

6 S&S is responsible for financial and accounting activities, including confirmation of
7 electric and gas transactions, annually verifying and processing over 1,600 invoices and billing
8 requests for bilateral transactions, and preparing journal entries for recording expenses and
9 revenues. Settlement activities with the CAISO include processing of daily settlement
10 statements and weekly invoices; validating settlements, including, when appropriate, the filing of
11 disputes of questionable charges; and reporting of generation and load meter data. Proposed
12 CAISO changes to its settlements process are reviewed and commented on, including
13 intervening at FERC, if appropriate.

14 S&S is also responsible for accounting for the commodity, transportation, hedging and
15 other related transactions associated with the gas burned in SDG&E-owned power plants and as
16 a result of tolling agreements. SDG&E owns 5 power plants¹¹ and manages 3 tolling
17 agreements. The S&S department is responsible for the confirmations of gas transaction;
18 verifying and processing payments; and preparing journal entries for recording the expenses and
19 revenues of gas transactions.

20 S&S contract administrators monitor and administer PPAs for Qualifying Facilities,
21 renewable energy resources and tolling agreements for combined cycle and peaking plants.
22 During 2013, S&S contract administrators were responsible for 65 PPAs.¹² This includes daily
23 interactions with the counterparties, coordinating and resolving disputes, coordinating
24 participation at quarterly meetings, invoice verifications, contract interpretations and serving as
25 points of contact. Contract administrators work closely with the settlement personnel to ensure
26 proper distribution of settlement payments and charges. They also monitor and verify various

¹¹ Miramar Energy Facility I, Miramar Energy Facility II, Palomar Energy Center, Cuyamaca Peak Energy Center and Desert Star Energy Center are further described in Carl LaPeter’s Generation Testimony Exhibit SDG&E-11.

¹² SDG&E 2013 ERRR Compliance Filing, A.14-05-026, S. Chen Testimony Table 1:Historical Purchases, p. SC-34.

1 contract terms, including scheduled maintenance, curtailments, insurance and efficiency
2 monitoring.

3 S&S is also responsible for preparing reports for monthly and annual CPUC filings and
4 for internal and external financial reporting. For example, S&S prepares the FERC form 1
5 sections related to purchased power and sales for resale. S&S personnel also prepare testimony,
6 data responses and reports for various regulatory agencies, including the CPUC and FERC, to
7 establish or revise policies within the scope of various regulatory proceedings, including ERRA
8 compliance and General Rate Case proceedings.

9 S&S is responsible for system administration for departmental software supported by
10 SDG&E's Information Technology department, including systems provided by Allegro and
11 Power Cost, Inc. Allegro and Power Cost, Inc. provide systems used to record gas and power
12 transactions and to schedule and bid power with the CAISO.

13 Energy Risk ("ER")

14 The ER department is responsible for middle-office functions, such as identifying,
15 managing, monitoring, and reporting on market, credit, financial and operational risks associated
16 with E&FP functions. For example, the ER section conducts daily reviews of electric
17 procurement physical and financial positions, including trader authority limits, counterparty
18 credit risk positions and compliance with financial liquidity/collateral limits. On a daily basis,
19 the ER section has responsibility for reviewing market pricing data which is used to develop
20 forward price curves, volatilities and correlations used for the evaluation and measurement of
21 portfolio risk and to ensure compliance with Commission-approved risk metrics¹³ and internal
22 policies. All these efforts help ensure that the energy procured on behalf of SDG&E's customers
23 is best fit and least cost.

24 This group also maintains and supports all trading and risk management related models
25 and applications. For example, ER monitors and enforces operational risk controls related to the
26 execution, recording and valuation of trades. This group is also responsible for compliance with
27 the Dodd-Frank requirements, including trade reporting and record retention activities, and
28 Sarbanes-Oxley ("SOX") 404 compliance, through testing of energy risk control activities. ER
29 also supports ES&D in the development of procurement and hedge plans, consistent with the
30 Commission approved LTPP, and monitors compliance with the approved plans. Finally, ER is

¹³ LTPP D.12-01-033

1 also responsible for reporting fixed price transactions to index publishers in accordance with
2 FERC requirements.

3 **2. Forecast Method**

4 The forecast method chosen for this cost category is five-year average. This is most
5 appropriate because work load can vary from year to year, and by using the five-year average
6 this reduces the variability between years. For example, over the time period of 2009 through
7 2013 this cost category had costs ranging between \$3,164,000 and \$3,352,000. Moreover, using
8 the 2009-2013 time frame is appropriate because in 2009 the CAISO implemented the New
9 Market. As noted above, the New Market involved a renovation of the electricity markets
10 administered by the CAISO and implementation of a new network model that integrates both the
11 supply and demand resources operations of the CAISO controlled grid, to allow for more
12 efficient dispatch of supply resources to meet demand. Although using a four-year average
13 would result in a slightly lower value, SDG&E opted to use the longer term for averaging this
14 cost category in order to be consistent with the other forecast methodologies chosen for the other
15 cost categories in my testimony. Specifically, using a five-year average forecast methodology,
16 the underlying forecast is labor of \$2,234,000 and non-labor of \$1,027,000, with 25.9 FTEs and
17 is forecasted to rise to \$2,306,000 for labor and \$1,034,000 for non-labor, with 26.8 FTEs in
18 2016.

19 **3. Cost Drivers**

20 The primary cost driver is the 1.0 FTE that will be added mainly due to increased
21 settlement and contract administration activity associated with two new conventional resources
22 and approximately 25 renewable generation resources coming on-line between 2014 and 2016.
23 In addition, 0.1 FTEs will be subtracted from the average due to a reduction in Cap and Trade
24 activities for electric commodity customers. In 2015, Cap and Trade activities for core gas will
25 begin. However, additional FTEs are not forecasted to be needed because existing personnel
26 working on electric Cap and Trade activities will, beginning in 2015, work on both core gas and
27 electric and will allocate their time accordingly between the two functions. Cost recovery of the
28 0.1 FTE of core gas labor will be addressed in R. 14-03-003.

1 **III. CONCLUSION**

2 The E&FP functions that SDG&E will undertake in 2016, as the above testimony
3 demonstrates, will expand beyond the 2013 workload, thus requiring the requested increases.
4 SDG&E requests that the Commission adopt its proposal for \$8.8 million of O&M expenses for
5 E&FP in order to allow SDG&E to meet all of its electric commodity procurement
6 responsibilities through the 2016-2018 rate case cycle.

7 This concludes my prepared direct testimony.

1 **IV. WITNESS QUALIFICATIONS**

2 My name is Sue E. Garcia. My business address is 8315 Century Park Court, San Diego,
3 CA 92123. I am employed by SDG&E as the Manager - Settlements and Systems in the E&FP
4 Department. My present duties include the settlements of all electric and fuel commodity
5 transactions as well as the management and administration of existing agreements, including
6 renewable agreements, tolling agreements, and bilateral agreements. I have been employed by
7 SDG&E since 1995. I have been in my current position since December 2011.

8 I received a B.S. in Business Administration, with an Accounting emphasis, from San
9 Diego State University. I am a Certified Public Accountant and a Certified Internal Auditor.

10 I have previously testified before the Commission.
11

APPENDIX A – GLOSSARY OF ACRONYMS

CAISO: California Independent System Operator
E&FP: Electric & Fuel Procurement
EP&T: Electric Procurement & Trading
ER: Energy Risk
ERRA: Energy Resource Recovery Account
ES&D: Energy Supply and Dispatch
FERC: Federal Energy Regulatory Commission
FTEs: full time equivalents
GHG: greenhouse gas
LTPP: Long Term Procurement Plan
M&PA: Market & Policy Analysis
MW: Megawatt
O&PD: Origination and Portfolio Design
PPAs: Power Purchase Agreements
PRG: Procurement Review Group
RFOs: Request for Offers
RPS: Renewables Portfolio Standard
S&S: Settlements and Systems
SOX: Sarbanes-Oxley

ATTACHMENT 1

Contract Summary	TOTAL PPA'S			OPERATING PPA'S		
	Number	MW	MWH	Number	MW	MWH
Energy Storage	2	60.0	0	1	40.0	0
QF/CHP	11	248.9	859,699	10	244.3	859,699
Renewable	56	2,629.8	6,897,885	50	2,575.6	6,897,885
Tolling	6	1,598.7	2,751,330	4	790.7	2,751,330
Use Limited Dispatch	1	25.0	0	1	25.0	0
WSPP	2	243.0	578,000	2	243.0	578,000
Total	78	4,805.5	11,086,913	68	3,918.7	11,086,913

Achieved COD Technology Type *	TOTAL PPA'S			OPERATING PPA'S		
	Number	MW	MWH	Number	MW	MWH
Bio-Mass	1	24.0	0	0	0.0	0
Conduit-Hydro	6	13.3	10,650	5	8.3	10,650
Digester Gas/Conduit Hydro	1	4.6	19,157	1	4.6	19,157
Battery Storage	1	20.0	0	0	0.0	0
Landfill Gas	10	25.6	151,987	10	25.6	151,987
Market	2	243.0	578,000	2	243.0	578,000
Natural Gas	16	1,870.8	3,610,346	13	1,058.2	3,610,346
Pumped-Storage Hydro	1	40.0	0	1	40.0	0
Solar PV	25	1,331.1	3,447,522	21	1,305.9	3,447,522
Wind	15	1,233.0	3,269,252	15	1,233.0	3,269,252
Total	78	4,805.5	11,086,913	68	3,918.7	11,086,913

Year-End Status	Number	MW	MWH
Operational	67	3,917.1	11,086,913
Pre-Operational	5	856.6	0
Expired	1	1.5	0
Terminated	5	30.2	0
Total	78	4,805.5	11,086,913

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)

ERRA Record Period: 2016 CONTRACT NAME		CONTRACT TERMS													
Contract Class	Contracts Administered Project Names	Technology	Product	Expected Annual Deliveries (kWh)	2016 Purchased MWh	Contract MW	Execution Date	Year Executed	Contract COD	Confidential?	Contract End Date	Delivery Period (Years)	Contract Status @ year end	CPUC Authorization	
COMMERCIAL OPERATIONS															
-ENERGY STORAGE															
Energy Storage	Olivenhain/Hodges Pumped Storage Facility	Pumped-Storage Hydro	Dispatchable	N/A	0	40.00	01/29/2004	2004	08/27/2012	NO	08/26/2037	25	In Effect	CPUC Decision 04-08-028	
-QUALIFYING FACILITIES/COMBINED HEAT AND POWER															
-CONVENTIONAL-															
CHP	Goal Line	Natural Gas	Dispatchable	N/A	23,018	49.90	07/02/2013	2013	02/01/2015	YES	02/14/2025	10	In Effect	CPUC Resolution E-4698 (Rev.1)	
QF	Grossmont Hospital	Natural Gas	As-Available	N/A	0.5	1.54	08/04/1984	1984	08/06/1984	NO	05/08/2016	Evergreen	Expired	CPUC Decision 83-01-103	
CHP	Yuma Cogeneration Associates	Natural Gas	Dispatchable	N/A	11,205	54.93	08/19/2014	2014	12/01/2015	YES	05/27/2024	8	In Effect	CPUC Resolution E-4729	
-CONDUIT HYDRO-															
QF	Badger Filtration Plant (Santa Fe Irrigation District)	Conduit-Hydro	As-Available	2,121,000	525	1.49	01/28/1985	1985	07/01/1987	NO	06/30/2017	30	In Effect	CPUC D.82-01-103	
QF	San Francisco Peak Hydro (City of Oceanside)	Conduit-Hydro	As-Available	899,000	158	0.35	08/29/1985	1985	12/15/1985	NO	Evergreen	Evergreen	In Effect	CPUC D.82-01-103	
-CONVENTIONAL-															
QF	CP Kelco	Natural Gas	As-Available	N/A	12,144	26.65	11/01/2015	2015	06/01/2017	YES	05/31/2025	7	In Effect	CPUC Resolution E-4642.	
QF	Naval Station Cogeneration	Natural Gas	Firm	N/A	353,422	49.90	03/29/1985	1985	12/01/1989	NO	11/30/2019	30	In Effect	CPUC Decision D.83-09-054	
QF	North Island Cogeneration	Natural Gas	Firm	N/A	292,479	34.00	03/29/1985	1985	12/01/1989	NO	11/30/2019	30	In Effect	CPUC Decision D.83-09-054	
QF	NTC/MCRD Cogeneration	Natural Gas	Firm	N/A	150,314	23.00	04/16/1985	1985	12/01/1989	NO	11/30/2019	30	In Effect	CPUC Decision D.83-09-054	
QF	NTC/MCRD Steam Turbine	Natural Gas	As-Available	N/A	16,434	2.58	07/31/1984	1984	07/31/1984	NO	Evergreen	Evergreen	In Effect	CPUC Decision 83-01-103	
-RENEWABLE ENERGY															
-CONDUIT HYDRO-															
Renewable	Bear Valley Hydro	Conduit-Hydro	As-Available	1,971,000	806	1.50	04/13/1994	1994	04/13/1994	NO	Evergreen	Evergreen	In Effect	CPUC D.82-01-103	
Renewable	Olivenhain Municipal Water Dist	Conduit-Hydro	As-Available	1,150,000	210	0.45	07/23/2013	2013	10/01/2013	NO	09/30/2033	20	In Effect	FIT - CPUC D.07-07-027 & Resolution E-4137	
Renewable	SDCWA - Rancho Penasquitos	Conduit-Hydro	As-Available	20,000,000	8,951	4.50	11/20/2003	2003	01/23/2007	NO	01/22/2017	10	In Effect	CPUC Resolution E-3868	
-HYBRID-															
Renewable	City of San Diego - Point Loma (Hybrid)	Digester Gas/Conduit Hydro	As-Available	24,103,000	19,157	4.641	12/09/2002	2002	12/09/2002	NO	12/31/2017	10 yrs + 5 one-yr extension (this is the last year to extend)	In Effect	CPUC Resolution E-4081	
-LANDFILL GAS-															
Renewable	MM Prima Deshecha	Landfill Gas	As-Available	46,894,000	45,175	6.10	09/06/2005	2005	10/01/2007	NO	09/30/2022	15	In Effect	CPUC Resolution E-3965	
Renewable	MM San Diego, LLC - Miramar	Landfill Gas	As-Available	28,400,000	30,474	4.50	11/09/2012	2013	05/20/2013	NO	05/19/2023	10	In Effect	CPUC Resolution E-4414	
Renewable	Otay Landfill 1	Landfill Gas	As-Available	13,140,000	7,365	1.50	05/01/2009	2009	05/01/2009	NO	04/30/2019	10	In Effect	FIT - CPUC Resolution E-4137	
Renewable	Otay Landfill 2	Landfill Gas	As-Available	13,140,000	8,360	1.50	02/22/2011	2011	07/01/2011	NO	06/30/2031	20	In Effect	FIT - CPUC Resolution E-4137	
Renewable	Otay Landfill 3	Landfill Gas	As-Available	24,000,000	7,854	3.75	08/31/2005	2005	03/08/2007	NO	03/07/2017	10	In Effect	CPUC Resolution E-3965	
Renewable	Otay Landfill V	Landfill Gas	As-Available	12,483,000	10,298	1.50	12/27/2011	2011	06/21/2013	NO	06/20/2033	20	In Effect	FIT - CPUC D.07-07-027 and D.08-09-033	

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ERRA Record Period: 2016 CONTRACT NAME		CONTRACT TERMS												
Contract Class	Contracts Administered Project Names	Technology	Product	Expected Annual Deliveries (kWh)	2016 Purchased MWh	Contract MW	Execution Date	Year Executed	Contract COD	Confidential?	Contract End Date	Delivery Period (Years)	Contract Status @ year end	CPUC Authorization
Renewable	Otay Landfill VI	Landfill Gas	As-Available	12,483,000	8,967	1.50	12/27/2011	2011	06/21/2013	NO	6/20/2033	20	In Effect	FIT - CPUC D.07-07-027 and D.08-09-033
Renewable	San Marcos Landfill	Landfill Gas	As-Available	11,784,000	12,788	1.50	11/20/2009	2009	05/18/2011	NO	05/17/2031	20	In Effect	FIT - CPUC D.07-07-027 & Resolution E-4137
Renewable	Sycamore Landfill 1	Landfill Gas	As-Available	11,784,000	5,798	1.50	11/20/2009	2009	05/16/2011	NO	05/15/2031	20	In Effect	FIT - CPUC D.07-07-027 & Resolution E-4137
Renewable	Sycamore Landfill 2	Landfill Gas	As-Available	13,403,000	14,908	2.25	03/07/2014	2014	03/30/2014	NO	03/29/2024	10	In Effect	FIT-ReMat CPUC D.13-05-034
SOLAR PV-														
Renewable	Arlington Valley Solar	Solar PV	As-Available	274,058,200	364,397	127.00	06/03/2011	2011	11/05/2013	NO	11/04/2038	25	In Effect	CPUC Resolution E-4425
Renewable	Calipatria	Solar PV	As-Available	48,427,000	47,438	19.90	12/13/2012	2012	02/11/2016	YES	02/10/2036	20	In Effect	CPUC Resolution E-4598
Renewable	Campo Verde Solar (Southern Company)	Solar PV	As-Available	300,041,000	362,328	139.00	10/31/2006	2006	10/25/2013	NO	10/24/2033	20	In Effect	CPUC Resolution E-4073
Renewable	Cascade SunEdison (RAM 2)	Solar PV	As-Available	55,265,000	54,660	18.50	10/19/2012	2012	12/14/2013	NO	12/13/2033	20	In Effect	RAM - CPUC Resolution E-4414
Renewable	Catalina Solar	Solar PV	As-Available	220,426,000	269,372	109.44	06/03/2011	2011	11/27/2013	NO	11/26/2038	25	In Effect	CPUC Resolution E-4462
Renewable	Centinela Solar Energy 1	Solar PV	As-Available	262,453,000	357,241	125.00	05/10/2010	2010	08/01/2014	YES	07/31/2034	20	In Effect	CPUC Resolution E-4388
Renewable	Centinela Solar Energy 2	Solar PV	As-Available	94,483,000	127,440	45.00	07/29/2010	2010	08/15/2014	YES	08/14/2034	20	In Effect	CPUC Resolution E-4388
Renewable	CSOLAR IV South (Tenaska)	Solar PV	As-Available	273,312,000	292,750	130.00	11/10/2010	2010	11/01/2013	NO	10/31/2038	25	In Effect	CPUC Resolution E-4408
Renewable	CSOLAR IV West (Tenaska)	Solar PV	As-Available	354,780,000	384,031	150.00	03/08/2011	2011	04/12/2016	YES	04/11/2041	25	In Effect	CPUC Resolution E-4446
Renewable	Desert Green Solar Farm LLC	Solar PV	As-Available	15,730,000	14,189	6.30	03/31/2011	2011	11/26/2014	YES	11/25/2039	25	In Effect	CPUC Resolution E-4439
Renewable	Imperial Valley Solar	Solar PV	As-Available	469,900,000	535,403	200.00	02/03/2012	2012	10/10/2013	NO	10/09/2038	25	In Effect	CPUC Resolution E-3965
Renewable	Maricopa West Solar	Solar PV	As-Available	57,550,000	52,566	20.00	04/16/2013	2013	12/15/2015	YES	12/14/2030	15	In Effect	Advice Letter 2482-E (RAM)

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ERRA Record Period: 2016 CONTRACT NAME		CONTRACT TERMS												
Contract Class	Contracts Administered Project Names	Technology	Product	Expected Annual Deliveries (kWh)	2016 Purchased MWh	Contract MW	Execution Date	Year Executed	Contract COD	Confidential?	Contract End Date	Delivery Period (Years)	Contract Status @ year end	CPUC Authorization
Renewable	NLP Granger Solar, LLC	Solar PV	As-Available	8,456,000	1,978	3.00	04/03/2014	2014	09/17/2016	YES	09/16/2036	20	In Effect	FIT-ReMat CPUC D.13-05-034
Renewable	NLP Valley Center Solar, LLC	Solar PV	As-Available	6,349,304	264	2.30	07/20/2015	2015	12/07/2016	YES	12/06/2036	20	In Effect	FIT-ReMat CPUC D.13-05-034
Renewable	NRG Solar Borrego I (NRG)	Solar PV	As-Available	59,400,000	71,084	26.00	01/25/2011	2011	02/28/2013	NO	02/27/2038	25	In Effect	CPUC Resolution E-4407
Renewable	SG2 Imperial Valley LLC	Solar PV	As-Available	362,621,880	418,390	150.00	06/24/2011	2011	11/17/2014	YES	11/18/2039	25	In Effect	CPUC Resolution E-4437
Renewable	Sol Orchard SD 20 (Ramona 1)	Solar PV	As-Available	3,993,000	4,857	2.00	04/11/2011	2011	12/18/2013	NO	12/17/2038	25	In Effect	CPUC Resolution E-4466
Renewable	Sol Orchard SD 21 (Ramona 2)	Solar PV	As-Available	9,982,000	11,767	5.00	04/11/2011	2011	12/18/2013	NO	12/17/2038	25	In Effect	CPUC Resolution E-4466
Renewable	Sol Orchard SD 22 (Valley Center 1)	Solar PV	As-Available	4,923,000	6,169	2.50	04/11/2011	2011	12/18/2013	NO	12/17/2038	25	In Effect	CPUC Resolution E-4466
Renewable	Sol Orchard SD 23 (Valley Center 2)	Solar PV	As-Available	9,778,000	11,571	5.00	04/11/2011	2011	12/18/2013	NO	12/17/2038	25	In Effect	CPUC Resolution E-4466
Renewable	TallBear Seville, LLC	Solar PV	As-Available	54,874,000	59,628	20.00	12/13/2012	2012	12/30/2015	YES	12/29/2035	20	In Effect	CPUC Resolution E-4598
		-WIND-												
Renewable	Coram	Wind	As-Available	26,940,000	28,137	7.50	07/12/2010	2010	02/01/2011	NO	01/31/2026	15	In Effect	CPUC Resolution E-4372
Renewable	Energia Sierra Juarez	Wind	As-Available	381,270,000	423,308	155.10	04/06/2011	2011	06/05/2015	YES	06/04/2035	20	In Effect	CPUC Resolution E-4467
Renewable	FPL Energy Green Power (WTE)	Wind	As-Available	21,600,000	24,194	16.50	10/31/2002	2002	06/28/2004	NO	12/31/2018	15	In Effect	CPUC Resolution E-3803 & E 3867
Renewable	Kumeyaay	Wind	As-Available	167,900,000	134,060	50.00	05/31/2004	2004	03/21/2006	NO	12/31/2025	20	In Effect	CPUC Resolution E-3890
Renewable	Manzana Wind	Wind	As-Available	259,296,000	283,511	100.00	02/14/2012	2012	12/31/2012	NO	12/31/2032	20	In Effect	CPUC Resolution E-4524
Renewable	Mountain Wind	Wind	As-Available	76,609,000	67,385	22.80	10/31/2002	2002	12/16/2003	NO	12/15/2018	15	In Effect	CPUC Resolutions E-3803 & 3867
Renewable	Naturener Glacier 1 Wind Energy	Wind	RECs	325,000,000	287,440	106.50	05/16/2008	2008	12/29/2008	NO	12/28/2023	15	In Effect	CPUC Resolution E-4192
Renewable	Naturener Glacier 2 Wind Energy	Wind	RECs	310,000,000	293,237	103.50	05/23/2008	2008	10/16/2009	NO	10/15/2024	15	In Effect	CPUC Resolution E-4192
Renewable	Naturener Rim Rock Wind Energy	Wind	RECs	678,812,000	659,499	189.00	05/05/2009	2009	10/15/2013	NO	10/14/2033	20	In Effect	CPUC Decision 11-07-002
Renewable	Oak Creek Wind Power LLC	Wind	As-Available	6,800,000	6,221	3.50	04/16/2013	2013	01/26/2014	NO	01/25/2024	10	In Effect	CPUC Energy Division 07-02-2013 Letter Approving AL-2482-E
Renewable	Oasis Power Partners	Wind	As-Available	173,000,000	186,056	60.00	10/30/2002	2002	12/25/2004	NO	12/24/2019	15	In Effect	CPUC Resolution E-3803 & E 3883
Renewable	Ocotillo Express	Wind	As-Available	789,276,355	529,478	265.29	02/01/2011	2011	07/30/2013	NO	07/29/2033	20	In Effect	CPUC Resolution E-4458
Renewable	Pacific Wind	Wind	As-Available	392,448,000	328,828	140.00	10/12/2005	2005	08/16/2012	NO	08/15/2032	20	In Effect	CPUC Resolution E-4358
Renewable	Phoenix Wind	Wind	As-Available	6,445,000	0	2.10	10/31/2002	2002	12/16/2003	NO	12/15/2018	15	In Effect	CPUC Resolutions E-3803 & 3867
Renewable	San Geronio West II	Wind	As-Available	32,377,000	17,899	11.20	04/16/2013	2013	01/20/2015	YES	01/19/2025	10	In Effect	Advice Letter 2482-E (RAM)
		-TOLLING PROJECTS												
Tolling	El Cajon Energy Center, LLC	Natural Gas	Dispatchable	N/A	10,339	46.60	05/10/2010	2010	06/16/2010	NO	12/31/2035	25	In Effect	CPUC Decision D.07-09-10 & D. 09-12-026
Tolling	Escondido Energy Center, LLC	Natural Gas	Dispatchable	N/A	31,847	48.00	02/25/2011	2011	01/25/2014	NO	12/31/2039	25	In Effect	CPUC Decision 13-03-029
Tolling	Orange Grove Energy, LLC	Natural Gas	Dispatchable	N/A	42,128	98.10	07/14/2009	2009	06/17/2010	NO	06/16/2035	25	In Effect	CPUC Decisions 07-09-10 & 09-03-033
Tolling	Otay Mesa Energy Center, LLC.	Natural Gas	Dispatchable	N/A	2,667,015	598.00	05/01/2007	2007	10/03/2009	NO	10/02/2019	10	In Effect	CPUC Decision D. 04-06-011
		-USE LIMITED DISPATCH												

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ERRA Record Period: 2016 CONTRACT NAME		CONTRACT TERMS													
Contract Class	Contracts Administered Project Names	Technology	Product	Expected Annual Deliveries (kWh)	2016 Purchased MWh	Contract MW	Execution Date	Year Executed	Contract COD	Confidential?	Contract End Date	Delivery Period (Years)	Contract Status @ year end	CPUC Authorization	
Use Limited Dispatch	EnerNoc	Natural Gas	Dispatchable	N/A	0.00	25.00	02/21/2005	2005	12/31/2006	NO	12/30/2016	10	In Effect	CPUC Resolution E-3926	
-FIRM ENERGY															
WSPP	BP Energy	Market	Firm	N/A	150,144	68.00	05/21/2015	2015	07/01/2015	YES	09/30/2019	4.3	In Effect	CPUC Advice Letter 2725-E Notice of Approval on May 5, 2015 by Energy Division	
WSPP	Morgan Stanley Capital Group (NOB) (net of Sales)	Market	As-Available	N/A	427,856	175.00	10/26/2011	2011	05/01/2013	NO	10/31/2022	9	In Effect	CPUC D.11-07-002	
PRE-COMMERCIAL OPERATION															
-RENEWABLE ENERGY															
BIO-MASS-															
Renewable	HL Power Company, LP	Bio-Mass	As-Available	175,000,000	N/A	24.00	11/14/2016	2016					Pre-COD	Approval of SDG&E AL 3002-E - BioEnergy Renewable Auction Mechanism Results and Request for Approval of a Standard BioRAM Power Purchase Agreement with HL Power Company LP for the BioRAM Program Pursuant to Resolution E-4770, effective 12/16/16	
-SOLAR PV-															
Renewable	Midway (97W18ME LLC)	Solar PV	As-Available	61,072,000	N/A	20.00	12/11/2015	2015					Pre-COD	CPUC Resolution E-4783	
-QUALIFYING FACILITIES/COMBINED HEAT AND POWER															
CHP	Grossmont	Natural Gas	As-Available	N/A	0	4.60	05/01/2016	2016					Pre-COD	CPUC D.09-12-042 (as modified by CPUC D.10-04-055, D.10-12-055 and D.11-04-033)	
-COMBINED HEAT & POWER-															
-TOLLING PROJECTS															
Tolling	Carlsbad Energy Center LLC	Natural Gas	Dispatchable	N/A	N/A	500.00	06/01/2015	2015					Pre-COD	CPUC D.15-05-051 & including the Court of Appeal of the State of California First Appellate District Division Three	
Tolling	Pio Pico Energy Center, LLC	Natural Gas	Dispatchable	N/A	N/A	308.01	02/02/2011	2011					Pre-COD	CPUC Decision 14-02-016	
TERMINATED PROJECTS (non-COD)															
-ENERGY STORAGE															

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ERRA Record Period: 2016 CONTRACT NAME		CONTRACT TERMS												
Contract Class	Contracts Administered Project Names	Technology	Product	Expected Annual Deliveries (kWh)	2016 Purchased MWh	Contract MW	Execution Date	Year Executed	Contract COD	Confidential?	Contract End Date	Delivery Period (Years)	Contract Status @ year end	CPUC Authorization
Energy Storage	Hecate Energy Bandroft	Battery Storage	As-Available	N/A	N/A	20.00	03/23/2016	2016					Terminated	CPUC D.14-03-004
-RENEWABLE ENERGY		-CONDUIT HYDRO												
Renewable	Rugraw IV	Conduit-Hydro	As-Available	24,778	N/A	5.00	10/23/2013	2013					Terminated	CPUC Energy Division letter dated December 13, 2012 related to AL 2418-E and 2418-A.
		-SOLAR PV												
Renewable	Pristine Sun Fund CA, LLC - 2226 Marsaglia	Solar PV	As-Available	2,168	N/A	0.80	12/22/2015	2015					Terminated	FIT-ReMat CPUC D.13-05-034
Renewable	Pristine Sun Fund CA, LLC - 2273 Saltus	Solar PV	As-Available	4,056	N/A	1.50	12/22/2015	2015					Terminated	FIT-ReMat CPUC D.13-05-034
Renewable	SEPV Boulevard	Solar PV	As-Available	9,274,913	N/A	2.90	06/16/2014	2014					Terminated	FIT-ReMat CPUC D.13-05-034

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Contract Class	Contracts Administered Project Names	Contract Price	Total Paid	Is this a New PPA executed during the ERRA record period?	Detail Summaries of important provisions	Applicable references to CPUC decision that directed SDG&E to execute contract	If outside ERRA, provide contract status and cite authority of request for approval
COMMERCIAL OPERATIONS							
-ENERGY STORAGE							
Energy Storage	Olivenhain/Hodges Pumped Storage Facility	(Fixed Cap \$65/kW-yr + Var Cap \$5/kW-yr) + \$2.0/MWh (VOM) esc by CPI	\$3,000,391	NO	N/A	N/A	N/A
-QUALIFYING FACILITIES/COMBINED HT							
CHP	Goal Line		12,031,755.73	NO	N/A	N/A	N/A
QF	Grossmont Hospital	Short run avoided cost rate for energy and as-available capacity applicable under the Applicable QF 20MW.	\$18	NO	N/A	N/A	N/A
CHP	Yuma Cogeneration Associates		10,492,357.49	NO	N/A	N/A	N/A
QF	Badger Filtration Plant (Santa Fe Irrigation District)	SRAC + As-Delivered Capacity Prices	\$33,509	NO	N/A	N/A	N/A
QF	San Francisco Peak Hydro (City of Oceanside)	SRAC + As-Available Capacity Prices	\$4,924	NO	N/A	N/A	N/A
QF	CP Kelco		\$423,804	NO	N/A	N/A	N/A
QF	Naval Station Cogeneration	SRAC + As-Available Capacity Prices	\$19,494,086	NO	N/A	N/A	N/A
QF	North Island Cogeneration	SRAC + As-Available Capacity Prices	\$15,102,305	NO	N/A	N/A	N/A
QF	NTC/MCRD Cogeneration	SRAC + As-Available Capacity Prices	\$8,580,417	NO	N/A	N/A	N/A
QF	NTC/MCRD Steam Turbine	SRAC + As-Available Capacity Prices	\$622,309	NO	N/A	N/A	N/A
-RENEWABLE ENERGY							
Renewable	Bear Valley Hydro	SRAC + As-Available Capacity Prices	\$33,653	NO	N/A	N/A	N/A
Renewable	Olivenhain Municipal Water Dist	\$93.75/MWh adjusted by TOD Factors	\$32,234	NO	N/A	N/A	N/A
Renewable	SDCWA - Rancho Penasquitos	\$53.70/MWh	\$469,691	NO	N/A	N/A	N/A
Renewable	City of San Diego - Point Loma (Hybrid)	1st Amendment \$44/MWh from start of delivery - 1/1/08 & from 1/1/08 until end of delivery 12/31/17 price is \$75.60 per MWh.	\$1,455,174	NO	N/A	N/A	N/A
Renewable	MM Prima Deshecha	\$48.50/MWh in 2007 and escalates to \$68.53/MWh until end of term	\$2,695,566	NO	N/A	N/A	N/A
Renewable	MM San Diego, LLC - Miramar	\$87/MWh adjusted by TOD Factors	\$2,682,501	NO	N/A	N/A	N/A
Renewable	Otay Landfill 1	\$100.43/MWh adjusted by TOD Factors	\$726,563	NO	N/A	N/A	N/A
Renewable	Otay Landfill 2	\$100.98/MWh adjusted by TOD Factors	\$846,404	NO	N/A	N/A	N/A
Renewable	Otay Landfill 3	\$57/MWh	\$488,686	NO	N/A	N/A	N/A
Renewable	Otay Landfill V	\$108.98/MWh adjusted by TOD Factors	\$1,139,307	NO	N/A	N/A	N/A

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Contract Class	Contracts Administered Project Names	Contract Price	Total Paid	Is this a New PPA executed during the ERRA record period?	Detail Summaries of important provisions	Applicable references to CPUC decision that directed SDG&E to execute contract	If outside ERRA, provide contract status and cite authority of request for approval
Renewable	Otay Landfill VI	\$108.98/MWh adjusted by TOD Factors	\$1,010,672	NO	N/A	N/A	N/A
Renewable	San Marcos Landfill	\$117.30/MWh adjusted by TOD Factors	\$1,500,082	NO	N/A	N/A	N/A
Renewable	Sycamore Landfill 1	\$117.30/MWh adjusted by TOD Factors	\$681,783	NO	N/A	N/A	N/A
Renewable	Sycamore Landfill 2	\$89.23/MWh adjusted by TOD Factors.	\$1,319,347	NO	N/A	N/A	N/A
Renewable	Arlington Valley Solar	\$108/MWh adjusted by TOD Factors Limited Economic Curtailment Provisions	\$44,445,979	NO	N/A	N/A	N/A
Renewable	Calipatria		\$3,541,070	NO	N/A	N/A	N/A
Renewable	Campo Verde Solar (Southern Company)	\$113/MWh in 2013 escalating to \$136/MWh in 2033. adjusted by TOD Factors.	\$42,148,755	NO	N/A	N/A	N/A
Renewable	Cascade SunEdison (RAM 2)	\$64.81/MWh in 2013 escalating to \$103.61/MWh in 2033 adjusted by TOD Factors.	\$4,106,601	NO	N/A	N/A	N/A
Renewable	Catalina Solar	\$113/MWh in 2013 escalating to \$142/MWh in 2037. adjusted by TOD Factors.	\$34,954,456	NO	N/A	N/A	N/A
Renewable	Centinela Solar Energy 1		\$52,503,164	NO	N/A	N/A	N/A
Renewable	Centinela Solar Energy 2		\$18,113,516	NO	N/A	N/A	N/A
Renewable	CSOLAR IV South (Tenaska)	\$126/MWh adjusted by TOD Factors Limited Economic Curtailment Provisions	\$43,930,768	NO	N/A	N/A	N/A
Renewable	CSOLAR IV West (Tenaska)		\$42,608,095	NO	N/A	N/A	N/A
Renewable	Desert Green Solar Farm LLC		\$1,978,541	NO	N/A	N/A	N/A
Renewable	Imperial Valley Solar	\$98.59/MWh adjusted by TOD Factors Limited Economic Curtailment Provisions	\$67,077,350	NO	N/A	N/A	N/A
Renewable	Maricopa West Solar		\$3,403,504	NO	N/A	N/A	N/A

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ERRA Record Period: 2016 CONTRACT NAME		PAYMENT TERMS		NEW CONTRACTS			
Contract Class	Contracts Administered Project Names	Contract Price	Total Paid	Is this a New PPA executed during the ERRR record period?	Detail Summaries of important provisions	Applicable references to CPUC decision that directed SDG&E to execute contract	If outside ERRR, provide contract status and cite authority of request for approval
Renewable	NLP Granger Solar, LLC		\$190,360	NO	N/A	N/A	N/A
Renewable	NLP Valley Center Solar, LLC		\$6,450	NO	N/A	N/A	N/A
Renewable	NRG Solar Borrego I (NRG)	\$130.00/MWh adjusted by TOD Factors	\$10,314,084	NO	N/A	N/A	N/A
Renewable	SG2 Imperial Valley LLC		\$38,539,054	NO	N/A	N/A	N/A
Renewable	Sol Orchard SD 20 (Ramona 1)	\$111.86/MWh in Year 1 escalating by 1% to \$142.03/MWh in Year 25 adjusted by TOD Factors	\$623,924	NO	N/A	N/A	N/A
Renewable	Sol Orchard SD 21 (Ramona 2)	\$111.86/MWh in Year 1 escalating by 1% to \$142.03/MWh in Year 25 adjusted by TOD Factors	\$1,517,339	NO	N/A	N/A	N/A
Renewable	Sol Orchard SD 22 (Valley Center 1)	\$111.86/MWh in Year 1 escalating by 1% to \$142.03/MWh in Year 25 adjusted by TOD Factors	\$796,223	NO	N/A	N/A	N/A
Renewable	Sol Orchard SD 23 (Valley Center 2)	\$111.86/MWh in Year 1 escalating by 1% to \$142.03/MWh in Year 25 adjusted by TOD Factors	\$1,497,131	NO	N/A	N/A	N/A
Renewable	TallBear Seville, LLC		\$5,448,852	NO	N/A	N/A	N/A
Renewable	Coram	\$95/MWh in Year 1 and escalates to \$109/MWh in year 15 adjusted by TOD Factors.	\$2,759,013	NO	N/A	N/A	N/A
Renewable	Energia Sierra Juarez		\$44,282,091	NO	N/A	N/A	N/A
Renewable	FPL Energy Green Power (WTE)	\$52.6/MWh	\$1,446,452	NO	N/A	N/A	N/A
Renewable	Kumeyaay	\$49/MWh in Year 1 and escalating to \$51.75/MWh in Years 5-20.	\$7,306,957	NO	N/A	N/A	N/A
Renewable	Manzana Wind	\$95/MWh Limited Economic Curtailment Provisions	\$20,180,686	NO	N/A	N/A	N/A
Renewable	Mountain Wind	\$49.15/MWh	\$3,492,291	NO	N/A	N/A	N/A
Renewable	Naturener Glacier 1 Wind Energy	Purchased price: \$89/MWh REC price: \$21/MWh	\$5,880,924	NO	N/A	N/A	N/A
Renewable	Naturener Glacier 2 Wind Energy	Purchased price: \$98/MWh REC price: \$30/MWh	\$8,624,250	NO	N/A	N/A	N/A
Renewable	Naturener Rim Rock Wind Energy	Purchased price: \$105.99/MWh REC price: \$43.99/MWh	(\$9,876,333)	NO	N/A	N/A	N/A
Renewable	Oak Creek Wind Power LLC	\$67/MWh adjusted by TOD Factors	\$409,748	NO	N/A	N/A	N/A
Renewable	Oasis Power Partners	\$49/MWh	\$9,981,228	NO	N/A	N/A	N/A
Renewable	Ocotillo Express	\$105.00/MWh Limited Economic Curtailment Provisions	\$54,972,377	NO	N/A	N/A	N/A
Renewable	Pacific Wind	\$115.47/MWh	\$37,945,479	NO	N/A	N/A	N/A
Renewable	Phoenix Wind	\$49.15/MWh	(\$6,707)	NO	N/A	N/A	N/A
Renewable	San Geronio West II		\$1,266,839	NO	N/A	N/A	N/A
-TOLLING PROJECTS							
Tolling	El Cajon Energy Center, LLC	Fixed Capacity: \$149.4/kW-yr; VOM: \$7.8/MWh esc by CPI)	\$7,698,607	NO	N/A	N/A	N/A
Tolling	Escondido Energy Center, LLC	Fixed Capacity: \$154.66/kW-yr; VOM: \$7.75/MWh esc by CPI)	\$8,910,223	NO	N/A	N/A	N/A
Tolling	Orange Grove Energy, LLC	Fixed Capacity: \$173.64/kW-yr VOM: \$5.01/MWh esc by CPI	\$18,291,146	NO	N/A	N/A	N/A
Tolling	Otay Mesa Energy Center, LLC.	Fixed Capacity: \$117/kW-yr VOM: \$2.69/MWh (Note: VOM \$2 esc by 2.5% annually Year 1 - 10	\$139,996,755	NO	N/A	N/A	N/A
-USE LIMITED DISPATCH							

Contains confidential/privileged pursuant Note: "N/A" can mean "Not Applicable" or "None or "None Available"

ERRA Record Period: 2016 CONTRACT NAME		PAYMENT TERMS		NEW CONTRACTS			
Contract Class	Contracts Administered Project Names	Contract Price	Total Paid	Is this a New PPA executed during the ERRR record period?	Detail Summaries of important provisions	Applicable references to CPUC decision that directed SDG&E to execute contract	If outside ERRR, provide contract status and cite authority of request for approval
Use Limited Dispatch	EnerNoc	\$77/kW-yr + calculated energy price	\$1,759,609	NO	N/A	N/A	N/A
-FIRM ENERGY							
WSPP	BP Energy		\$15,014,400	NO	N/A	N/A	N/A
WSPP	Morgan Stanley Capital Group (NOB) (net of Sales)	\$52/MWh 2013-2016 & \$71/MWh 2016-2022 (May-Oct)	\$36,695,469	NO	N/A	N/A	N/A
PRE-COMMERCIAL OPERATING							
-RENEWABLE ENERGY							
Renewable	HL Power Company, LP		N/A				
Renewable	Midway (97W18ME LLC)		N/A	NO	N/A	N/A	N/A
-QUALIFYING FACILITIES/COMBINED HEATING AND POWER							
CHP	Grossmont		N/A				
-TOLLING PROJECTS							
Tolling	Carlsbad Energy Center LLC		N/A	NO	N/A	N/A	N/A
Tolling	Pio Pico Energy Center, LLC			NO	N/A	N/A	N/A
TERMINATED PROJECTS (n)							
-ENERGY STORAGE							

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ERRR Record Period: 2016 CONTRACT NAME		PAYMENT TERMS		NEW CONTRACTS			
Contract Class	Contracts Administered Project Names	Contract Price	Total Paid	Is this a New PPA executed during the ERRR record period?	Detail Summaries of important provisions	Applicable references to CPUC decision that directed SDG&E to execute contract	If outside ERRR, provide contract status and cite authority of request for approval
Energy Storage	Hecate Energy Bandroft		N/A				
-RENEWABLE ENERGY							
Renewable	Rugraw IV		N/A	NO	N/A	N/A	N/A
Renewable	Pristine Sun Fund CA, LLC - 2226 Marsaglia		N/A	NO	N/A	N/A	N/A
Renewable	Pristine Sun Fund CA, LLC - 2273 Saltus		N/A	NO	N/A	N/A	N/A
Renewable	SEPV Boulevard		N/A	NO	N/A	N/A	N/A

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ERRA Record Period: 2016 CONTRACT NAME		CONTRACT MODIFICATIONS, LETTER AGREEMENTS AND AMENDMENTS FILED IN ADVISE LETTERS OR APPLICATIONS					
Contract Class	Contracts Administered Project Names	Modification, Letter Agreement and Amendment Type(s)	Execution Date(s)	Effective Date(s)	Advice Letter or Application #	Resolution # or Decision Approving the Modification	Authority for Approval if Outside ERRR
COMMERCIAL OPERATIONS							
-ENERGY STORAGE							
Energy Storage	Olivenhain/Hodges Pumped Storage Facility	N/A	N/A	N/A	N/A	N/A	N/A
-QUALIFYING FACILITIES/COMBINED H							
CHP	Goal Line	N/A	N/A	N/A	N/A	N/A	N/A
QF	Grossmont Hospital	N/A	N/A	N/A	N/A	N/A	N/A
CHP	Yuma Cogeneration Associates	N/A	N/A	N/A	N/A	N/A	N/A
QF	Badger Filtration Plant (Santa Fe Irrigation District)	None	N/A	N/A	N/A	N/A	N/A
QF	San Francisco Peak Hydro (City of Oceanside)	N/A	N/A	N/A	N/A	N/A	N/A
QF	CP Kelco	N/A	N/A	N/A	N/A	N/A	N/A
QF	Naval Station Cogeneration	N/A	N/A	N/A	N/A	N/A	N/A
QF	North Island Cogeneration	N/A	N/A	N/A	N/A	N/A	N/A
QF	NTC/MCRD Cogeneration	N/A	N/A	N/A	N/A	N/A	N/A
QF	NTC/MCRD Steam Turbine	N/A	N/A	N/A	N/A	N/A	N/A
-RENEWABLE ENERGY							
Renewable	Bear Valley Hydro	None	N/A	N/A	N/A	N/A	N/A
Renewable	Olivenhain Municipal Water Dist	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	SDCWA - Rancho Penasquitos	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	City of San Diego - Point Loma (Hybrid)	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	MM Prima Deshecha	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	MM San Diego, LLC - Miramar	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Otay Landfill 1	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Otay Landfill 2	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Otay Landfill 3	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Otay Landfill V	N/A	N/A	N/A	N/A	N/A	N/A

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Renewable	Otay Landfill VI	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	San Marcos Landfill	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Sycamore Landfill 1	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Sycamore Landfill 2	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Arlington Valley Solar	First Amendment to Power Purchase Agreement	01/20/2016	01/20/2016	N/A	N/A	N/A
Renewable	Calipatria	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Campo Verde Solar (Southern Company)	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Cascade SunEdison (RAM 2)	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Catalina Solar	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Centinela Solar Energy 1	Exhibit I Project Operating Restrictions	04/01/2016	04/01/2016	Advice Letter 2171-E	N/A	N/A
Renewable	Centinela Solar Energy 2	Exhibit I Project Operating Restrictions	04/01/2016	04/01/2016	Advice Letter 2193-E	N/A	N/A
Renewable	CSOLAR IV South (Tenaska)	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	CSOLAR IV West (Tenaska)	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Desert Green Solar Farm LLC	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Imperial Valley Solar	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Maricopa West Solar	N/A	N/A	N/A	N/A	N/A	N/A

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Contract Class	Contracts Administered Project Names	Modification, Letter Agreement and Amendment Type(s)	Execution Date(s)	Effective Date(s)	Advice Letter or Application #	Resolution # or Decision Approving the Modification	Authority for Approval if Outside ERRA
Renewable	NLP Granger Solar, LLC	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	NLP Valley Center Solar, LLC	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	NRG Solar Borrego I (NRG)	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	SG2 Imperial Valley LLC	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Sol Orchard SD 20 (Ramona 1)	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Sol Orchard SD 21 (Ramona 2)	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Sol Orchard SD 22 (Valley Center 1)	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Sol Orchard SD 23 (Valley Center 2)	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	TallBear Seville, LLC	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Coram	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Energia Sierra Juarez	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	FPL Energy Green Power (WTE)	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Kumeyaay	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Manzana Wind	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Mountain Wind	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Naturener Glacier 1 Wind Energy	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Naturener Glacier 2 Wind Energy	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Naturener Rim Rock Wind Energy	a) Settlement Agreement and Mutual Release b) Amendment 1 Green Attributes c) Amendment 2 NOB PPA	a) 08/22/2016 b) 08/22/2016 c) 08/22/2016	a) 08/22/2016 b) 08/22/2016 c) 08/22/2016	a) U902E; 10-07-017; AL 2088-E b) U902E; 10-07-017; AL 2088-E c) U902E; 10-07-017; AL 2088-E	a) D.16-07-006; D.11-07-002; E-4277 b) D.16-07-006; D.11-07-002; E-4277 c) D.16-07-006; D.11-07-002; E-4277	a) CPUC b) CPUC c) CPUC
Renewable	Oak Creek Wind Power LLC	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Oasis Power Partners	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Ocotillo Express	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Pacific Wind	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Phoenix Wind	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	San Gorgonio West II	N/A	N/A	N/A	N/A	N/A	N/A
-TOLLING PROJECTS							
Tolling	El Cajon Energy Center, LLC	N/A	N/A	N/A	N/A	N/A	N/A
Tolling	Escondido Energy Center, LLC	N/A	N/A	N/A	N/A	N/A	N/A
Tolling	Orange Grove Energy, LLC	N/A	N/A	N/A	N/A	N/A	N/A
Tolling	Otay Mesa Energy Center, LLC.	N/A	N/A	N/A	N/A	N/A	N/A
-USE LIMITED DISPATCH							

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Use Limited Dispatch	EnerNoc	N/A	N/A	N/A	N/A	N/A	N/A
-FIRM ENERGY							
WSPP	BP Energy	N/A	N/A	N/A	N/A	N/A	N/A
WSPP	Morgan Stanley Capital Group (NOB) (net of Sales)	N/A	N/A	N/A	N/A	N/A	N/A
PRE-COMMERCIAL OPERATING							
-RENEWABLE ENERGY							
Renewable	HL Power Company, LP	Rider and Amendment submitted with PPA in the original advice letter filing	11/14/2016	11/14/2016	AL-3002E	Resolution # E-4770	N/A
Renewable	Midway (97W18ME LLC)	N/A	N/A	N/A	N/A	N/A	N/A
-QUALIFYING FACILITIES/COMBINED HEAT AND POWER							
CHP	Grossmont	N/A	N/A	N/A	N/A	N/A	N/A
-TOLLING PROJECTS							
Tolling	Carlsbad Energy Center LLC	N/A	N/A	N/A	N/A	N/A	N/A
Tolling	Pio Pico Energy Center, LLC	N/A	N/A	N/A	N/A	N/A	N/A
TERMINATED PROJECTS (n)							
-ENERGY STORAGE							

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Contract Class	Contracts Administered Project Names	Modification, Letter Agreement and Amendment Type(s)	Execution Date(s)	Effective Date(s)	Advice Letter or Application #	Resolution # or Decision Approving the Modification	Authority for Approval if Outside ERRR
Energy Storage	Hecate Energy Bandroft	N/A	N/A	N/A	N/A	N/A	N/A
-RENEWABLE ENERGY							
Renewable	Rugraw IV	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Pristine Sun Fund CA, LLC - 2226 Marsaglia	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Pristine Sun Fund CA, LLC - 2273 Saltus	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	SEPV Boulevard	N/A	N/A	N/A	N/A	N/A	N/A

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ERRA Record Period: 2016 CONTRACT NAME		AMENDMENTS & MODIFICATIONS FOR REVIEW IN THE ERRA APPLICATION (not filed in advice letters or applications)							
Contract Class	Contracts Administered Project Names	Execution Date(s)	Modification, Letter Agreement and Amendment	Summary of important changes to the project	Reason Modification was not submitted for review via AL or Application	Reasons and analyses supporting the amendment, modification or renegotiation	Economic analysis and/or ratepayer benefit analysis	Projects economic and operational viability w/o amendment	
COMMERCIAL OPERATIONS									
-ENERGY STORAGE									
Energy Storage	Olivenhain/Hodges Pumped Storage Facility	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
-QUALIFYING FACILITIES/COMBINED HEAT AND POWER									
CHP	Goal Line	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
QF	Grossmont Hospital	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
CHP	Yuma Cogeneration Associates	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
QF	Badger Filtration Plant (Santa Fe Irrigation District)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
QF	San Francisco Peak Hydro (City of Oceanside)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
QF	CP Kelco	a) 05/15/2016 b) 07/07/2016 c) 12/07/2016	a) Letter Agreement b) Letter Agreement c) Amendment to Power Purchase and Sale Agreement	[REDACTED]			N/A	N/A	N/A
QF	Naval Station Cogeneration	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
QF	North Island Cogeneration	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
QF	NTC/MCRD Cogeneration	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
QF	NTC/MCRD Steam Turbine	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
-RENEWABLE ENERGY									
Renewable	Bear Valley Hydro	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Renewable	Olivenhain Municipal Water Dist	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Renewable	SDCWA - Rancho Penasquitos	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Renewable	City of San Diego - Point Loma (Hybrid)	06/08/2016	Notice from Seller to Buyer of Extension pursuant to the First Amendment to the PPA	[REDACTED]					
Renewable	MM Prima Deshecha	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Renewable	MM San Diego, LLC - Miramar	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Renewable	Otay Landfill 1	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Renewable	Otay Landfill 2	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Renewable	Otay Landfill 3	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Renewable	Otay Landfill V	N/A	N/A	N/A	N/A	N/A	N/A	N/A	

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Contract Class	Contracts Administered Project Names	Execution Date(s)	Modification, Letter Agreement and Amendment	Summary of important changes to the project	Reason Modification was not submitted for review via AL or Application	Reasons and analyses supporting the amendment, modification or renegotiation	Economic analysis and/or ratepayer benefit analysis	Projects economic and operational viability w/o amendment				
Renewable	Otay Landfill VI	N/A	N/A	N/A	N/A	N/A	N/A	N/A				
Renewable	San Marcos Landfill	N/A	N/A	N/A	N/A	N/A	N/A	N/A				
Renewable	Sycamore Landfill 1	N/A	N/A	N/A	N/A	N/A	N/A	N/A				
Renewable	Sycamore Landfill 2	N/A	N/A	N/A	N/A	N/A	N/A	N/A				
Renewable	Arlington Valley Solar	10/27/2016	First Amendment to Power Purchase Agreement									
Renewable	Calipatria	N/A	N/A						N/A	N/A	N/A	N/A
Renewable	Campo Verde Solar (Southern Company)	N/A	N/A						N/A	N/A	N/A	N/A
Renewable	Cascade SunEdison (RAM 2)	N/A	N/A						N/A	N/A	N/A	N/A
Renewable	Catalina Solar	N/A	N/A						N/A	N/A	N/A	N/A
Renewable	Centinela Solar Energy 1	01/20/2016	First Amendment to Power Purchase Agreement									
Renewable	Centinela Solar Energy 2	01/20/2016	First Amendment to Power Purchase Agreement									
Renewable	CSOLAR IV South (Tenaska)	N/A	N/A	N/A	N/A	N/A	N/A	N/A				
Renewable	CSOLAR IV West (Tenaska)	a) 03/19/2016 b) 10/27/2016	a) Settlement and Release Agreement b) Letter Agreement									
Renewable	Desert Green Solar Farm LLC	N/A	N/A						N/A	N/A	N/A	N/A
Renewable	Imperial Valley Solar	N/A	N/A						N/A	N/A	N/A	N/A
Renewable	Maricopa West Solar	N/A	N/A						N/A	N/A	N/A	N/A

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Contract Class	Contracts Administered Project Names	Execution Date(s)	Modification, Letter Agreement and Amendment	Summary of important changes to the project	Reason Modification was not submitted for review via AL or Application	Reasons and analyses supporting the amendment, modification or renegotiation	Economic analysis and/or ratepayer benefit analysis	Projects economic and operational viability w/o amendment
Renewable	NLP Granger Solar, LLC	a) 08/24/2016 b) 09/21/2016	a) Modification of PPA with Revised Attachment E b) Modification of Appendix B Update Commercial Operations Certificate					
Renewable	NLP Valley Center Solar, LLC	a) 08/22/2016 b) 08/24/2016	a) Letter Agreement Clarifying Delivery Term Contract Quantity b) Modification of PPA with Revised Attachment E					
Renewable	NRG Solar Borrego I (NRG)	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	SG2 Imperial Valley LLC	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Sol Orchard SD 20 (Ramona 1)	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Sol Orchard SD 21 (Ramona 2)	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Sol Orchard SD 22 (Valley Center 1)	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Sol Orchard SD 23 (Valley Center 2)	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	TallBear Seville, LLC	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Coram	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Energia Sierra Juarez	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	FPL Energy Green Power (WTE)	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Kumeyaay	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Manzana Wind	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Mountain Wind	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Naturener Glacier 1 Wind Energy	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Naturener Glacier 2 Wind Energy	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Naturener Rim Rock Wind Energy	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Oak Creek Wind Power LLC	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Oasis Power Partners	N/A	N/A					
Renewable	Ocotillo Express	10/11/2016	Amendment 4					
Renewable	Pacific Wind	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Phoenix Wind	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	San Geronio West II	N/A	N/A	N/A	N/A	N/A	N/A	N/A
-TOLLING PROJECTS								
Tolling	El Cajon Energy Center, LLC	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Tolling	Escondido Energy Center, LLC	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Tolling	Orange Grove Energy, LLC	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Tolling	Otay Mesa Energy Center, LLC.	N/A	N/A	N/A	N/A	N/A	N/A	N/A
-USE LIMITED DISPATCH								

Contains confidential/privileged pursuant

ERRA Record Period: 2016 CONTRACT NAME		AMENDMENTS & MODIFICATIONS FOR REVIEW IN THE ERRR APPLICATION (not filed in advice letters or applications)						
Contract Class	Contracts Administered Project Names	Execution Date(s)	Modification, Letter Agreement and Amendment	Summary of important changes to the project	Reason Modification was not submitted for review via AL or Application	Reasons and analyses supporting the amendment, modification or renegotiation	Economic analysis and/or ratepayer benefit analysis	Projects economic and operational viability w/o amendment
Use Limited Dispatch	EnerNoc	N/A	N/A	N/A	N/A	N/A	N/A	N/A
-FIRM ENERGY								
WSPPP	BP Energy	N/A	N/A	N/A	N/A	N/A	N/A	N/A
WSPPP	Morgan Stanley Capital Group (NOB) (net of Sales)	N/A	N/A	N/A	N/A	N/A	N/A	N/A
PRE-COMMERCIAL OPERATING								
-RENEWABLE ENERGY								
Renewable	HL Power Company, LP	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Midway (97W18ME LLC)							
-QUALIFYING FACILITIES/COMBINED HEATING AND POWER								
CHP	Grossmont	N/A	N/A	N/A	N/A	N/A	N/A	N/A
-TOLLING PROJECTS								
Tolling	Carlsbad Energy Center LLC							
Tolling	Pio Pico Energy Center, LLC	N/A	N/A	N/A	N/A	N/A	N/A	N/A
TERMINATED PROJECTS (not included)								
-ENERGY STORAGE								

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ERRR Record Period: 2016 CONTRACT NAME		AMENDMENTS & MODIFICATIONS FOR REVIEW IN THE ERRR APPLICATION (not filed in advice letters or applications)						
Contract Class	Contracts Administered Project Names	Execution Date(s)	Modification, Letter Agreement and Amendment	Summary of important changes to the project	Reason Modification was not submitted for review via AL or Application	Reasons and analyses supporting the amendment, modification or renegotiation	Economic analysis and/or ratepayer benefit analysis	Projects economic and operational viability w/o amendment
Energy Storage	Hecate Energy Bandroft	N/A	N/A	N/A	N/A	N/A	N/A	N/A
-RENEWABLE ENERGY								
Renewable	Rugraw IV	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Pristine Sun Fund CA, LLC - 2226 Marsaglia	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Pristine Sun Fund CA, LLC - 2273 Saltus	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	SEPV Boulevard	N/A	N/A	N/A	N/A	N/A	N/A	N/A

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ERRA Record Period: 2016 CONTRACT NAME		TERMINATED CONTRACTS					
Contract Class	Contracts Administered Project Names	Contract Terminated Date	Termination Contract Provision	Fees or Security Retained or Returned	If Yes, Recorded To Account	If Not Recorded to Account, Please explain why	Termination Fees Payment
COMMERCIAL OPERATIONS							
-ENERGY STORAGE							
Energy Storage	Olivenhain/Hodges Pumped Storage Facility	N/A	N/A	N/A	N/A	N/A	N/A
-QUALIFYING FACILITIES/COMBINED HI							
CHP	Goal Line	N/A	N/A	N/A	N/A	N/A	N/A
QF	Grossmont Hospital						
CHP	Yuma Cogeneration Associates	N/A	N/A	N/A	N/A	N/A	N/A
QF	Badger Filtration Plant (Santa Fe Irrigation District)	N/A	N/A	N/A	N/A	N/A	N/A
QF	San Francisco Peak Hydro (City of Oceanside)	N/A	N/A	N/A	N/A	N/A	N/A
QF	CP Kelco	N/A	N/A	N/A	N/A	N/A	N/A
QF	Naval Station Cogeneration	N/A	N/A	N/A	N/A	N/A	N/A
QF	North Island Cogeneration	N/A	N/A	N/A	N/A	N/A	N/A
QF	NTC/MCRD Cogeneration	N/A	N/A	N/A	N/A	N/A	N/A
QF	NTC/MCRD Steam Turbine	N/A	N/A	N/A	N/A	N/A	N/A
-RENEWABLE ENERGY							
Renewable	Bear Valley Hydro	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Olivenhain Municipal Water Dist	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	SDCWA - Rancho Penasquitos	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	City of San Diego - Point Loma (Hybrid)	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	MM Prima Deshecha	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	MM San Diego, LLC - Miramar	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Otay Landfill 1	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Otay Landfill 2	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Otay Landfill 3	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Otay Landfill V	N/A	N/A	N/A	N/A	N/A	N/A

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ERRA Record Period: 2016 CONTRACT NAME		TERMINATED CONTRACTS					
Contract Class	Contracts Administered Project Names	Contract Terminated Date	Termination Contract Provision	Fees or Security Retained or Returned	If Yes, Recorded To Account	If Not Recorded to Account, Please explain why	Termination Fees Payment
Renewable	Otay Landfill VI	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	San Marcos Landfill	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Sycamore Landfill 1	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Sycamore Landfill 2	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Arlington Valley Solar	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Calipatria	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Campo Verde Solar (Southern Company)	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Cascade SunEdison (RAM 2)	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Catalina Solar	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Centinela Solar Energy 1	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Centinela Solar Energy 2	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	CSOLAR IV South (Tenaska)	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	CSOLAR IV West (Tenaska)	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Desert Green Solar Farm LLC	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Imperial Valley Solar	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Maricopa West Solar	N/A	N/A	N/A	N/A	N/A	N/A

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ERRA Record Period: 2016 CONTRACT NAME		TERMINATED CONTRACTS					
Contract Class	Contracts Administered Project Names	Contract Terminated Date	Termination Contract Provision	Fees or Security Retained or Returned	If Yes, Recorded To Account	If Not Recorded to Account, Please explain why	Termination Fees Payment
Renewable	NLP Granger Solar, LLC	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	NLP Valley Center Solar, LLC	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	NRG Solar Borrego I (NRG)	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	SG2 Imperial Valley LLC	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Sol Orchard SD 20 (Ramona 1)	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Sol Orchard SD 21 (Ramona 2)	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Sol Orchard SD 22 (Valley Center 1)	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Sol Orchard SD 23 (Valley Center 2)	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	TallBear Seville, LLC	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Coram	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Energia Sierra Juarez	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	FPL Energy Green Power (WTE)	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Kumeyaay	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Manzana Wind	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Mountain Wind	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Naturener Glacier 1 Wind Energy	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Naturener Glacier 2 Wind Energy	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Naturener Rim Rock Wind Energy	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Oak Creek Wind Power LLC	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Oasis Power Partners	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Ocotillo Express	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Pacific Wind	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Phoenix Wind	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	San Gorgonio West II	N/A	N/A	N/A	N/A	N/A	N/A
-TOLLING PROJECTS							
Tolling	El Cajon Energy Center, LLC	N/A	N/A	N/A	N/A	N/A	N/A
Tolling	Escondido Energy Center, LLC	N/A	N/A	N/A	N/A	N/A	N/A
Tolling	Orange Grove Energy, LLC	N/A	N/A	N/A	N/A	N/A	N/A
Tolling	Otay Mesa Energy Center, LLC.	N/A	N/A	N/A	N/A	N/A	N/A
-USE LIMITED DISPATCH							

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ERRA Record Period: 2016 CONTRACT NAME		TERMINATED CONTRACTS					
Contract Class	Contracts Administered Project Names	Contract Terminated Date	Termination Contract Provision	Fees or Security Retained or Returned	If Yes, Recorded To Account	If Not Recorded to Account, Please explain why	Termination Fees Payment
Use Limited Dispatch	EnerNoc	12/31/2016	Article 2 - Term and Termination: 2.1 Term. Subject to Article 3, this Agreement shall become effective as of the date of its execution, and shall remain in full force and effect through December 31, 2016. Applicable provisions of this Agreement shall continue in effect after termination to the extent necessary to satisfy the terms and conditions of this Agreement and, as applicable, to provide for: final billings and adjustments related to the period prior to termination, repayment of any money due and owing either Party pursuant to this Agreement, release or repayment of principal and interest associated with the Security, and the indemnifications specified in this Agreement.	N/A	N/A	N/A	N/A
-FIRM ENERGY							
WSPP	BP Energy	N/A	N/A	N/A	N/A	N/A	N/A
WSPP	Morgan Stanley Capital Group (NOB) (net of Sales)	N/A	N/A	N/A	N/A	N/A	N/A
PRE-COMMERCIAL OPERATIC							
-RENEWABLE ENERGY							
Renewable	HL Power Company, LP	N/A	N/A	N/A	N/A	N/A	N/A
Renewable	Midway (97W18ME LLC)	N/A	N/A	N/A	N/A	N/A	N/A
-QUALIFYING FACILITIES/COMBINED HI							
CHP	Grossmont	N/A	N/A	N/A	N/A	N/A	N/A
-TOLLING PROJECTS							
Tolling	Carlsbad Energy Center LLC	N/A	N/A	N/A	N/A	N/A	N/A
Tolling	Pio Pico Energy Center, LLC	N/A	N/A	N/A	N/A	N/A	N/A
TERMINATED PROJECTS (n							
-ENERGY STORAGE							

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ERRA Record Period: 2016 CONTRACT NAME		TERMINATED CONTRACTS					
Contract Class	Contracts Administered Project Names	Contract Terminated Date	Termination Contract Provision	Fees or Security Retained or Returned	If Yes, Recorded To Account	If Not Recorded to Account, Please explain why	Termination Fees Payment
Energy Storage	Hecate Energy Bandroft						
-RENEWABLE ENERGY							
Renewable	Rugraw IV						
Renewable	Pristine Sun Fund CA, LLC - 2226 Marsaglia						
Renewable	Pristine Sun Fund CA, LLC - 2273 Saltus						
Renewable	SEPV Boulevard						

CONTRACTS FOR THE PROCUREMENT OF FUEL SERVICES IN EFFECT OR UNDER NEGOTIATION, INITIATION, REVISION, AMENDMENT, OR TERMINATION

Contract type	Contract Description	Tradebook	Contract class	Product	Status	Effective date	Contract type	Contract Description	Tradebook	Contract class	Product	Status	Effective date
BILATERAL	Anadarko Energy Services Company	UEG	NAESB	NG	ACTIVE	9/1/2003	BILATERAL	Morgan Stanley Capital Group, Inc. - Spot	UEG	Spot	NG	ACTIVE	11/20/1995
BILATERAL	Anahau Energy, LLC - Gas	UEG	NAESB	NG	ACTIVE	2/11/2014	BILATERAL	Munich Re Trading LLC	UEG	NAESB	NG	ACTIVE	6/4/2015
BILATERAL	Arizona Public Service Company	UEG	GISB	NG	ACTIVE	3/22/1999	BILATERAL	National Fuel Marketing Company, LLC	UEG	NAESB	NG	ACTIVE	8/1/2002
BILATERAL	Atlantic Coast Energy Corporation - Gas	UEG	NAESB	NG	ACTIVE	10/22/2012	BILATERAL	NDR Energy Group, LLC - Gas	UEG	NAESB	NG	ACTIVE	3/19/2015
BILATERAL	ATO Power, Inc. - Gas	UEG	NAESB	NG	ACTIVE	2/26/2013	BILATERAL	Nevada Power Company dba NV Energy	UEG	NAESB	NG	ACTIVE	8/1/2015
BILATERAL	Barclays Bank	UEG	ISDA	NG	ACTIVE	10/13/2005	BILATERAL	NexEra Energy Marketing, LLC	UEG	NAESB	NG	ACTIVE	7/1/2006
BILATERAL	BioUrja Trading, LLC	UEG	NAESB	NG	ACTIVE	10/1/2015	BILATERAL	NJR Energy Services Company	UEG	NAESB	NG	ACTIVE	10/1/2009
BILATERAL	BNP Paribas Energy Trading GP - ISDA	UEG	ISDA	NG	ACTIVE	10/1/2004	BILATERAL	Noble Americas Energy Solutions, LLC	UEG	NAESB	NG	ACTIVE	8/27/2012
BILATERAL	BP Corporation North America Inc	UEG	ISDA	NG	ACTIVE	4/1/2005	BILATERAL	Noble Americas Gas & Power Corp.	UEG	NAESB	NG	ACTIVE	4/4/2012
BILATERAL	BP Energy Company	UEG	NAESB	NG	ACTIVE	8/1/2003	TRANSPORT	North Baja Pipeline, LLC	UEG	Other	NG	ACTIVE	9/12/2011
BILATERAL	BP Energy Company - WSPP	UEG	WSPP	NG	ACTIVE	5/21/2015	TRANSPORT	Nova Gas Transmission	UEG	Other	NG	ACTIVE	1/1/1993
TRANSPORT	California Gas Transmission	UEG	Other	NG	ACTIVE	1/1/1993	BILATERAL	Occidental Energy Marketing Inc.	UEG	NAESB	NG	ACTIVE	5/1/2005
BILATERAL	Canadian Imperial Bank of Commerce	UEG	ERMA	NG	ACTIVE	4/1/1997	BILATERAL	One Nation Energy Solutions, LLC	UEG	NAESB	NG	ACTIVE	2/1/2003
BILATERAL	Cargill, Inc.	UEG	NAESB	NG	ACTIVE	2/1/2003	BILATERAL	Pacific Gas & Electric Company	UEG	NAESB	NG	ACTIVE	5/1/2003
BILATERAL	Castleton Commodities Merchant Trading L.P.	UEG	NAESB	NG	ACTIVE	4/3/1996	BILATERAL	Pacific Summit Energy LLC	UEG	NAESB	NG	ACTIVE	10/11/2005
BILATERAL	Chevron Natural Gas	UEG	NAESB	NG	ACTIVE	1/1/2003	BILATERAL	Patten Energy Enterprises, Inc.	UEG	NAESB	NG	ACTIVE	4/10/2012
BILATERAL	CIMA ENERGY, LTD.	UEG	NAESB	NG	ACTIVE	7/1/2006	BILATERAL	PetroChina International (America), Inc.	UEG	NAESB	NG	ACTIVE	11/2/2015
BILATERAL	Citadel Energy Marketing LLC	UEG	NAESB	NG	ACTIVE	11/14/2016	BILATERAL	Powerex Corporation	UEG	NAESB	NG	ACTIVE	12/1/2005
BILATERAL	Citigroup Energy Inc.	UEG	NAESB	NG	ACTIVE	2/27/2007	BILATERAL	QEP Energy Company	UEG	NAESB	NG	ACTIVE	9/2/2011
BILATERAL	Concord Energy LLC	UEG	NAESB	NG	ACTIVE	8/27/2002	BILATERAL	Red Willow Production Company	UEG	GISB	NG	ACTIVE	4/1/2000
BILATERAL	Conexus Energy, LLC	UEG	NAESB	NG	ACTIVE	6/21/2016	BILATERAL	Sacramento Municipal Utility District	UEG	NAESB	NG	ACTIVE	4/1/2007
BILATERAL	ConocoPhillips Company	UEG	NAESB	NG	ACTIVE	12/1/2002	BILATERAL	Saja Energy LLC	UEG	NAESB	NG	ACTIVE	8/21/2013
BILATERAL	Continuum Energy Services, LLC	UEG	NAESB	NG	ACTIVE	9/1/2014	BILATERAL	Salt River Project	UEG	NAESB	NG	ACTIVE	10/1/2004
BILATERAL	CRC Marketing, Inc.	UEG	NAESB	NG	ACTIVE	9/1/2015	BILATERAL	Samson Resources Co. - bankrupt ch 11	UEG	NAESB	NG	ACTIVE	8/1/2006
BILATERAL	Credit Suisse Energy LLC	UEG	ISDA	NG	ACTIVE	4/1/2008	BILATERAL	Sempra Energy Trading LLC - ERMA	UEG	ERMA	NG	ACTIVE	12/2/1996
BILATERAL	Cross Timbers Energy Services, Inc.	UEG	NAESB	NG	ACTIVE	8/1/2015	BILATERAL	Sempra Energy Trading LLC Umbrella	UEG	Umbrella	NG	ACTIVE	12/2/1996
BILATERAL	DCP Midstream Marketing, LLC	UEG	NAESB	NG	ACTIVE	9/1/2009	BILATERAL	Sequent Energy Management, L.P.	UEG	NAESB	NG	ACTIVE	9/14/2007
BILATERAL	DES Wholesale, LLC dba DES-Gas	UEG	NAESB	NG	ACTIVE	7/15/2011	BILATERAL	Shell Energy North America (US), L.P.	UEG	NAESB	NG	ACTIVE	5/1/2009
BILATERAL	Deutsche Bank AG	UEG	ISDA	NG	ACTIVE	12/1/2005	TRANSPORT	Southern California Gas Company	UEG	GISB	NG	ACTIVE	7/1/1998
BILATERAL	EDF Trading North America, LLC	UEG	NAESB	NG	ACTIVE	12/12/2008	BILATERAL	Southern California Gas Company Capacity Products	UEG	NAESB	NG	ACTIVE	6/17/2005
TRANSPORT	EI Paso Natural Gas Company	UEG	Other	NG	ACTIVE	1/1/1993	TRANSPORT	Southern Trails Pipeline	UEG	Other	NG	ACTIVE	1/1/1993
BILATERAL	Eik Mountain Energy, LLC - Gas	UEG	NAESB	NG	ACTIVE	8/30/2012	TRANSPORT	Southwest Gas Corporation	UEG	Other	NG	ACTIVE	10/1/2011
BILATERAL	Energy Transfer Company	UEG	NAESB	NG	ACTIVE	1/16/2004	BILATERAL	Southwest Gas Corporation	UEG	Spot	NG	ACTIVE	4/1/1999
BILATERAL	ENSTOR Energy Services, LLC	UEG	NAESB	NG	ACTIVE	2/1/2003	BILATERAL	Suez Energy Marketing NA, Inc.	UEG	NAESB	NG	ACTIVE	12/10/2002
BILATERAL	Enterprise Products Operating LLC	UEG	NAESB	NG	ACTIVE	4/24/2009	BILATERAL	Susterra Energy, LLC - Gas	UEG	NAESB	NG	ACTIVE	1/16/2013
BILATERAL	Eurell Energy Resources	UEG	NAESB	NG	ACTIVE	12/1/2007	BILATERAL	Talen Energy Marketing, LLC	UEG	NAESB	NG	ACTIVE	2/28/2003
BILATERAL	Exelon Generation Company, LLC	UEG	NAESB	NG	ACTIVE	5/2/2005	BILATERAL	Targa Gas Marketing LLC	UEG	NAESB	NG	ACTIVE	5/1/2009
BILATERAL	Freepoint Commodities LLC	UEG	NAESB	NG	ACTIVE	2/6/2012	BILATERAL	Tenaska Gas Storage, LLC	UEG	NAESB	NG	ACTIVE	1/1/2003
TRANSPORT	Gas Transmission Northwest	UEG	Other	NG	ACTIVE	1/1/1993	BILATERAL	Tenaska Marketing Ventures	UEG	NAESB	NG	ACTIVE	1/1/2003
TRANSPORT	Gasoducto Bajanorte	UEG	Other	NG	ACTIVE	9/21/2011	BILATERAL	Tiger Natural Gas, Inc.	UEG	NAESB	NG	ACTIVE	5/23/2008
BILATERAL	GearyEnergy, LLC - Gas	UEG	NAESB	NG	ACTIVE	5/23/2008	BILATERAL	Total Gas & Power North America, Inc.	UEG	NAESB	NG	ACTIVE	4/1/2004
BILATERAL	ICC Energy Corporation - Gas	UEG	NAESB	NG	ACTIVE	10/1/2006	TRANSPORT	TransCanada Pipeline Company	UEG	Other	NG	ACTIVE	1/1/1993
BILATERAL	IPC (USA), Inc.	UEG	NAESB	NG	ACTIVE	6/16/2008	TRANSPORT	Transportador de Gas Natural	UEG	Other	NG	ACTIVE	9/21/2011
BILATERAL	J. Aron & Company - ISDA	UEG	ISDA	NG	ACTIVE	4/2/2003	TRANSPORT	Transwestern Pipeline Company	UEG	Other	NG	ACTIVE	1/1/1993
BILATERAL	J. Aron & Company - NAESB	UEG	NAESB	NG	ACTIVE	8/1/2003	BILATERAL	Tristar Producer Services of Texas, L.P.	UEG	Umbrella	NG	ACTIVE	1/16/1996
BILATERAL	J.P. Morgan Ventures Energy Corporation ISDA	UEG	ISDA	NG	ACTIVE	12/1/2007	BILATERAL	Twin Eagle Resource Management, LLC	UEG	NAESB	NG	ACTIVE	12/4/2012
BILATERAL	J.P. Morgan Ventures Energy Corporation NAESB	UEG	NAESB	NG	ACTIVE	10/14/2008	BILATERAL	Twine Gas & Power, Inc.	UEG	GISB	NG	ACTIVE	7/1/2001
TRANSPORT	Kern River Gas Transmission Company	UEG	Other	NG	ACTIVE	1/1/1993	BILATERAL	UBS AG - ISDA	UEG	ISDA	NG	ACTIVE	4/1/2008
BILATERAL	Kerr-McGee Energy Services Corporation	UEG	NAESB	NG	ACTIVE	2/20/2006	BILATERAL	Ultra Resources, Inc.	UEG	NAESB	NG	ACTIVE	11/1/2004
BILATERAL	Macquarie Energy LLC - ISDA	UEG	ISDA	NG	ACTIVE	6/10/1999	BILATERAL	United Energy Trading, LLC	UEG	NAESB	NG	ACTIVE	5/1/2003
BILATERAL	Macquarie Energy LLC - NAESB	UEG	NAESB	NG	ACTIVE	2/1/2003	BILATERAL	Walden Energy LLC	UEG	NAESB	NG	ACTIVE	12/12/2003
BILATERAL	Meritspan Energy California, LLC	UEG	NAESB	NG	ACTIVE	4/23/2015	BILATERAL	Wells Fargo Commodities, LLC	UEG	NAESB	NG	ACTIVE	1/1/2007
BILATERAL	Mieco Inc.	UEG	NAESB	NG	ACTIVE	7/16/2013	BILATERAL	WPX Energy Marketing, LLC	UEG	NAESB	NG	ACTIVE	3/1/2010

**BEFORE THE PUBLIC UTILITIES
COMMISSION OF THE STATE OF CALIFORNIA**

**DECLARATION
OF DANIEL L. SULLIVAN**

A.17-06-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 2016, (ii) Costs Related to those Activities Recorded to the Energy Resource Recovery Account and Transition Cost Balancing Account in 2016 and (iii) Costs Recorded in Related Regulatory Accounts in 2016

I, Daniel L. Sullivan, declare as follows:

1. I am Senior Energy Administrator 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, 2016 through December 31, 2016, 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
All highlighted areas in the body, tables or footnotes of Section V.A entitled "Renewable Resources" 1. Bio-Gas 2. Wind 3. Hydro 4. Solar 5. Terminated Renewable PPAs	VII.G	Contract terms; confidential for 3 years
All highlighted areas in the body, tables or footnotes of Section V.B entitled "QF/CHP Resources" 1. QF PPA Administration 2. Terminated QF PPAs 6. QF/CHP Performance	VII.E	Contract terms; confidential for 3 years
All highlighted areas in the body, tables or footnotes of Section V.E entitled "Market Purchases"	VII.B	Contract terms; confidential for 3 years
All highlighted areas in the body, tables or footnotes of Section V.F entitled "Miscellaneous Contract Issues"	VII.B VII.E VII.G	Contract terms; confidential for 3 years
EXHIBIT B All highlighted areas in ATTACHMENT 1	VII.G XI	Contract terms; confidential for 3 years Detail of monthly variable cost on energy operation; confidential for 3 years

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.

4. I am not aware of any instances where the Protected Information has been disclosed to the public. To my knowledge, no party, including SDG&E, has publicly revealed any of the Protected Information.

5. I will comply with the limitations on confidentiality specified in the Matrix for the type of data that is provided herewith.

6. The Protected Information cannot be provided in a form that is aggregated, partially redacted, or summarized and continue to provide the level of support to the Application as intended; however, SDG&E is certainly willing to work with the Commission regarding possible aggregations if the Commission seeks to make any of the confidential information provided in the Testimony public.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 1st day of June, 2016, at San Diego, California.



Daniel L. Sullivan
Senior Energy Administrator
San Diego Gas & Electric Company