

*First Pro Forma Update*

**2018 MOORPARK/GOLETA RFP**

**PRO FORMA**

**DEMAND RESPONSE PURCHASE AND SALE AGREEMENT**

*between*

**SOUTHERN CALIFORNIA EDISON COMPANY**

*and*

***[SELLER’S NAME]***

(ID# *[Number]*)

*[SCE Comment: provisions exclusive to Goleta-area projects are in green type, italics and brackets.]*

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**DEMAND RESPONSE PURCHASE AND SALE AGREEMENT**

**between**

**SOUTHERN CALIFORNIA EDISON COMPANY**

**AND**

***[SELLER’S NAME]***

**(ID# *[Number]*)**

This Demand Response Purchase and Sale Agreement, together with the exhibits attached hereto (as amended, restated, extended, renewed, modified or supplemented from time to time, collectively, the “Agreement”), is made and entered into as of this *[\_\_\_\_]* day of *[Month]*, *[Year]* (“Effective Date”) by **SOUTHERN CALIFORNIA EDISON COMPANY**, a California corporation (“SCE”), and ***[SELLER]***, a *[Seller’s business registration]* (“Seller”). SCE and Seller are sometimes referred to herein individually as a “Party” and jointly as the “Parties”.

**RECITALS**

1. Seller is proposing, pursuant to the terms of this Agreement, to reduce or serve the electrical consumption of Customers with the Project.
2. Seller is willing to sell to SCE, and SCE is willing to purchase from Seller, the DR Resource under the conditions set forth in this 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.

# TRANSACTION

## DR Resource.

### The “DR Resource” consists of the ability to serve all or a portion of the electrical consumption of all or a portion of the Participating Accounts through the use of all or a portion of the Project for an Operating Month pursuant to the terms of this Agreement.

### During the Delivery Period, Seller shall deliver and sell, and SCE shall purchase and receive, the DR Resource subject to and in accordance with the terms and conditions of this Agreement. Seller will not sell, assign, attribute, claim, or otherwise transfer the DR Resource other than to SCE pursuant to this Agreement.

### Event Parameters. The “Event Parameters” are:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Minimum Duration Per Dispatch** | **Maximum Duration Per Dispatch** | **Maximum Dispatches Per Resource ID Per Day** | **Maximum Dispatch Hours Per Resource ID Per Day** | **Maximum Dispatch Hours Per Resource ID Per Month** | **Maximum Dispatch Hours Per Resource ID Per Term Year** |
| *[Bid]* | *[Bid]* | *[Bid]* | *[Bid]* | *[Bid]* | *[Bid]* |

### *[Additional N-2 Dispatch Rights. During an N-2 Event, SCE may require Seller to Dispatch the DR Resource, or one or more Resource IDs included in the DR Resource, in excess of the Maximum Dispatch Hours Per Month and Maximum Dispatch Hours Per Year set forth in Section 1.01(c), but still within other parameters identified in Section 1.01(c) and 2.03, for up to [\_\_\_\_] (##) days during the Term] [Seller bid, Additional N-2 Dispatch Rights Days].*

### Customer Type.

\_\_\_\_\_ Residential Customer and Small Commercial Customer

A “Residential Customer” is an End-Use Customer which is a Single-Family Accommodation or Multifamily Accommodation Customer using Domestic Service, including Recreational Vehicle Parks, Residential Hotels, and Mobilehome Parks, and includes Electric Vehicle charging for Customers using Domestic Service if separately metered, as such capitalized terms are defined in Rule 1 of the SCE Tariff.

A “Small Commercial Customer” is an End-Use Customer who is not a Residential Customer and has a monthly maximum demand of 20 kW or less.

\_\_\_\_\_ Commercial and Industrial Customer

A “Commercial and Industrial Customer” is an End-Use Customer who is not a Residential Customer and has a monthly maximum demand of greater than 20 kW.

## Project.

### The “Project” consists of the Storage Unit(s), Prevention Equipment and demand response measures together with all materials, equipment systems, structures, features and improvements necessary to store, charge and discharge electric energy or to reduce electrical consumption of the Participating Accounts on demand, including interconnection facilities as applicable or specified in the relevant interconnection studies or agreements, but excluding the Site(s), land rights and interests in land and as more fully described in Exhibit B.

### Location of Site(s). *[Project Addresses]*, as further described in Exhibit B.

## Capacity.

The “Contract Capacity,” corresponding “Capacity Rate” and “Minimum Energy Storage Capacity” are as set forth below:

|  |  |  |  |
| --- | --- | --- | --- |
| **Month and Year** | **Contract Capacity (kW)** | **Capacity Rate ($/kW-month)** | **Minimum Energy Storage Capacity (kW)** |
| January *[20XX]* |  |  |  |
| February *[20XX]* |  |  |  |
| March *[20XX]* |  |  |  |
| April *[20XX]* |  |  |  |
| May *[20XX]* |  |  |  |
| June *[20XX]* |  |  |  |
| July *[20XX]* |  |  |  |
| August *[20XX]* |  |  |  |
| September *[20XX]* |  |  |  |
| October *[20XX]* |  |  |  |
| November *[20XX]* |  |  |  |
| December *[20XX]* |  |  |  |

## Energy Rate.

The “Energy Rate” shall be *[Bid]* per kilowatt hour (kWh).

## Exclusive Rights.

During the Delivery Period SCE shall have the exclusive rights to:

### utilize the energy storage capacity, if any, included in the Project;

### the Contract Capacity from, and the energy benefit derived from, the Participating Accounts and the DR Resource; and

### all benefits, attributes, credits, emissions reductions, offsets, and allowances, howsoever entitled, derived or attributable from or to the DR Resource, including the exclusive right to use, market or sell the DR Resource, and the benefits provided under Section 6.03, and all revenues created from the use, sale or marketing of the DR Resource and the benefits provided under Section 6.03.

## Designation of Intended Use.

SCE may, in its sole discretion, designate the amount of the DR Resource that it intends to use for distribution needs and the amount of the DR Resource that it intends to use as a resource adequacy resource; provided that the total for any distinct time period must be within the total parameters identified in Sections 1.01(c) and 2.02. SCE’s initial designation is set forth in Exhibit M, which may be amended by SCE in accordance with Section 14.01(b).

# CONDITIONS PRECEDENT

## Term.

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

## Delivery Period.

The “Delivery Period” shall commence on the later of (a) the first day of the first month that begins thirty (30) days after CPUC Approval is obtained and (b) the Initial Delivery Date and shall continue in full force and effect until *[[DATE] or [11:59 p.m. of the date which is \_\_\_\_\_ months after the Initial Delivery Date]]* unless terminated earlier in accordance with the terms and conditions of this Agreement. The Delivery Days, Delivery Hours, and Operating Months during the Delivery Period are as set forth below.

* + 1. “Delivery Days” means *[Seller bid, Monday through Friday or Monday through Sunday]*, excluding NERC Holidays.
		2. “Delivery Hours” means *[Seller bid, Beginning Time HE ## to Ending Time HE ##]*.
		3. “Operating Months” means *[Seller bid of calendar months during the Delivery Period that contain Contract Capacity as provided in Section 1.03]*.

## Expected Initial Delivery Date.

### The “Expected Initial Delivery Date” for the DR Resource is *[Date]*.

## Initial Delivery Date.

### 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 DR Resource:

#### Seller has completed, to SCE’s satisfaction, Seller’s obligations set forth in Sections 4.01(a) through 4.01(g);

#### If the Project includes Storage Units:

##### Each Storage Unit has achieved Commercial Operation;

##### [Each Storage Unit is a New Resource;] *{SCE Note: as bid; delete for projects with storage units that are not new resources}*

##### Seller has demonstrated, as part of the Initial Commercial Operation Test and to SCE’s reasonable satisfaction, that the Storage Units are capable of meeting the Minimum Energy Storage Capacity for all months set forth in Section 1.03, and the Event Parameters;

##### The applicable Storage Unit is installed at the applicable Participating Account as set forth in Exhibit B;

##### Seller has entered into and complied in all material respects with all obligations, requirements, or agreements needed to operate and interconnect, [as a Non-Exporting project] under Rule 21 of the SCE Tariff (or other SCE Tariff that replaces or is used in lieu of Rule 21 for the interconnection of a [non-exporting] energy storage device that becomes applicable and effective after the Effective Date), each Storage Unit, including any obligations, requirements, or agreements required under SCE Tariff; and *{SCE Note: as bid; include bracketed language only for projects that are non-exporting}*

##### Seller has provided SCE with certification from an Independent Engineer that (I) Seller has designed and built the Project to have a design life equal to the number of years required for the Project to operate until the end of the Term 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;

#### Seller has deposited with SCE the applicable Performance Assurance amounts as set forth in Section 7.02(a);

#### Seller has executed and delivered to SCE all documents or instruments required under or requested pursuant to Article 7;

#### Seller has delivered to SCE all insurance documents required under Section 14.07; and

#### SCE shall have obtained or waived CPUC Approval.

#### Seller has delivered the Safety Report to SCE no later than 30 days prior to the start of the Delivery Period.

The Parties agree that, in order for Seller to obtain the Initial Delivery Date, the Parties may have to perform certain of their Delivery Period obligations in advance of the Initial Delivery Date, including providing Supply Plans. The Parties shall cooperate with each other in order for SCE to be able to utilize the DR Resource beginning on the Initial Delivery Date.

### If Seller has otherwise complied with its obligations under this Agreement for a Project that uses energy storage but the Initial Commercial Operation Test indicates that, on the Expected Initial Delivery Date or the Initial Delivery Deadline, the Storage Units are not capable of meeting the Minimum Energy Storage Capacity for all months set forth in Section 1.03, and the Event Parameters, but are capable of providing at least seventy-five percent (75%) of the Minimum Energy Storage Capacity during each of the months set forth in Section 1.03 and under each of the Event Parameters, then:

#### The Initial Delivery Date shall be deemed that date if such date is the first day of the calendar month or the following first day of the calendar month after such date;

#### The Minimum Energy Storage Capacity will be reduced *[for all affected time periods/for all time periods]* to an amount equal to the actual reduced capacity use at the Site(s) as determined by Initial Commercial Operation Test;

#### The Contract Capacity will be reduced *[for all affected time periods/for all time periods]* by the same amount by which the Minimum Energy Storage Capacity was reduced;

#### Prior to the Initial Delivery Date (and as a condition to its occurrence), Seller shall pay SCE an amount equal to the product of *[Dollar amount text]* dollars *($[Number])* per kW *[SCE Comment: amount to be provided by SCE]* and the difference (in kWs) between the original Contract Capacity and the reduced Contract Capacity; provided that, with SCE’s consent, Seller may elect to apply its Development Security toward this payment.

## Initial Delivery Deadline.

### Subject to Seller’s right to extend the Initial Delivery Deadline as set forth in Sections 2.06 and 8.03(a), Seller must achieve the Initial Delivery Date by no later than the Expected Initial Delivery Date; provided, notwithstanding any other provision in this Agreement, the Initial Delivery Date may not be earlier than *[insert date that is the earliest the Project can come online]* or later than *[insert date that is ninety (90) days after the Expected Initial Delivery Date]* (the “Initial Delivery Deadline”).

### If (x) Seller and SCE mutually agree that Initial Delivery Date will not occur on or before the Expected Initial Delivery Date or Initial Delivery Deadline, as applicable; or (y) the Initial Delivery Date will not occur due to any termination of this Agreement as a result of an Event of Default by Seller occurring on or before the Expected Initial Delivery Date or Initial Delivery Deadline, as applicable, SCE shall be entitled to:

#### The entire Development Security, including the right to draw on and retain for its sole benefit any Letter of Credit and the proceeds thereof, as well as any cash posted as Development Security and interest accrued thereon; and

#### Terminate this Agreement.

If SCE terminates this Agreement pursuant to this Section 2.05(b), any amount of Development Security that Seller has not yet posted with SCE will be immediately due and payable by Seller to SCE.

Neither Party shall have liability for damages for failure to deliver or purchase the DR Resource after the effective date of termination under this Section 2.05(b) and the Forward Settlement Amount will be zero dollars ($0).

## Daily Delay Liquidated Damages to Extend Initial Delivery Deadline.

Seller may extend the Expected Initial Delivery Date by paying to SCE damages in an amount equal to two percent (2%) of the Development Security per day for each day (or portion thereof) from and including the original Expected Initial Delivery Date to and excluding the actual date that the Project achieves the Initial Delivery Date (“Daily Delay Liquidated Damages”).

To extend the Expected Initial Delivery Date, Seller must, at the earliest possible time, but no later than 6:00 a.m. on the first day of the Expected Initial Delivery Date extension, provide SCE with Notice of its election to extend the Expected Initial Delivery Date along with Seller’s estimate of the duration of the extension and its payment of Daily Delay Liquidated Damages for the full estimated Initial Delivery Date extension period. Seller may further extend the Expected Initial Delivery Date beyond the original Expected Initial Delivery Date extension period subject to the same terms applicable to the original Expected Initial Delivery Date extension.

The Daily Delay Liquidated Damages payments applicable to days included in any Expected Initial Delivery Date extension are nonrefundable and are in addition to, and not a part of, the Development Security.

Seller will 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 Expected Initial Delivery Date was actually extended.

In no event may Seller extend the Expected Initial Delivery Date for more than a total of ninety (90) days by the payment of Daily Delay Liquidated Damages.

## CPUC Approval.

Within ninety (90) days after the Effective Date, SCE shall file with the CPUC the appropriate request for CPUC Approval. SCE shall expeditiously seek CPUC Approval, including promptly responding to any requests for information related to the request for CPUC Approval. As requested by SCE, Seller shall use commercially reasonable efforts to support SCE in obtaining CPUC Approval. SCE 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 SCE.

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 CPUC Approval has not been obtained or waived by SCE in its sole discretion by *[Date TBD]* and a Notice of termination is given on or before the date CPUC Approval is obtained.

Failure to obtain CPUC Approval in accordance with this Section 2.07 will not be deemed to be a failure of Seller to sell or deliver the DR Resource or a failure of SCE to purchase or receive the DR Resource, and will not be or cause an Event of Default by either Party. No Forward 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.

# PAYMENT AND BILLING

## Invoice.

For each month of the Delivery Period, SCE shall make monthly Delivered Energy Payments and Delivered Capacity Payments and, if applicable, Seller shall make Recapture Payments in accordance with Section 3.05(f) and pay Shortfall Energy Amounts in accordance with Section 3.06(h), in each case in arrears and subject to the following:

### If SCE does not provide a Dispatch Instruction for an Operating Month, Seller shall submit an invoice to SCE no later than ninety (90) days after the end of such Operating Month setting forth Seller’s calculation of the Delivered Capacity Payment and any Recapture Payments for such Operating Month in accordance with Section 3.05.

### If SCE does provide one or more Dispatch Instructions for an Operating Month, Seller shall submit an invoice to SCE no later than one hundred and twenty days (120) days after the end of such Operating Month setting forth Seller’s calculation of the Delivered Capacity Payment, Delivered Energy Payment and any Recapture Payments and Shortfall Energy Amounts for such Operating Month in accordance with Sections 3.05 and 3.06.

### All invoices submitted by Seller shall include recorded meter data and other performance data and calculations supporting the Delivered Capacity Payment, Delivered Energy Payment, Recapture Payments and Shortfall Energy Amounts Seller claims or owes for such Operating Month. If the Project includes Storage Units, Seller shall also report, with each invoice, the percentages of the Hourly Recorded Reductions that were attributable to the use of energy storage by Participating Accounts (i) for each Dispatch and (ii) for all Dispatch hours in the Operating Month.

## Timeliness of Payment.

### SCE will pay Seller all undisputed invoices within thirty (30) days after receipt of Seller’s invoice. Seller shall pay any applicable Recapture Payments and Shortfall Energy Amounts to SCE within thirty (30) days after providing Seller’s invoice with respect thereto.

### Unless otherwise agreed to in writing by the Parties, payment to each Party will be by ACH transfer or similar method, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue late payment simple interest. The late payment simple interest shall be the product of the following three factors:

#### the dollar amount on which an interest payment is based;

#### for any date, (i) the per annum rate of interest equal to the “Prime Rate” published in *The Wall Street Journal* under “Money Rates” or such date (or if not published on such date on the most recent preceding day on which published); plus (ii) two percentage points (2%); provided*,* in no event may the interest rate under this Section 3.02(b)(ii) exceed the maximum interest rate permitted by Applicable Laws; and

#### the number of days in the calculation period divided by 360.

## Disputes and Adjustments of Invoices.

Either Party may, in good faith, dispute the correctness of any invoice, bill, charge, or any adjustment to an invoice, rendered under this Agreement, or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, bill, charge, or adjustment to an invoice, was rendered. Disputes are subject to the provisions of Article 12. If 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 after such resolution. Notwithstanding the timelines in this section, overpayments shall be returned upon request or offset, as appropriate, from future payments.

## Netting Rights.

SCE reserves the right to net amounts that would otherwise be due to Seller under this Agreement in payment of any amounts:

### Owing to SCE by Seller arising out of, or related to, this Agreement; or

### Owed to SCE by Seller arising out of, or related to, any other SCE agreement, tariff, obligation or liability.

Nothing in this Section 3.04 shall limit SCE’s rights under applicable tariffs, other agreements or Applicable Laws.

## Delivered Capacity Payment.

### Before the first Dispatch is performed during the Delivery Period, the Delivered Capacity Payment shall equal the applicable Contract Capacity times the applicable Capacity Rate.

### After the DR Resource has been subjected to a Dispatch, the Delivered Capacity Payment and Recapture Payments, if any, shall be calculated for each Operating Month as follows:

#### *[For any Operating Month in which no N-2 Event has occurred, the Delivered Capacity Payment and Recapture Payments, if any, shall be calculated for each Operating Month as follows:]*

|  |  |
| --- | --- |
| **Total Recorded Capacity/Contract Capacity(expressed as a percentage)** | **Delivered Capacity Payment or Recapture Payment** |
| >105.00% | 1.05 \* Contract Capacity \* Capacity Rate |
| 95.00-105.00% | Total Recorded Capacity \* Capacity Rate |
| 75.00-94.99% | 0.5 \* Total Recorded Capacity \* Capacity Rate |
| <75.00% | (Total Recorded Capacity - (0.75 \* Contract Capacity)) \* Capacity Rate |

#### *[For any Operating Month in which an N-2 Event has occurred, the Delivered Capacity Payment shall be calculated for each Operating Month as follows:*

|  |  |
| --- | --- |
| ***Total Recorded Capacity/Contract Capacity(expressed as a percentage)*** | ***Delivered Capacity Payment***  |
| *≥100.00%* | *Contract Capacity \* Capacity Rate* |
| *<100.00%* | *$0.00* |

*]*

### The “Total Recorded Capacity” for any particular Operating Month will be calculated as follows:

#### *[For any Operating Month in which no N-2 Event has occurred, the Total Recorded Capacity]* shall equal (A) the sum of the Hourly Recorded Reductions (expressed in kW) for all Dispatches during the applicable Operating Month, divided by (B) the product of (1) the number of Dispatched hours during such Operating Month (for this purpose, any partial hour Dispatch will be expressed as a decimal to reflect the actual percentage of the hour that was subject to a Dispatch and Dispatches of less than all of the DR Resource will be expressed as decimal percentages to reflect the actual percentage of the Contract Capacity that was subject to a Dispatch) and (2) if a Dispatch of less than all of the DR Resource occurred during such Operating Month, the percentage of the Contract Capacity Dispatched, on average, for all Dispatched hours during such Operating Month, expressed as a decimal.

#### *[For any Operating Month in which an N-2 Event has occurred, the Total Recorded Capacity shall equal (A) the sum of the Hourly Recorded Reductions (expressed in kW) for all Dispatches during the N-2 Event, divided by (B) the product of (1) the number of Dispatched hours during such N-2 Event (*for this purpose, any partial hour Dispatch will be expressed as a decimal to reflect the actual percentage of the hour that was subject to a Dispatch and Dispatches of less than all of the DR Resource will be expressed as decimal percentages to reflect the actual percentage of the Contract Capacity that was subject to a Dispatch*) and (2) if a Dispatch of less than all of the DR Resource occurred during the N-2 Event, the percentage of the Contract Capacity Dispatched, on average, for all Dispatched hours during the N-2 Event, expressed as a decimal). For the avoidance of doubt, Hourly Recorded Reductions for Dispatches outside of the N-2 Event shall be excluded from the Total Recorded Capacity calculation in any Operating Month in which an N-2 Event has occurred.]*

#### If during a particular Operating Month a Dispatch has not occurred, then the “Total Recorded Capacity” for such Operating Month shall equal the “Total Recorded Capacity” which was calculated with respect to the most recent Operating Month during which a Dispatch occurred.

### An “Hourly Recorded Reduction” will be calculated for each hour during which the DR Resource (or any Resource ID within the DR Resource) is Dispatched. For each hour during which such a Dispatch has occurred (regardless of whether the DR Resource has been Dispatched for the entire duration of such hour), the Hourly Recorded Reduction equals the sum, for all Participating Accounts in the Resource ID(s) subject to the Dispatch for such hour, of each Participating Account’s Energy Baseline less (i) the Participating Account’s recorded energy, as measured by the Qualifying Meter, for that hour, and (ii) the Participating Account’s Default Adjustment Value (if applicable). In no event shall the Hourly Recorded Reduction for any hour be less than zero (0). For purposes of this Section 3.05(d), “hour” means the applicable hour of the day, not the duration of the Dispatch.

### For purposes of determining the Hourly Recorded Reduction with respect to a Participating Account, should coincident event hours for a Dispatch and a Dual Participation Program occur, then any load reductions calculated during such coincident hours for such Participating Account will be included in the Hourly Recorded Reduction calculation.

### If the Total Recorded Capacity is less than seventy-five percent (75%) of the applicable Contract Capacity, then the Delivered Capacity Payment shall equal zero dollars ($0); and Seller shall owe SCE a Recapture Payment based on the absolute value of the above formula.

## Delivered Energy Payment.

### If SCE does not provide a Dispatch Instruction during an Operating Month, then the Delivered Energy Payment shall be zero dollars ($0) for that Operating Month. Seller shall not receive a Delivered Energy Payment for any Seller Dispatch or reduction in load not based on SCE’s Dispatch Instruction.

### The Delivered Energy Payment shall be calculated for each full and partial hour in which a Dispatch occurs as follows:

|  |  |
| --- | --- |
| **Hourly Recorded Reduction (MW)/Contract Capacity(expressed as a percentage)** | **Delivered Energy Payment or Shortfall Energy Amount** |
| >150.00% | 1.50 \* Contract Capacity \* Energy Rate |
| 100.00-150.00% | Hourly Recorded Reduction \* Energy Rate |
| <100.00% | (Hourly Recorded Reduction \* Energy Rate) - (Shortfall Energy Amount) |

### The Delivered Energy Payment shall be calculated for each partial hour in which a Dispatch occurs in the same manner as for a Dispatch occurring over a full hour, except that the Contract Capacity in the table above shall be prorated (i) for a partial hour, to reflect the actual percentage of the hour that was subject to the Dispatch and (ii) for a Dispatch of less than all of the DR Resource, to reflect the actual percentage of the Contract Capacity that was subject to a Dispatch.

### “Shortfall Energy Amount” means Shortfall Energy during the applicable hour times the CAISO’s average “Interval Locational Marginal Price” (available on the OASIS website) for the Pricing Node(s) of the Resource ID(s) Dispatched during the applicable hour (using a weighted average, in the case of a Dispatch of Resource ID(s) covering more than one Pricing Node, to reflect the proportion of Dispatched Resource ID(s) corresponding to each Pricing Node) for the corresponding day and hour during which the Shortfall Energy occurred; provided that the Shortfall Energy Amount shall not be less than zero dollars ($0).

### “Shortfall Energy” means (in kWh) the Contract Capacity (prorated, for a partial hour, to reflect the actual percentage of the hour that was subject to a Dispatch and, for a Dispatch of less than all of the DR Resource, to reflect the actual percentage of the Contract Capacity that was subject to a Dispatch) less the Hourly Recorded Reduction for that hour. No “Shortfall Energy” shall exist with respect to an hour if the Hourly Recorded Reduction is greater than or equal to the Contract Capacity in such hour.

### For purposes of determining the Hourly Recorded Reduction with respect to a Participating Account, should coincident event hours for a Dispatch and Dual Participation Program occur, then any load reductions calculated during such coincident hours for such Participating Account will be included in the Hourly Recorded Reduction calculation.

### Notwithstanding any other provision in this Agreement, Delivered Energy Payments shall be made solely for load reductions for Participating Accounts that are customers of SCE who takes bundled services from SCE including having all its power requirements purchased by SCE (“Bundled Service Customers”); accordingly, the Hourly Recorded Reduction value used in the calculation of the Delivered Energy Payment pursuant to Section 3.06(b) shall include only load reductions from Participating Accounts that are Bundled Service Customers.

### If the value calculated pursuant to the table in Section 3.06(b) for a particular hour is a negative amount (*i.e*., Shortfall Energy Amount is greater than the product of the Hourly Recorded Reduction and the Energy Rate), then Seller shall owe to SCE the absolute value of such negative amount.

### If the Hourly Recorded Reduction is less than one hundred percent (100%) of the applicable Contract Capacity (prorated, for a partial hour, to reflect the actual percentage of the hour that was subject to a Dispatch and, for a Dispatch of less than all of the DR Resource, to reflect the actual percentage of the Contract Capacity that was subject to a Dispatch), then Seller shall owe SCE a Shortfall Energy Amount based on above formula.

## Federal Tax Incentives Price Reduction.

If, prior to the earlier of Seller’s closing on Tax Equity Financing or the Initial Delivery Date, federal tax legislation is enacted which is applicable to the DR Resource, the Capacity Rate shall be reduced according to the applicable Tax Credit Percentage available to Seller, as set forth in the table below, and the Capacity Rate shall automatically be amended to reflect the product of the applicable Reduced Price Percentage and the Capacity Rate. *{SCE Note: any such price amendment may need to take escalated prices, price shaping or other variable pricing structures into account.}*

|  |  |
| --- | --- |
| Tax Credit Percentage | Reduced Price Percentage |
| 30% or greater | 90% |
| 25% - 29.99% | 92% |
| 20% - 24.99% | 93% |
| 15% - 19.99% | 95% |
| 10% - 14.99% | 97% |
| 5% - 9.99%  | 98% |

## Seller Dispatch.

Seller may initiate a Dispatch in any Operating Month; provided:

### Seller must provide advance Notice to SCE of a range of dates during which it requests that the Dispatch occur (the “Requested Date Range”). Each Requested Date Range must be comprised of no less than five (5) consecutive Business Days, and the earliest date must be at least three (3) Business Days after the Notice has been received by SCE.

### Following its receipt of such Notice, SCE will, in its sole discretion select the specific timing for such Dispatch within the Requested Date Range, by providing a Dispatch Instruction to Seller either telephonically or pursuant to the ADP at least fifteen (15) minutes in advance of the start of such Seller Dispatch. Each such Dispatch Instruction given in accordance with this Section 3.08 will be effective and Seller shall then Dispatch the DR Resource as instructed.

Notwithstanding anything to the contrary in this Agreement, (x) such Dispatch shall solely be considered a “Seller Dispatch,” (y) Seller shall not be entitled to receive any Delivered Energy Payments for a Seller Dispatch, and (z) Seller shall be responsible for all costs associated with a Seller Dispatch, including any energy charging costs associated with such test. The number of hours from Seller Dispatches will not count towards the Event Parameter limitations, including the maximum available Dispatch hours for a given month or year, as set forth in Section 1.01(c).

# DESIGN AND CONSTRUCTION OF PROJECT

## Seller’s Obligations.

At no cost to SCE, Seller shall:

### Design and construct, or refurbish the Project, including, if applicable, Storage Units as described in Exhibit B in an amount capable of meeting the Minimum Energy Storage Capacity, as required for Seller to perform its obligations under this Agreement;

### Complete all environmental impact assessments, statements, or studies required pursuant to Applicable Laws, including obtaining public review and certification of any final documents relating to any environmental impact assessment or studies;

### As required to achieve Commercial Operation for each Storage Unit, furnish and install all Protective Apparatus as SCE reasonably determines to be necessary for proper and safe operation of the Project in parallel with SCE’s electric system or the CAISO grid;

### Furnish and install Prevention Equipment;

### Provide to SCE, prior to commencement of any construction activities on the Site(s), a Safety Report;

### Within *[number]* (*[#]*) days prior to the Expected Initial Delivery Date, Seller shall file all applications or other appropriate requests to acquire and maintain all Required Permits; Seller shall obtain all Required Permits on or before *[Date]* (the “Required Permit Date”); and

### Throughout the Delivery Period, maintain all Required Permits.

## Changes in Operational Characteristics.

Seller shall provide to SCE Notice of any changes in the operational characteristics of the Project or the specifications or descriptions set forth in this Agreement (and related exhibits), for SCE’s review as far in advance as practicable, but in no event less than thirty (30) days before the changes are to be made.

## EPC Contractor.

If the Project includes Storage Units, Seller shall provide SCE with Notice of the name and address of Seller’s EPC Contractor on the later of the Effective Date or the fifth (5th) Business Day after Seller enters into a contract with an EPC Contractor. If Seller does not have an EPC Contractor selected by the Effective Date, Seller shall provide SCE with a shortlist of candidates by the Effective Date.

## Provision of Information.

During the Term, Seller shall promptly provide SCE copies of:

### 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);

### Any reports, studies, or assessments done for Seller by an independent engineer for the Project; and

### No later than twenty (20) days after each semi-annual period ending on June 30th or December 31st, a report listing all women, minority, disabled veteran, lesbian, gay, bisexual and/or transgender business enterprises, as more particularly set forth in CPUC General Order 156 (“Diverse Business Enterprises”) that supplied goods or services to Seller or its Affiliates related to the DR Resource, including any certifications or other documentation of such Diverse Business Enterprises’ status as such and the aggregate amount paid to Diverse Business Enterprises during such period.

#### SCE has the right to disclose to the CPUC all such information provided by Seller pursuant to this Section 4.04(c).

#### Seller shall make reasonable efforts to accommodate requests by the CPUC (or by SCE in response to a request by the CPUC) to audit Seller in order to verify data provided by Seller pursuant to this Section 4.04(c).

## Inspection Rights.

SCE shall have the right at any time during the Term to enter onto the Site(s) 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 SCE with access to the Site(s) and all applicable documents and records in order to permit SCE to determine whether:

### Seller has obtained and maintained all Required Permits, and that such Required Permits do not contain Permit Requirements that might restrict SCE’s ability to Dispatch the DR Resource as provided for in this Agreement; and

### All contracts described in Section 4.04(a) have been entered into and become effective on a timely basis and Seller is not in default thereunder.

## 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 Exhibit D (“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 DR Resource has not yet met its Initial Delivery Date, or within five (5) days after SCE’s request, Seller shall deliver to SCE a monthly progress report, substantially in the form set forth in Exhibit E (“Construction Report”), describing its progress in relation to the Milestone Schedule, including projected time to completion of any milestones, for each Storage Unit 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 SCE. In addition, Seller shall advise SCE, 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.

## Critical Path Development Milestones.

Seller shall achieve each Critical Path Development Milestone on or before the applicable deadline specified below. Seller shall provide to SCE, on or before the applicable deadline to achieve each Critical Path Development Milestone, evidence reasonably requested by SCE that the Critical Path Development Milestone has been achieved. Seller shall also provide any additional evidence reasonably requested by SCE that the Critical Path Development Milestone has been achieved.

|  |  |
| --- | --- |
| **Critical Path Development Milestone** | **Deadline to achieve Critical Path Development Milestone** |
| Provide redacted copies of existing and enforceable contracts between Seller and Customers that would be eligible under this Agreement to be included in the DR Resource representing capacity that is equal to 25% of Contract Capacity | *[SCE Note: insert date that is 15 months prior to Expected Initial Delivery Date]* |
| Provide redacted copies of existing and enforceable contracts between Seller and Customers that would be eligible under this Agreement to be included in the DR Resource representing capacity that is equal to 50% of Contract Capacity | *[SCE Note: insert date that is 13 months prior to Expected Initial Delivery Date]* |
| Provide redacted copies of existing and enforceable contracts between Seller and Customers that would be eligible under this Agreement to be included in the DR Resource representing capacity that is equal to 75% of Contract Capacity | *[SCE Note: insert date that is 11 months prior to Expected Initial Delivery Date]* |
| Provide redacted copies of existing and enforceable contracts between Seller and Customers that would be eligible under this Agreement to be included in the DR Resource representing capacity that is equal to 100% of Contract Capacity | *[SCE Note: insert date that is 9 months prior to Expected Initial Delivery Date]* |
| Submit completed applications for interconnection with the Distribution Provider for each Storage Unit needed to meet the Minimum Energy Storage Capacity | *[SCE Note: insert date that is 9 months prior to Expected Initial Delivery Date]* |
| File for all material Required Permits for each Storage Unit needed to meet the Minimum Energy Storage Capacity | *[SCE Note: insert date that is 8 months prior to Expected Initial Delivery Date]* |
| Sign purchase order for *[SCE Note: TBD Major Equipment]* needed to construct the Project at a size equal to the Minimum Energy Storage Capacity | *[SCE Note: insert date that is 7 months prior to Expected Initial Delivery Date]* |
| Execute an interconnection agreement with Distribution Provider for each Storage Unit in the Project needed to meet the Minimum Energy Storage Capacity | *[SCE Note: insert date that is 7 months prior to Expected Initial Delivery Date]* |
| Obtain all material Required Permits for each Storage Unit needed to meet the Minimum Energy Storage Capacity | *[SCE Note: insert date that is 1 month prior to Expected Initial Delivery Date]* |

If Seller fails to achieve a Critical Path Development Milestone on or before the applicable deadline Seller may cure such failure; provided, that

### Within ten (10) Business Days after any such failure, Seller either (i) completes the Critical Path Development Milestone or (ii) submits to SCE (A) a written description of the reason for the failure, (B) the date Seller expects it will achieve completion of the missed Critical Path Development Milestone (“CPD Milestone Extension Date”), and (C) a written recovery plan for completing all necessary work to achieve completion of the missed Critical Path Development Milestone, the remaining Critical Path Development Milestones, and the Initial Delivery Date by the Expected Initial Delivery Date (the “Recovery Plan”). The Recovery Plan shall also include an updated milestone schedule with revised dates for each remaining Critical Path Development Milestone, which updated milestone schedule shall be subject to acceptance by SCE, in its reasonable discretion.

### Seller shall commence the work contemplated by the Recovery Plan within five (5) days after submitting such Recovery Plan to SCE.

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

### If Seller fails in any material respect, as reasonably determined by SCE, to: (i) meet the requirements of the Recovery Plan; (ii) make sufficient progress in effecting the Recovery Plan; or (iii) achieve completion of the missed Critical Path Development Milestone by the CPD Milestone Extension Date, such failure shall not be subject to a further attempt to cure; and

### Seller may cure a failure under this Section 4.07 only once during the Term.

Nothing in this Section 4.07 shall be construed to: (x) relieve Seller of its obligations under this Agreement; (y) modify the deadlines for achieving the remaining Critical Path Development Milestones (except for the one-time update to the milestone schedule pursuant to Section 4.07(a) above and the missed Critical Path Development Milestone which Seller is attempting to cure under this Section 4.07); or (z) relieve Seller of its obligation to timely achieve the Initial Delivery Date by the Expected Initial Delivery Date.

# COMMISSIONING AND TESTING

## Interconnection.

### Seller shall be responsible for all fees and costs associated with the following:

#### Obtaining all interconnection studies;

#### Maintaining, complying with and performing Seller’s obligations under the interconnection agreement and related documents throughout the Delivery Period;

#### any interconnection facilities that are installed for the purpose of interconnecting the Project with existing distribution systems; and

#### All costs arising from, relating to or associated with any interconnection agreement between Seller and SCE.

### Seller shall, or shall cause each Participating Account to, as applicable, interconnect each Storage Unit [as a Non-Exporting project] under Rule 21 of the SCE Tariff*[, and shall not interconnect such Storage Unit as a Net Energy Metering project under Rule 21 of the SCE Tariff]{SCE Note: {SCE Note: as bid; include bracketed language only for projects that are non-exporting}*.

## Metering, Communications and Telemetry.

### Metering and Communication Equipment.

#### Seller shall, at its own cost, install, or cause the Recruited Accounts to provide and install, an upgraded Qualifying Meter if upgraded metering and communication equipment are required in order for SCE to monitor and utilize the DR Resource. SCE shall determine the type of metering and communication equipment to be installed and shall be the Meter Data Management Agent, as defined by Rule 22 of the SCE Tariff (if applicable) for all Participating Accounts.

#### For each and every individual Site location with energy storage, Seller, at its own cost, shall install, or cause the Recruited Accounts to provide and install, equipment capable of providing at least 15 minute readings of the charge/discharge power flow and State of Charge of the Storage Unit(s), and shall provide this data to SCE, on a monthly basis, within *[\_\_\_]* days after the end of each month in a form acceptable to SCE. *[SCE Comment: Parties to negotiate mutually acceptable language that requires Seller to install a device, or provide access to information, that indicates whether the Storage Unit(s) at each location are charging or discharging electric energy. For example, such language could require the installation of meters, access to data streams, or some combination thereof. Language shall be based on the specific storage technology and include SCE rights with respect to physical verification and auditing.]*

### Dispatch and Access to Telemetry.

#### Dispatch. Subject to the limitations set forth in Sections 1.01, 1.03, and 2.02, SCE may direct Seller to Dispatch the DR Resource, or the Participating Accounts in one or more Resource IDs included in the DR Resource, by issuing a Dispatch Instruction. The Dispatch Instruction shall be made pursuant to an automated dispatch protocol to be determined by SCE in its sole discretion (the “ADP”). The Dispatch Instruction must be given at least fifteen (15) minutes in advance of the start of the Dispatch, and will be effective unless and until SCE provides Seller with an updated Dispatch Instruction. Seller shall comply with updated Dispatch Instructions as soon as possible.

If multiple events per day are allowed under Section 1.01(c), then SCE in its sole discretion may require Seller to Dispatch multiple times per day, each of which shall be a separate event and settled separately. SCE in its sole discretion may require Seller to Dispatch on the same day as a Seller Dispatch (prior to or after a Seller Dispatch), and such events shall be separate events and settled separately from the Seller Dispatch.

Seller and SCE shall work in good faith to install and implement the ADP described above. Any equipment necessary to install and implement the ADP will be at Seller's cost. If Seller is unable to Dispatch the DR Resource due to Seller's failure to install, implement and maintain the ADP, for every day that the ADP is unavailable, (a) for purposes of calculating the Delivered Capacity Payment, the Maximum Dispatches per Resource ID per Day will be deemed to have occurred on each such day for all Resource IDs included in the DR Resource, with each such Dispatch equal to the Maximum Duration per Dispatch (all as set forth in Section 1.01(c), and not to exceed 24 hours per day, the Maximum Dispatch Hours per Resource ID per Day, the Maximum Dispatch Hours per Resource ID per Month, or the Maximum Dispatch Hours per Resource ID per Term Year) and the Hourly Recorded Reduction shall be deemed to be zero for each hour thereof, and (b) notwithstanding the provisions of Section 3.06, Seller shall not be entitled to any Delivered Energy Payment for any hour thereof.

#### Access to Telemetry. Seller shall install telemetry systems for the DR Resource acceptable to the CAISO and SCE such that SCE is able to remotely monitor the status of the DR Resource and which permits SCE to have real time information access to the operations of the DR Resource, including the ability to measure the real time demand reductions and changes in demand of the DR Resource over time. Seller shall take all actions and execute all documents necessary to grant SCE and CAISO access to such telemetry systems associated with the DR Resource.

## Testing.

### Initial Commercial Operation Test.

At least thirty (30) days prior to the Expected Initial Delivery Date, Seller shall schedule and complete an Initial Commercial Operation Test for each Storage Unit. Seller shall use commercially reasonable efforts to undertake such activities in sufficient time to achieve Commercial Operation of each Storage Unit by the Expected Initial Delivery Date and SCE will reasonably cooperate with Seller to meet such deadline. Such Initial Commercial Operation Test shall be scheduled and conducted in accordance with the requirements of the Independent Engineer and the Test Parameters. Seller shall be responsible for all costs associated with the Initial Commercial Operation Test, including any energy charging costs associated with such test.

Seller shall maintain and provide to SCE, within fifteen (15) days after SCE’s request, accurate records with respect to each Storage Unit(s)’ Initial Commercial Operation Test.

### Storage Units’ Test Parameters.

### For purposes of the Initial Commercial Operation Test, the following test parameters (“Test Parameters”) shall apply to the Storage Unit(s), if any, included in the Project:

The Independent Engineer shall test and provide certification of the following: (i) the Independent Engineer has tested the operation of such Storage Unit(s), himself or herself, or observed a test of the operation of such Storage Unit(s), (ii) the Prevention Equipment and each Storage Unit has been installed and is operating; (iii) during the Initial Commercial Operation Test Storage Units equal to the Minimum Energy Storage Capacity were tested as a part of the DR Resource and (i) dispatched concurrently in an amount equal to the applicable Storage-Backed Load Drop Amount, (ii) dispatched concurrently for the amount of time described in the “Maximum Duration Per Resource ID Per Dispatch” Event Parameter at the applicable Storage-Backed Load Drop Amount, and (iii) dispatched concurrently on one day for the number of hours described in the “Maximum Duration Per Resource ID Per Dispatch” Event Parameter at the applicable Storage-Backed Load Drop Amount for the number of times described in the “Maximum Dispatches Per Resource ID Per Day” Event Parameter, but not exceeding the “Maximum Dispatch Hours Per Resource ID Per Day.”

*[SCE Comment: Additional or Modified Test Parameters TBD based on storage technology]*

# SELLER’S OPERATION, MAINTENANCE, AND REPAIR OBLIGATIONS

## Seller’s Operation Obligations.

### Seller shall operate the Project and DR Resource in accordance with Prudent Electrical Practices, Applicable Laws, Permit Requirements and Industry Standards.

### Seller shall maintain a daily operations log for each Storage Unit which shall include information on charging and discharging (including charging and discharging efficiency), electric energy consumption and efficiency, State of Charge, availability, maintenance performed, outages, changes in operating status, inspections and any other significant events related to the operation of each Storage Unit.

In addition, Seller shall maintain all records applicable to each Storage Unit, including the electrical characteristics of the Storage Unit(s) and settings or adjustments of the Storage Unit(s) control equipment (including the power conversion system) and protective devices.

Information maintained pursuant to this Section 6.01(b) shall be provided to SCE, within fifteen (15) days after SCE’s request.

### SCE or the CAISO may require Seller, at Seller’s expense, to demonstrate to SCE’s reasonable satisfaction the correct calibration and operation of Seller’s Protective Apparatus any time SCE or the CAISO has reason to believe that said Protective Apparatus may impair the integrity of SCE’s electric system or CAISO grid.

### Seller shall be responsible for (i) managing, purchasing, charging and transporting each Storage Unit’s energy requirements, and (ii) the electric energy costs associated with each Storage Unit, including the cost to charge each Storage Unit.

### DERs Monitoring.

#### The Parties acknowledge that, during the Term, GDERMS may progress in a manner that allows SCE to exercise greater access to real-time monitoring of grid assets, including Distributed Energy Resources (“DERs”), consistent with interconnection facilities requirements (“DERs Monitoring”). If such GDERMS become available during the Term, Seller agrees to implement new or upgraded DERs to GDERMS interfacing equipment to the DR Resource to allow for such DERs Monitoring.

#### Once the GDERMS become available within SCE’s service territory, as determined by SCE, Seller agrees to change the DR Resource to allow SCE to implement DERs Monitoring, including the installation of any necessary telemetry or equipment required for such DERs Monitoring (“DER Upgrade”). Prior to the purchase and installation of any equipment necessary for the implementation of DERs Monitoring, Seller shall (1) consult with SCE regarding all proposed installation plans and equipment modifications and (2) obtain SCE approval of any such proposed installation plans and equipment modifications.

#### Subject to this Section 6.01(e), Seller shall not be responsible for any out-of-pocket expenses in order to make any DER Upgrade. If Seller reasonably anticipates that it will incur out-of-pocket expenses to effectuate any DER Upgrade required by SCE, Seller shall provide Notice to SCE of such anticipated out-of-pocket expenses. SCE will have sixty (60) days to evaluate such Notice (during which time period Seller shall not be obligated to take any actions to implement the DER Upgrade) and shall, within such time, either:

##### Agree to reimburse Seller for all or some portion of such costs (such SCE-agreed upon costs, the “Accepted DER Costs”). If SCE agrees to reimburse Seller for the Accepted DER Costs, then Seller shall install and implement such DER Upgrade covered by the Accepted DER Costs and SCE shall reimburse Seller for Seller’s actual costs to effect the DER Upgrade, not to exceed the Accepted DER Costs; or

##### Waive Seller’s obligation to implement such DER Upgrade, or any part thereof for which SCE has not agreed to reimburse Seller.

Notwithstanding the foregoing, to the extent that this Agreement (other than pursuant to this Section 6.01(e)), the CAISO Tariff, Applicable Laws, Seller’s interconnection agreement, or SCE, in its capacity as participating transmission or distribution owner, requires Seller to make a DER Upgrade, Seller shall implement such DER Upgrade and shall bear the entire cost of any such DER Upgrades.

### *Maximum Efforts during N-2 Event.*

*[Notwithstanding anything in this Agreement to the contrary, including Article 8 (Force Majeure), Seller shall (a) exercise Maximum Efforts at all times during each N-2 Event; and (b) upon SCE’s request, demonstrate to SCE that its actions were consistent with this standard.]*

## Resource Adequacy Benefits.

If SCE is required to report any of the information described in the following subsections (a) or (b) pursuant to the Resource Adequacy Rulings or any other Applicable Laws, SCE will inform Seller of such fact and thereafter:

### If the DR Resource or Project will not be available to provide the full amount of Resource Adequacy Benefits associated with the Contract Capacity (or, if applicable, the Net Qualifying Capacity obtained pursuant to Section 6.01(e)), or will not be able to provide flexible Capacity Attributes equal to the EFC in each case for any Operating Month during the Delivery Period, Seller shall, no later than sixty (60) days before the first day of the relevant Operating Month, notify SCE of the amount of capacity of the DR Resource or Project which can be included in such RA Compliance Showing; and

### If the DR Resource or Project will not be able to provide flexible Capacity Attributes equal to the EFC for any RA Compliance Showing, Seller agrees to notify SCE of the amount of Inflexible Capacity which may be included in such RA Compliance Showing.

Notifications provided by Seller pursuant to this Section 6.02 shall not adjust the Contract Capacity or otherwise relieve Seller of any obligations under this Agreement.

## Seller’s Maintenance and Repair Obligations.

### Seller shall inspect, maintain, and repair the Project and, if necessary, replace, each Storage Unit and Prevention Equipment, and any portion thereof, in accordance with applicable Industry Standards and Prudent Electrical Practices. Seller shall maintain, and deliver to SCE upon request, maintenance and repair records of each Storage Unit.

### Seller shall promptly make all necessary repairs to the Project or, if necessary, replacement of each Storage Unit, and any portion thereof, and take all actions necessary in order to provide the DR Resource to SCE in accordance with the terms of this Agreement.

### Seller shall inspect, maintain and repair the ADP, GDERMS and telemetry equipment associated with the DR Resource and will promptly notify SCE of any malfunction, outage or other condition that could impair the ability of the DR Resource to respond to Dispatch instructions or SCE’s ability to monitor the DR Resource.

## Delivery.

Seller grants, pledges, assigns, and otherwise commits to SCE the full Contract Capacity of the DR Resource and all Resource Adequacy Benefits associated with the DR Resource and the Project in order for SCE to meet its Resource Adequacy Requirements. The Parties shall take all actions (including amending this Agreement and complying with all current and future CAISO Tariff provisions and decisions of the CAISO, the CPUC, or any other Governmental Authority that address resource adequacy performance obligations and penalties), and execute all documents or instruments necessary, to facilitate SCE’s timely filing of Supply Plans with the CAISO and to effect the use of the Resource Adequacy Benefits of the DR Resource and the Project for SCE’s sole benefit throughout the Delivery Period.

## Scheduling Coordinator; Demand Response Provider; Resource IDs.

### Seller shall take all actions and execute and deliver to SCE all documents reasonably necessary to authorize or designate SCE as the Scheduling Coordinator and *[SCE Note: to be completed prior to agreement execution]* as the “Demand Response Provider” (as defined by the CAISO Tariff) for the DR Resource throughout the Delivery Period.

### If SCE is the Demand Response Provider:

#### Seller shall take all actions and execute and deliver to SCE all documents reasonably necessary to enable SCE to obtain Resource IDs for the DR Resource, or parts of the DR Resource, as determined by SCE; and

#### Within a reasonable amount of time, not to exceed ninety (90) days, after receipt of Notice from SCE of its intent to terminate its Demand Response Provider role, Seller shall take all actions and execute and deliver all document necessary to designate another party to act as Demand Response Provider.

### If Seller is the Demand Response Provider, Seller shall obtain Resource IDs for the DR Resource, or parts of the DR Resource.

### The Parties shall exercise good faith efforts to consolidate the DR Resource into as few Resource IDs as possible, with the goal of having one Resource ID per circuit unless otherwise required by CAISO rules.

### Throughout the Delivery Period, Seller shall not authorize or designate any other party to act as Scheduling Coordinator or Demand Response Provider for the DR Resource, nor shall Seller perform, for its own benefit, the duties of Scheduling Coordinator or Demand Response Provider for the DR Resource, unless SCE, at its sole discretion, provides Notice under subsection (b)(ii), above, or otherwise provides prior written consent.

## Net Qualifying Capacity; EFC.

### If a process enabling demand response resources to obtain a Net Qualifying Capacity becomes available during the Term, Seller agrees to obtain, as soon as possible thereafter, a Net Qualifying Capacity for the DR Resource and/or the Storage Units, as applicable. Thereafter, Seller shall notify SCE within three (3) Business Days after it receives notice from the CAISO, or the Seller becomes aware, that any such Net Qualifying Capacity has changed, regardless of whether there is an increase or decrease in such Net Qualifying Capacity.

### If a process enabling demand response resources to obtain an EFC becomes available during the Term, Seller agrees to consult with SCE and obtain, as soon as possible thereafter, an EFC for the DR Resource and/or the Storage Units, as applicable, at the level and within the parameters acceptable to SCE in its sole discretion. Thereafter, Seller shall notify SCE within three (3) Business Days after it receives notice from the CAISO, or the Seller becomes aware, that any such EFC has changed, regardless of whether there is an increase or decrease in such EFC.

## Limitations on Charging of Storage Units.

Seller shall not charge any of the Storage Units at any point in time that is within (a) a Delivery Hour that is within a Delivery Day of an Operating Month, or (b) a Delivery Hour that is within a day that could be a Measurement Day, regardless of whether such day is used as a Measurement Day.

## Measurement and Evaluation of the DR Resource.

Seller agrees, and shall cause each Recruited Account to agree, to (a) allow SCE, the CPUC, or the CEC, and the authorized representatives of such entities, reasonable access to Seller’s and the Recruited Accounts’ facilities to conduct measurement and evaluation activities related to this Agreement; and (b) participate in and complete all evaluation surveys received from SCE, the CPUC or the CEC related to this Agreement.

## Seller’s Submittal of Recruited Accounts and Participating Accounts.

### List of Recruited Accounts. No less than seventy-five (75) days before the beginning of each Operating Month, Seller shall provide to SCE, or its designated agent, a list identifying each Recruited Account for such Operating Month. Each Recruited Account must satisfy the following criteria and, upon request, Seller shall include with the list information reasonably necessary to permit SCE to verify that:

#### The Recruited Account has properly executed the “Aggregator Add Account Form” (SCE Form 14-932, or successor), and has delivered such form to SCE;

#### The Recruited Account is a DR Resource;

#### The Recruited Account directly takes or receives electricity services from a circuit or lower voltage substation in SCE’s distribution system that electrically connects directly to the *[SCE Note: insert applicable substation/circuit].*

#### The Recruited Account is not served under any other demand response agreement with SCE or demand response program, except for up to one Dual Participation Program and, if a Recruited Account is participating in a Dual Participation Program, the name(s) of the program(s) in which such Recruited Account is participating.

#### The Recruited Account is not receiving a Medical Baseline Allocation or receiving service under Schedules DM, DMS-1, DMS-2, DMS-3, DS, or any streetlight, area lighting, traffic control or wireless technology rate;

#### The Recruited Account has an installed and operating Qualifying Meter;

#### The Recruited Account meets the requirements of Section 5.02(a)(ii);

#### The Recruited Account meets the requirements of Section 6.11;

#### The Storage Unit(s), if any, for the DR Resource associated with the Recruited Account meet(s) the description set forth in Section 1 of Exhibit B and have satisfied the following criteria:

##### Seller has completed with respect to such Storage Unit(s), Seller’s obligations set forth in Sections 4.01(a) through 4.01(g), inclusive, in order to bring such Storage Units(s), Project and the DR Resource into operation and as contemplated by this Agreement;

##### Seller has entered into and complied in all material respects with all obligations, requirements, or agreements needed to operate and interconnect, [as a Non-Exporting project] under Rule 21 of the SCE Tariff (or other SCE Tariff that replaces or is used in lieu of Rule 21 for the interconnection of a [Non-Exporting] energy storage device that becomes applicable and effective after the Effective Date), such Storage Unit(s), including any obligations, requirements, or agreements required under SCE Tariff; and *{SCE Note: as bid; include bracketed language only for projects that are non-exporting}*

##### Seller has provided SCE with certification from an Independent Engineer that (I) such Storage Unit(s) are designed and built to have an operational life equal to the number of years required for such Storage Unit(s) to operate until the end of the Term of this Agreement, when installed and operated in accordance with Prudent Electrical Practices, and (II) the design and construction of such Storage Unit(s) was carried out by the original equipment manufacturer or other competent organization.

In addition, for each Recruited Account, Seller shall identify the Recruited Account’s name, service address and zip code, SCE service account number, and the Resource ID with which the Recruited Account is associated. For each Recruited Account that uses energy storage, Seller shall also identify the expected Storage-Backed Load Drop Amount, and shall provide the Default Adjustment Value for each Recruited Account has certified that it may have to use a Prohibited Resource during a Dispatch for safety, health or operational reasons. Seller shall also identify the expected total Load Drop Amount for each Resource ID included in the DR Resource (which must not be greater than the amount recognized by the CAISO for such Resource ID).

A Customer may remove itself from Seller’s Recruited Accounts by executing and delivering to Seller and SCE an “Aggregator Remove Account Form” (SCE Form 14-933, or successor); provided, the Customer is not a Participating Account for the Operating Month in which the removal is requested. Any removal of a Recruited Account will go into effect the first day of the calendar month following Seller’s request for its removal.

### SCE Verification. No less than seventy (70) days before the beginning of each Operating Month, SCE, or its designated agent, shall verify in writing that the Recruited Accounts for such Operating Month meet the requirements set forth in Section 6.09(a)(i)-(ix). All unverified Recruited Accounts are ineligible to be included as Participating Accounts for such Operating Month. SCE may adjust or modify the SLAP boundaries in accordance with direction SCE receives from the CAISO or CPUC; provided, such adjustment or modification shall not affect SCE’s obligation to make Delivered Energy Payments or Delivered Capacity Payments for the Dispatch of the DR Resource or Participating Accounts that have been previously verified by SCE. Notwithstanding any other provision in this Agreement, SCE is not obligated to make payment for any Contract Capacity or energy associated with a Customer, Recruited Account, or Participating Account that does not meet the requirements of this Agreement.

### List of Participating Accounts. No less than sixty-five (65) days before the beginning of each Operating Month, Seller shall provide to SCE, or its designated agent, a list identifying the Recruited Accounts that were verified under Section 6.09(b) that will constitute the DR Resource for such Operating Month (each a “Participating Account”), along with the following information:

#### an estimate (in kilowatts) of the total Load Drop Amount of the Participating Accounts, provided, the total estimate does not exceed the applicable Contract Capacity;

#### an estimate (in kilowatts) of the total Storage-Backed Load Drop Amount of the Participating Accounts that use energy storage;

#### an estimate (in kilowatts) of the total Load Drop Amount of the Participating Accounts in each Resource ID included in the DR Resource (which must not be greater than the amount recognized by the CAISO for such Resource ID); and

#### the Default Adjustment Value for each Participating Account that has certified that it may have to use a Prohibited Resource during a Dispatch for safety, health or operational reasons.

Once a Recruited Account becomes a Participating Account, Seller may remove, based on its reasonable discretion, such Participating Account from the list of Participating Accounts; provided, the aggregate Load Drop Amount of the remaining Participating Accounts is not less than the applicable Contract Capacity for the applicable Operating Month, the aggregate Storage-Backed Load Drop Amount of the remaining Participating Accounts is not less than the applicable Minimum Energy Storage Amount for the applicable Operating Month, and the remaining DR Resource can still meet the Event Parameters maximums when dispatched at the applicable Contract Capacity. In addition, Seller shall remove Participating Accounts from the DR Resource if required under Section 6.11. The removal of a Participating Account based on the preceding sentences shall only be effective if Notice of such removal is given to SCE at least fifteen (15) days before the beginning of the Operating Month that the removal is intended to be effective.

### No Adjustment during Operating Month. Seller may not adjust or alter the list of Participating Accounts once the Operating Month commences.

## Customer Service Provisions.

### Limitation of Liability for Seller Service.

SCE has no obligations to any person or entity that is, or may participate as, a Recruited Account or Participating Account with Seller.

### Release of Customer-Specific Usage or Meter Data.

SCE shall, to the extent available and permitted by Applicable Laws, provide specific information, usage, or meter data of a Customer to Seller, if Seller provides to SCE written authorization from such Customer to release such information. Such written authorization must be provided in a form acceptable to SCE in its sole discretion. If SCE is unable to provide the information contemplated under this Section 6.10(b) for any reason, Seller shall be responsible for obtaining such information at its sole cost and expense. SCE has no obligation to verify the accuracy of any information provided to Seller hereunder.

### Customer Inquiries.

All inquiries concerning Seller's services shall be directed to Seller.

### Advertising and Marketing.

Any and all marketing materials designed or developed by Seller that reference any SCE program will be subject to written approval from the SCE Contract Representative prior to any distribution, circulation or publication. Seller is responsible for all marketing activities to Customers; however, SCE, in its sole discretion, may assist Seller with any advertising or marketing to Customers. Seller shall not use SCE’s corporate name, trademark, trade name, logo, identity or any affiliation for any reason, without SCE’s prior written consent, which may be withheld in SCE’s sole discretion.

### Cyber Security.

Seller shall implement reasonable administrative, technical, and physical safeguards to protect Customer information from unauthorized access, destruction, use, modification, or disclosure.

A “Security Incident” is:

#### Unless expressly authorized under this Agreement, any use, reproduction, distribution, transfer, disposition, disclosure, possession, memory input, alteration, erasure, damage, breach in the security, or other activity by a person or party other than SCE of

##### Seller’s information system that contains EPI, or

##### SCE’s computing systems that contain EPI, if caused by the action or inaction of Seller

#### Or any unauthorized access to, interception of, disclosure or acquisition of such EPI.

Any reasonably suspected or confirmed Security Incident must be reported to SCE via email to Cybersecurity@sce.com, within 24 hours of Seller’s awareness of the event. Notification shall include the nature of the event, date and time of the event, suspected amount and type of information exposed and steps being taken to investigate the circumstances of the exposure. Seller shall cooperate and assist SCE in the investigation, analysis and resolution of Security Incidents. Seller shall provide SCE with details of the investigation and final disposition of the Security Incident relevant to the services provided to SCE or which may impact the confidentiality, integrity or availability of those services or of SCE information.

## Prohibited Resources.

During each month of the Delivery Period, if any Participating Accounts have a Prohibited Resource, Seller shall ensure that such Prohibited Resource is not used to reduce load during a Dispatch, as follows:

### Seller shall include a provision in its contract with each of its residential Recruited Accounts forbidding the use of Prohibited Resources to reduce load during a Dispatch. Any Recruited Account that does not accept the prohibition will not be eligible to participate in the DR Resource.

### Seller shall require, from each of its non-residential Recruited Accounts, an attestation (i) indicating whether it has a Prohibited Resource on site; (ii) indicating that if it has a Prohibited Resource it will not use the resource to reduce load during a Dispatch; or, (iii) if applicable, certifying that the Recruited Account may have to use a Prohibited Resource during a Dispatch for operational, health or safety reasons, providing the nameplate capacity of the Prohibited Resource, and agreeing to a default adjustment (the “Default Adjustment”) in which the Load Drop Amount such Recruited Account can provide is reduced by the nameplate capacity of the Prohibited Resource (or, if the Recruited Account has multiple Prohibited Resources, by the sum of the nameplate capacity values from all Prohibited Resources on the site) (the “Default Adjustment Value”), regardless of whether the Prohibited Resource was actually used. Seller shall collect and store all such attestations and make them available upon request to the CPUC or to SCE. Seller shall include provisions in its contracts with non-Residential Recruited Accounts permitting change the Default Adjustment Value if (x) the change results from a change in the operational status of a Prohibited Resource associated with the Recruited Account’s service account; and, (y) Seller has verified this change in operational status.

### Seller shall include additional and separate provisions near the beginning of its contracts with Recruited Accounts explaining and implementing these restrictions specifying that compliance will be subject to verification, indicating the consequences for noncompliance with the provision. All Contracts with non-residential Recruited Accounts shall indicate that the non-compliance consequences will be as set forth in this section. If the instance of non-compliance involves clerical or administrative errors, such as an inaccurate listing of a Recruited Account name or the nameplate value of a Prohibited Resource in an attestation, or a failure to include a Recruited Account’s Prohibited Resource on an attestation, provided in all cases that such Prohibited Resource is not used in violation of the terms of this Agreement (collectively, “Type One Non-Compliance”), Seller shall specify that the Recruited Account will have sixty days from receipt of notice to cure such Type One Non-Compliance. If the instance of non-compliance involves either (a) that a Recruited Account attests to the “does not have” or “no-use” provisions of Prohibited Resource(s) but is verified to have used a Prohibited Resource to reduce load during a Dispatch; or (b) that a Recruited Account intentionally submits an invalid nameplate capacity value for the Prohibited Resource(s) (collectively “Type Two Non-Compliance”), then the Recruited Account will be removed from the DR Resource as follows. If there is an instance of (a) an uncured Type One Non-Compliance, or (b) a Type Two Non-Compliance, the consequences will be removal from the DR Resource and ineligibility to enroll in any demand response program subject to the prohibited resource requirement in D.16-09-056 for twelve calendar months from the removal date (for a single instance of noncompliance), or three years from the removal date (for two or more instances of noncompliance).

### Seller shall provide such documentation as may be reasonably necessary for SCE to verify the accuracy of the attestations referenced in subsections (a) – (c) and Seller’s compliance with and enforcement of this Section 6.11. For all non-residential Participating Accounts, Seller shall: (i) provide the Default Adjustment Values monthly (with Contract Capacity information); and (ii) ensure that bids in the wholesale market reflect portfolio amounts prior to the application of the Default Adjustment. Seller shall comply with any Prohibited Resource audit verification plan that is developed in accordance with D. 16-09-056 and approved by the CPUC (the “Prohibited Resources Plan”); provided, however, that for contracts executed by Seller with Recruited Accounts prior to the CPUC’s adoption of the Prohibited Resources Plan, installation of additional interval metering will not be required for verification purposes.

### On an annual basis, Seller shall provide to SCE the language of the prohibition included in its contracts with residential Recruited Accounts. Seller will develop metrics, targets and record keeping systems to assess the effectiveness of the outreach and notification efforts required under this Section 6.11, and will provide such materials to the CPUC upon SCE’s request.

# CREDIT AND COLLATERAL; FINANCIAL INFORMATION

## Development Security.

### Amount.

Seller shall post and thereafter maintain development security (“Development Security”) equal to *[Dollar amount text]* dollars *($[Number])*. *{SCE Comment: Development Security will be calculated based on RFP Instructions.}*

### Posting Requirements.

Seller shall post the Development Security in accordance with the following terms and conditions:

#### Seller shall post one-half of the Development Security within five (5) Business Days after the Effective Date, with the remainder to be posted no later than five (5) Business Days after CPUC Approval is obtained or waived by SCE in its sole discretion;

#### The Development Security must be in the form of cash or a Letter of Credit; and

#### The Development Security and any interest accrued thereon in accordance with Section 7.03(a) shall be held by SCE as security for Seller’s obligation to meet the Initial Delivery Date on or before the Expected Initial Delivery Date and demonstrating that the DR Resource is capable of providing the Contract Capacity and, if the Project includes Storage Units, that the Storage Units are capable of providing the Minimum Energy Storage Capacity.

### Return of Development Security.

If no Event of Default with respect to Seller has occurred and is continuing, and no Early Termination Date has occurred or been designated as the result of an Event of Default with respect to Seller, then:

#### As soon as reasonably practicable after the Initial Delivery Date, SCE shall return to Seller the full Development Security including any interest accrued thereon pursuant to Section 7.03(a).

#### As soon as reasonably practicable after the termination of this Agreement by either Party pursuant to Section 2.07 or Article 8, SCE shall return to Seller the full Development Security; provided, a termination under Article 8 only entitles Seller to a return of the Development Security only if the termination is based on a Force Majeure that prevents the Initial Delivery Date from occurring on or before the Initial Delivery Deadline.

Seller may, with SCE’s consent, authorize SCE to retain cash or Letter(s) of Credit initially posted as Development Security as Performance Assurance posted under Section 7.02.

## Performance Assurance.

### Amount.

At all times during the Delivery Period, Seller shall post and maintain performance assurance (“Performance Assurance”) in an amount equal to *[Dollar amount text]* dollars *($[Number]). {SCE Comment: Performance Assurance will be calculated based on RFP Instructions}*

### Posting Requirements.

Seller shall post the Performance Assurance in accordance with the following terms and conditions:

#### Seller shall post all of the Performance Assurance on or before the Initial Delivery Date;

#### Performance Assurance must be in the form of cash or a Letter of Credit; and

#### The Performance Assurance and any interest accrued thereon in accordance with Section 7.03(a) shall be held by SCE as security for Seller’s performance of its obligations under this Agreement.

### Return of Performance Assurance.

SCE shall return to Seller the unused portion of the Performance Assurance, including any interest accrued thereon pursuant to Section 7.03(a), as soon as reasonably practicable after (i) the Delivery Period has ended and (ii) Seller has satisfied all monetary obligations which survive termination of this Agreement.

## Administration of Project Security.

### Cash.

#### SCE shall calculate and pay to Seller the product of the following three factors:

##### dollar amount on which an interest payment is based;

##### for any given month, the average of the annual interest rates reported for all weekdays in the month opposite the caption “Federal funds (effective)” as set forth in the H.15 release, or any successor publication, published by the Board of Governors of the Federal Reserve System; and

##### the number of days in the calculation period divided by 360

on any Project Security posted in cash, concurrently with the return of such collateral to Seller in accordance with the terms of this Agreement.

#### On or after the occurrence of 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, SCE shall retain any interest payment as additional Project Security until the obligations of the Seller under this 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; provided that*,* any interest payment amount that is held by SCE as an additional Project Security amount shall not accrue interest in accordance with Section 7.03(a)(i).

#### SCE shall have the right to sell, pledge, rehypothecate, assign, invest, use, commingle or otherwise use in its business any cash that it holds as Project Security hereunder, free from any claim or right of any nature whatsoever of Seller, including any equity or right of redemption by Seller.

### Letters of Credit.

#### Each Letter of Credit shall be maintained for the benefit of SCE.

#### Seller shall:

##### renew or cause the renewal of each outstanding Letter of Credit no less than sixty (60) days before its expiration;

##### if the issuer of an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide alternative Project Security no less than twenty (20) Business Days before its expiration; and

##### if the issuer of a Letter of Credit fails to honor SCE’s properly documented request to draw on an outstanding Letter of Credit, provide substitute Project Security within three (3) Business Days after such refusal.

#### Upon the occurrence of a Letter of Credit Default, Seller shall provide to SCE alternative Project Security on or before the third (3rd) 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).

#### Upon or at any time after the occurrence and continuation of an Event of Default by Seller, SCE may draw on the entire undrawn portion of any outstanding Letter of Credit upon submission to the issuer of such Letter of Credit of one or more certificates specifying that such Event of Default has occurred and is continuing. In addition, SCE will have the right to draw on the Letter of Credit for any of the reasons set forth in such Letter of Credit (or its accompanying draw certificate).

#### Cash proceeds received by SCE from drawing upon the Letter of Credit shall be deemed Project Security for Seller’s obligations to SCE and SCE shall have the rights and remedies set forth in this Agreement with respect to such cash proceeds.

#### In all cases, all costs associated with a Letter of Credit, including the costs and expenses of establishing, renewing, substituting, canceling, and changing the amount of a Letter of Credit, shall be borne by Seller.

### Liability Following Application of Collateral. Notwithstanding SCE’s use of cash collateral or receipt of cash proceeds of a drawing under the Letter of Credit, Seller shall remain liable for:

#### Any failure to provide or maintain the required Project Security if, following such application, the remaining Project Security is less than the amount required hereunder (including failure to replenish cash collateral or a Letter of Credit to the full Project Security amount in the event that SCE uses the cash collateral or draws against the Letter of Credit for any reason other than to satisfy a Termination Payment); or

#### Any amounts owing to SCE that remain unpaid after the application of the amounts drawn by SCE.

## Grant of Security Interest.

To secure its performance of its obligations under this Agreement, and until released as provided herein, Seller hereby grants to SCE a present and continuing first-priority security interest (“Security Interest”) in, and lien on (and right of setoff against), and assignment of the Project Security, 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 SCE, and Seller agrees to take such action as SCE reasonably requires in order to perfect SCE’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.

## Remedies.

### Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, SCE, if it is the Non-Defaulting Party, may do any one or more of the following:

#### Exercise any of its rights and remedies with respect to the Project Security, including any such rights and remedies under law then in effect;

#### Exercise its rights of setoff against any and all property of Seller in the possession of SCE or its agent;

#### Draw on any outstanding Letter of Credit issued for its benefit; and

#### Liquidate any Project Security then held by or for the benefit of SCE free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

### SCE 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, subject to SCE’s obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

### SCE shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available hereunder. Seller shall in all events remain liable to SCE for any amount payable by Seller in respect of any of its obligations remaining unpaid after any such liquidation, application and set off.

## Credit and Collateral Covenants.

### Seller shall, from time to time as requested by SCE, execute, acknowledge, record, register, deliver 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 SCE with respect to its Security Interest furnished pursuant to this Agreement.

### Seller may not cause or permit the stock, equity ownership interest in Seller or assets of Seller to be pledged or assigned as collateral or otherwise to any party other than Lender pursuant to a Collateral Assignment Agreement.

### Seller shall not hold any material assets, become liable for any material obligations or engage in any material business activities other than the development, construction and operation of the Project.

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

### During any period during which Seller is a Defaulting Party, Seller may not:

#### Declare or pay any dividend, or make any other distribution or payment, on account of any equity interest in Seller; or

#### Otherwise make any distribution or payment to any Affiliate of Seller.

## California Commercial Code Waiver.

This Agreement sets forth the entirety of the agreement of the Parties regarding credit, collateral, financial assurances and adequate assurances. Except as expressly set forth in this Agreement, including those provisions set forth in this Article 7 and Article 10, neither Party:

### 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

### will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of this Article 7 and Article 10 of this Agreement; and all implied rights relating to financial assurances arising from Section 2609 of the California Commercial Code or case law applying similar doctrines are hereby waived.

## 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 or IFRS:

### 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 for the Party; and

### 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 unaudited 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 each case, the financial statements specified above must be certified in accordance with all Applicable Laws, including all applicable SEC rules and regulations, if such Party is an SEC reporting company, or certified by the chief financial officer, controller, treasurer or any assistant treasurer of a Party or any employee of a Party designated by any of the foregoing, as being fairly stated in all material respects (subject to normal year-end audit adjustments) if such Party is not an 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 7.08.

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.

# FORCE MAJEURE

## No Default for Force Majeure.

### Neither Party will be considered to be in default in the performance of any of its obligations set forth in this Agreement 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.

### *[Notwithstanding anything in this Agreement to the contrary, a Force Majeure event shall not excuse Seller from its obligations to exercise Maximum Efforts during an N-2 Event or from any liability hereunder arising from failure to perform such obligations.]*

## Force Majeure Claim.

If, because of a Force Majeure, either Party is unable to perform its obligations under this Agreement, such Party (the “Claiming Party”) shall be excused from whatever performance is affected by the Force Majeure only to the extent so affected, provided:

### the Claiming Party, no more than fourteen (14) days after the initial occurrence of the claimed Force Majeure, gives the other Party Notice describing the particulars of the occurrence and estimating the event’s expected duration and probable impact on the performance of the Claiming Party’s obligations under this Agreement, and shall continue to furnish timely regular reports during the continuation of the event;

### the Claiming Party must provide timely evidence reasonably sufficient to establish that the occurrence constitutes a Force Majeure as defined in this Agreement;

### the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure; and

### as soon as the 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.

## Termination.

### If the Initial Delivery Date does not occur on or before the Initial Delivery Deadline as the result of a Force Majeure occurring before the Initial Delivery Deadline and Seller is the Claiming Party, then the Initial Delivery Deadline will, subject to Section 2.06 and Seller’s compliance with its obligations as the Claiming Party under this Article 8, be extended on a day-for-day basis for the duration of the Force Majeure; provided, if such extension coincides with and is beyond the Initial Delivery Deadline, then either Party may terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is provided.

### During the Delivery Period, either Party may terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is provided, if (i) an event of Force Majeure extends for more than three hundred sixty-five (365) consecutive days and materially and adversely affects the operations of the Claiming Party, or (ii) the Project is destroyed or rendered inoperable by a Force Majeure, and an independent, third-party engineer determines in writing that the Project cannot be repaired or replaced within six (6) months after the first day of such Force Majeure.

### If either Party exercises its termination right pursuant to this Section 8.03, no Termination Payment will be due or owing by either Party, and Seller will be entitled to a return of any Project Security.

# REPRESENTATIONS, WARRANTIES AND COVENANTS

## Representations and Warranties of Both Parties.

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

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

### Except for CPUC Approval in the case of SCE, it has or will timely acquire all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

### 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;

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

### 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;

### There is not pending or, to its knowledge, threatened against it or, in the case of Seller, its Affiliates, any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

### 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;

### 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;

### It has entered into this Agreement in connection with the conduct of its business and it has the capability or ability to make available or take delivery of, as applicable, the DR Resource under this Agreement in accordance with the terms of this Agreement; and

### It has not relied upon any promises, representations, statements or information of any kind whatsoever that are not contained in this Agreement in deciding to enter into this Agreement.

## Additional Seller Representations and Warranties.

### Seller represents and warrants to SCE as of the Initial Delivery Date that:

#### To the best of Seller’s knowledge, each specification and description of the Project and each Storage Unit (if any), is true and correct.

#### [Each Storage Unit is a New Resource.] *{SCE Note: as bid; delete for projects with storage units that are not new resources}*

#### Seller has not used, granted, pledged, assigned, or otherwise committed any Contract Capacity of the DR Resource to meet the RAR, Flexible RAR or Local RAR of, or confer Resource Adequacy Benefits upon, any entity other than SCE during the Delivery Period.

### On each day on which Project Security is held by SCE under this Agreement, Seller hereby represents and warrants that:

#### Seller has good title to and is the sole owner of such Project Security, 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 the Project Security, other than the security interests and liens created under this Agreement;

#### upon the posting of Project Security by Seller to SCE, SCE 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

#### Seller 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 Project Security with respect hereto.

### Seller represents and warrants that, as of the Effective Date, Seller has provided SCE with true and correct, up-to-date copies of all documents, if any, related to the interconnection of the Storage Units.

### Seller represents and warrants to SCE that Seller has provided to SCE a list of services that Seller currently provides or intends to provide to SCE or to any other entity using the Storage Unit(s), in addition to the DR Resource delivered to SCE under this Agreement.

## Seller’s Covenants.

Seller shall maintain ownership of and demonstrable exclusive rights to the Project throughout the Term.

Seller covenants to SCE that throughout the Delivery Period:

### Seller will deliver the DR Resource to SCE free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person.

### Seller has been appointed by each Participating Account to act as an aggregator on behalf of said Participating Account with respect to all aspects of the DR Resource, including: (i) the receipt of Notices from SCE; (ii) the receipt of capacity and energy payments from SCE; and (iii) the payment of penalties to SCE.

### Seller will not use, grant, pledge, assign, or otherwise commit any Contract Capacity of the DR Resource or capacity of the Project to meet the RAR, Flexible RAR or Local RAR of, or confer Resource Adequacy Benefits upon, any entity other than SCE during the Delivery Period.

### Seller will use and follow Prudent Electrical Practices.

### Each Recruited Account is a Customer.

### For each Participating Account that uses energy storage, Seller shall have the right to install and operate the applicable Storage Unit at the Participating Account’s location in a manner necessary to perform its obligations under this Agreement.

### 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.

### 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 CAISO, the CPUC, 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 DR Resource and Project for SCE’s sole benefit through the Delivery Period.

### Seller shall obtain, maintain and remain in compliance with all Required Permits and interconnection agreements necessary to operate the Project, and to charge and discharge the Storage Units, if any.

### [Seller has not and will not obtain, and shall ensure that the Project, the equipment associated with the DR Resource, each Storage Unit, and all of the Participating Accounts have not obtained and will not obtain, with respect to the Project, the DR Resource, such equipment or the Storage Units, any compensation or other benefits pursuant to, SCE’s Net Energy Metering tariff, or other similar program that exists now or during the Term] *{SCE Note: TBD.}*.

### [Seller shall not, and shall ensure that all of the Participating Accounts do not, during the Delivery Period, obtain benefits under SCE’s Net Energy Metering tariff, or any other similar program that exists now or during the Term.] *{SCE Note: TBD.}*

### Seller shall not, and shall ensure that all of the Participating Accounts do not, during the Delivery Period, obtain benefits under SCE’s Automated Demand Response Program, or any other similar program that exists now or during the Term.

### [Seller has not obtained, and shall ensure that the Project, the equipment associated with the DR Resource, each Storage Unit, and all of the Participating Accounts have not obtained, with respect to the Project, the DR Resource, such equipment or the Storage Units, any compensation or other benefits pursuant to the Self-Generation Incentive Program, as defined in CPUC Decision 01-03-073 prior to *[Date]*.] *{SCE Note: TBD.}*

### Seller will not use the DR Resource to participate in the CAISO markets.

### If Seller agrees to use the Storage Unit(s) to provide any services to SCE or to any other entity in addition to the DR Resource delivered to SCE under this Agreement, Seller shall inform SCE regarding such additional services in writing prior to providing such additional services. Upon SCE’s request, Seller shall provide SCE with an update regarding any previously reported additional services or any new additional services delivered to SCE or any other entity.

### If Seller uses the Storage Unit(s) to provide any other service to SCE or to any other entity in addition to the DR Resource delivered to SCE under this Agreement, Seller shall do so in compliance with the rules set forth in CPUC Decision (D.) 18-01-003 regarding multiple-use application issues for energy storage devices, as such rules are amended, modified or updated from time to time.

# EVENTS OF DEFAULT; TERMINATION

## Events of Default.

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

### With respect to either Party:

#### 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;

#### 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; provided, if the misrepresentation or breach of warranty is capable of a cure, an Event of Default will be deemed to occur if the misrepresentation of breach of warranty is not remedied within five (5) Business Days after Notice from the non-breaching Party;

#### 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 thirty (30) days after Notice of the failure, which Notice sets forth in reasonable detail the nature of the failure; provided, if the failure is not reasonably capable of being cured within the thirty (30) day cure period specified above, the Defaulting Party will have such additional time (not exceeding an additional sixty (60) days) as is reasonably necessary to cure the failure, so long as the Defaulting Party promptly commences and diligently pursues the cure;

#### Such Party becomes Bankrupt; or

#### Such Party disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of this Agreement.

### With respect to Seller:

#### Seller fails to satisfy the credit and collateral requirements set forth in Article 7, including failure to post or maintain Project Security, and such failure is not cured within three (3) Business Days after Notice from SCE;

#### Subject to Seller’s one-time right to cure pursuant to Section 4.07, Seller fails to achieve a Critical Path Development Milestone on or before the deadline to achieve such Critical Path Development Milestone set forth in this Agreement;

#### Seller fails to comply with any of its covenants under Sections 13.06 or 9.03, unless such failure to comply is cured within a period specifically provided elsewhere in this Agreement applicable to such failure to comply;

#### Seller fails to achieve the Initial Delivery Date for the Project by the Expected Initial Delivery Date or Initial Delivery Deadline, except if (A) the cause of such failure is due to an event of Force Majeure, (B) Seller has complied with its obligations under Article 8, and (C) this Agreement is subject to termination under Section 8.03;

#### 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;

#### Except as permitted under Section 14.04, Seller does not own or otherwise have control of the Project;

#### Seller charges any Storage Unit in violation of Section 6.07;

#### During the Delivery Period, the measured Total Recorded Capacity is less than seventy-five percent (75%) of the applicable Contract Capacity for three (3) months during which Dispatches have occurred in any twelve (12)-month period;

#### During the Delivery Period, the measured Storage-Backed Recorded Capacity is less than seventy-five percent (75%) of the applicable Minimum Energy Storage Capacity for three (3) months during which Dispatches have occurred in any twelve (12)-month period;

#### During the Delivery Period, the amount of Resource Adequacy Benefits provided is less than seventy-five percent (75%) of the Net Qualifying Capacity obtained pursuant to 6.06(a) for three (3) months in any twelve (12)-month period;

#### During the Delivery Period, the amount of flexible Capacity Attributes provided is less than seventy-five percent (75%) of the EFC obtained pursuant to 6.06(b) for three (3) months in any twelve (12)-month period;

#### During the Delivery Period, Seller fails for three (3) months in any twelve (12)-month period to identify, pursuant to Section 6.09(c), Participating Accounts with an expected Load Drop Amount equal to or greater than seventy-five percent (75%) of the applicable Contract Capacity;

#### During the Delivery Period, Seller fails for three (3) months in any twelve (12)-month period to identify, pursuant to Section 6.09(c), Participating Accounts with an expected Storage-Backed Load Drop Amount equal to or greater than seventy-five percent (75%) of the applicable Minimum Energy Storage Capacity;

#### Seller removes from any Site equipment upon which the Contract Capacity or capacity of the Storage Unit(s) 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 SCE;

#### During the Term, Seller makes any material misrepresentation or omission in any report required to be made or furnished by Seller pursuant to this Agreement;

#### Seller fails to take any actions necessary to dedicate, convey or effectuate the use of any and all Resource Adequacy Benefits for SCE’s sole benefit as specified under Section 6.04;

#### A termination of, or cessation of service under, any agreement necessary for Seller to (A) interconnect the Project to SCE’s distribution electric system, (B) charge or discharge the Project, or (C) comply with the SCE 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;

#### During the Delivery Period, Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the DR Resource or the capacity of the Storage Units, or any portion thereof, to any party other than SCE without SCE’s written consent;

#### 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 of Seller, which results in the indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable;

#### Seller consolidates or amalgamates with, merges into or with, or transfers substantially all its assets to another entity and (A) the resulting entity fails to assume all the obligations of Seller hereunder, or (B) the resulting entity’s creditworthiness is materially weaker than that of Seller immediately prior to such action. The creditworthiness of the resulting entity shall not be deemed to be ‘materially weaker’ so long as the resulting entity maintains a Credit Rating of at least that of the Seller, immediately prior to the consolidation, merger or transfer; or

#### *[Seller fails to exercise Maximum Efforts at any time during an N-2 Event.]*.

## Early Termination Date.

If an Event of Default 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 by Notice, which will be effective five (5) Business Days after the Notice is given, a day, no later than twenty (20) days after the Notice is given, for the early termination of this Agreement (an “Early Termination Date”), (b) accelerate all amounts owing between the Parties under this Agreement; (c) withhold any payments due to the Defaulting Party under this Agreement; (d) suspend performance pending termination of this Agreement, but excluding the obligation to post and maintain Project Security in accordance with Article 7; and (e) pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages and, where appropriate, specific performance or injunctive relief), except to the extent that such remedies are limited by the terms of this Agreement.

## 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 including the Forward Settlement Amount, together with appropriate supporting documentation. If SCE is the Non-Defaulting Party and reasonably expects to incur penalties, fines or costs from the CAISO, the CPUC, or any other Governmental Authority, then SCE may estimate the amount of those penalties and fines and include them in the Termination Payment amount.

If the Termination Payment is owed to the Non-Defaulting Party, the Defaulting Party shall pay such amount to the Non-Defaulting Party within five (5) Business Days after the Notice is provided. If the Termination Payment is owed to the Defaulting Party, then the Forward Settlement Amount shall be zero dollars ($0) and the Non-Defaulting Party shall only pay to the Defaulting Party, within thirty (30) days after the Notice is provided, any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date.

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 12 (Disputes).

## Limitations on Seller’s and Seller’s Affiliates’ Ability to Make or Agree to Third Party Sales from the Project/Storage Units after Certain Terminations of this Agreement.

If Seller terminates this Agreement, as provided in Section 2.07 or Article 8 (based on a Force Majeure as to which Seller is the Claiming Party), or if SCE terminates this Agreement pursuant to Section 2.05(b), or due to an Event of Default by Seller prior to the Initial Delivery Date, neither Seller nor Seller's Affiliates may sell, or enter into a contract to sell, energy, capacity, demand response resource, Resource Adequacy Benefits or ancillary services associated with or attributable to a Storage Unit or the Project to a party other than SCE for a period of two (2) years following the effective date of such termination (the “Restricted Period”).

This prohibition on contracting and sale will not apply if, before entering into such contract or making a sale to a party other than SCE, Seller or Seller’s Affiliates provides SCE with a written offer to sell the energy, capacity, demand response resource, Resource Adequacy Benefits or ancillary services at the DR Resource price and on other terms and conditions materially similar to the terms and conditions contained in this Agreement and SCE fails to accept such offer within forty-five (45) days after SCE’s receipt thereof.

Neither Seller nor Seller’s Affiliates may sell or transfer the Project, or any part thereof, or land rights or interests in the Site(s) (including interconnection queue positions) during the Restricted Period so long as the limitations contained in this Section 10.05 apply, unless the transferee agrees to be bound by the terms set forth in this Section 10.05 pursuant to a written agreement approved by SCE. Upon termination of this Agreement pursuant to the Sections referenced in the first paragraph of this Section 10.05, Seller shall deliver a notice of SCE’ rights in respect of the Site, in a form reasonably acceptable to SCE, that SCE may record giving notice of SCE’s rights under this Section 10.05.

# LIMITATION OF REMEDIES, LIABILITY, AND DAMAGES

## 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.

SUBJECT TO SECTION 12.04, 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 THE PROVISIONS OF ARTICLE 13, NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

NOTHING IN THIS ARTICLE PREVENTS, OR IS INTENDED TO PREVENT SCE FROM PROCEEDING AGAINST OR EXERCISING ITS RIGHTS WITH RESPECT TO ANY PROJECT SECURITY.

## No Representation by SCE.

Any review by SCE or its consultants of the Project, including the design, construction or refurbishment, operation or maintenance of the Project, or otherwise, is solely for SCE’s information. By making such review, SCE 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 SCE of the Project, including any review of the design, construction or renovation, operation, or maintenance of the Project by SCE, constitutes any such representation by SCE. Seller is solely responsible for the economic and technical feasibility, operational capability, and reliability of the Project.

## Separation of Functions.

The Parties acknowledge that they have no rights against each other or obligations to each other under this Agreement with respect to any relationship between the Parties in which SCE is acting in its capacity as an owner or provider of electrical interconnection, transmission, or distribution service or equipment, and that this Agreement conveys no rights or obligations with respect to electrical interconnection, transmission, or distribution service or equipment. The Parties further acknowledge that SCE is not responsible or liable in any way for (a) any delay or failure by Seller to achieve the Initial Delivery Date by the Expected Initial Delivery Date or the Initial Delivery Deadline, as applicable, related to electrical interconnection, transmission, or distribution service or equipment, (b) any costs or damages incurred by Seller as a result thereof or any reduction in payments under this Agreement resulting from any delay in achieving the Initial Delivery Date by the Expected Initial Delivery Date or Initial Delivery Deadline, as applicable, or (c) a reduction in the Term or the Delivery Period related to electrical interconnection, transmission, or distribution service or equipment, and Seller’s non-performance of any provision of this Agreement shall not be excused to any greater extent due to any action or inaction of SCE in its capacity as an owner or provider of electrical interconnection, transmission, or distribution service or equipment than it would be if the non-performance were due to any action or inaction of a person other than SCE.

# DISPUTE RESOLUTION

## Dispute Resolution.

Other than requests for provisional relief under Section 12.04, any and all Disputes which the Parties have been unable to resolve by informal methods after undertaking a good faith effort to do so, must first be submitted to mediation under the procedures described in Section 12.02, and if the matter is not resolved through mediation, then for final and binding arbitration under the procedures described in Section 12.03.

The Parties agree that there will be no interlocutory appellate relief (such as writs) available. Any Dispute resolution process pursuant to this Article 12 shall be commenced within one (1) year of the date of the occurrence of the facts giving rise to the Dispute, without regard to the date such facts are discovered; provided, if the facts giving rise to the Dispute were not reasonably capable of being discovered at the time of their occurrence, then such one (1) year period shall commence on the earliest date that such facts were reasonably capable of being discovered, and in no event more than four (4) years after the occurrence of the facts giving rise to the Dispute. If any Dispute resolution process pursuant to this Article 12 with respect to a Dispute is not commenced within such one (1) year time period, such Dispute shall be barred, without regard to any other limitations period set forth by law or statute.

## Mediation.

Either Party may initiate mediation by providing Notice to the other Party in accordance with Section 14.02 of a written request for mediation, setting forth a description of the Dispute and the relief requested.

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

Such selection and scheduling will be completed within forty-five (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 one hundred twenty (120) days from the date of Notice of the request for mediation.

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

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

## Arbitration.

Either Party may initiate binding arbitration with respect to the matters first submitted to mediation by providing Notice in accordance with Section 14.02 of a demand for binding arbitration before a single, neutral arbitrator (the “Arbitrator”) within sixty (60) days following the unsuccessful conclusion of the mediation provided for in Section 12.02. If Notice of arbitration is not provided by either Party within sixty (60) days following the unsuccessful conclusion of the mediation provided for in Section 12.02, the Dispute resolution process shall be deemed complete and further resolution of such Dispute shall be barred, without regard to any other limitations period set forth by law or statute.

The Parties will cooperate with one another in selecting the Arbitrator within sixty (60) days after Notice of the demand for arbitration and will further cooperate in scheduling the arbitration to commence no later than one hundred eighty (180) days from the date of Notice of the demand.

If, notwithstanding their good faith efforts, the Parties are unable to agree upon a mutually acceptable Arbitrator, the Arbitrator will be appointed as provided for in California Code of Civil Procedure Section 1281.6.

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

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

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

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

Absent the existence of such rules and procedures, the arbitration will be conducted in accordance with the California Arbitration Act, California Code of Civil Procedure Section 1280 et seq. and California procedural law (including the Code of Civil Procedure, Civil Code, Evidence Code and Rules of Court, but excluding local rules).

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

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

### 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);

### The initial disclosure will occur within thirty (30) days after the initial conference with the Arbitrator or at such time as the Arbitrator may order;

### Discovery may commence at any time after the Parties’ initial disclosure;

### The Parties will not be permitted to propound any interrogatories or requests for admissions;

### Discovery will be limited to twenty-five (25) document requests (with no subparts), three (3) lay witness depositions, and three (3) expert witness depositions (unless the Arbitrator holds otherwise following a showing by the Party seeking the additional documents or depositions that the documents or depositions are critical for a fair resolution of the Dispute or that a Party has improperly withheld documents);

### Each Party is allowed a maximum of three (3) expert witnesses, excluding rebuttal experts;

### Within sixty (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;

### Within thirty (30) days after the initial expert disclosure, the Parties may designate a maximum of two (2) rebuttal experts;

### Unless the Parties agree otherwise, all direct testimony will be in form of affidavits or declarations under penalty of perjury; and

### Each Party shall make available for cross examination at the arbitration hearing its witnesses whose direct testimony has been so submitted.

Subject to Article 11, the Arbitrator will have the authority to grant any form of equitable or legal relief a Party might recover in a court action. The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms of this Agreement, that money damages would not be a sufficient remedy for any breach of these provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to specific performance and injunctive or other equitable relief as a remedy for a breach of Sections 1.01(b), 6.04, 6.10(e), 10.04, or 14.05.

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.

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

## Provisional Relief.

The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms of this Agreement, that money damages would not be a sufficient remedy for any breach of these provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to seek a preliminary injunction, temporary restraining order, or other provisional relief as a remedy for a breach of Sections 1.01(b), 6.04, 6.10(e), 10.04, or 14.05 in any court of competent jurisdiction, notwithstanding the obligation to submit all other Disputes (including all claims for monetary damages under this Agreement) to arbitration pursuant to this Article 12. The Parties further acknowledge and agree that the results of the arbitration may be rendered ineffectual without the provisional relief.

Such a request for provisional relief does not waive a Party’s right to seek other remedies for the breach of the provisions specified above in accordance with this Article 12, notwithstanding any prohibition against claim-splitting or other similar doctrine. The other remedies that may be sought include specific performance and injunctive or other equitable relief, plus any other remedy specified in this Agreement for the breach of the provision, or if this Agreement does not specify a remedy for the breach, all other remedies available at law or equity to the Parties for the breach.

## Consolidation of Matters.

The Parties shall make diligent good faith efforts to consolidate any provisional relief, mediation, arbitration or other dispute resolution proceedings arising pursuant to this Article 12 that arise from or relate to the same act, omission or issue.

# INDEMNIFICATION

## SCE’s Indemnification Obligations.

In addition to any other indemnification obligations SCE may have elsewhere in this Agreement, which are hereby incorporated in this Section 13.01, SCE 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 SCE of its representations and warranties in Section 9.01; and

### the failure to pay any Governmental Charges for which SCE is responsible under Section 13.06.

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.

## 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 13.02, Seller releases, and shall indemnify, defend and hold harmless SCE, and SCE’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:

### any breach made by Seller of its representations, warranties and covenants in Article 9;

### the failure to pay any Governmental Charges for which Seller is responsible under Sections 13.06, 13.07, or 13.08;

### Seller’s failure to fulfill its obligations regarding Resource Adequacy Benefits as set forth in Section 6.04;

### injury or death to persons, including SCE employees, and physical damage to property, including SCE 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;

### injury or death to any person or damage to any property, including the personnel or property of SCE, to the extent that SCE would have been protected had Seller complied with all of the provisions of 14.07 (Insurance); provided, the inclusion of this Section 13.02(e) is not intended to create any express or implied right in Seller to elect not to provide the insurance required under 14.07 (Insurance);

### any representations, statements, or promises made by either Seller or Seller’s agents or employees to a Recruited Account or potential Recruited Account;

### the Storage Unit(s), or any equipment, software, applications or programs (or any portion of same) used in connection with the Storage Unit(s) 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;

### any breach by Seller of the covenants set forth in Section 10.05;

### any violation of Applicable Laws arising out of or in connection with Seller’s performance of, or failure to perform this Agreement, including strict liability;

### 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; and

### any monetary penalties or fines assessed against SCE by the CPUC or the CAISO or any other entity having jurisdiction, resulting from Seller’s willful or negligent failure to provide SCE with the full amount of Resource Adequacy Benefits associated with the Contract Capacity, meet the time requirements for Dispatching the DR Resource, or provide Notice of the non-availability of any portion of the Contract Capacity as required under Section 6.06 hereof. The Parties shall use commercially reasonable efforts to minimize such penalties and fines; provided that in no event shall SCE be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines.

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

## 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:

### 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.

### 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.

### 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.

## Survival of Indemnification Rights and Obligations.

All indemnity rights shall survive the termination of this Agreement for a period of four (4) years.

## Cooperation to Minimize Tax Liabilities.

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.

## 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 DR Resource.

If SCE is required by Applicable Laws to remit or pay Governmental Charges which are Seller’s responsibility hereunder, SCE may deduct the amount of any such Governmental Charge from any amounts due to Seller under this Agreement. If SCE elects not to deduct such amounts from amounts due to Seller under this Agreement, Seller shall promptly reimburse SCE for such amounts upon SCE’s request.

## 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. If these requirements conflict, or the CAISO or CPUC do not provide a corresponding requirement to the other Governmental Authorities, Seller shall comply with the most stringent requirement of the Governmental Authorities.

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 or operate the Project in accordance with Applicable Laws and Permit Requirements. No such fines, penalties or charges shall be passed through to SCE.

## Environmental Costs and Indemnification.

Seller is solely responsible for

### all costs incurred in connection with 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 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 Materials introduced to any Site, and the decontamination or remediation, on or off any Site, necessitated by the introduction of such Hazardous Materials on any Site,

### all taxes, charges or fees imposed on the Storage Unit(s) or Seller by a Governmental Authority for Greenhouse Gas emitted by and attributable to the Storage Unit(s) during the Term,

### any obligations listed under “Compliance Obligation” in the GHG Regulations, and

### all other costs associated with the implementation and regulation of Greenhouse Gas emissions (whether in accordance with the California Global Warming Act of 2006, Assembly Bill 32 (2006) and the regulations promulgated thereunder—including the GHG Regulations, or any other federal, state or local legislation to offset or reduce any Greenhouse Gas emissions implemented and regulated by a Governmental Authority) with respect to the Project or Seller, if applicable.

#  MISCELLANEOUS

## General.

### Entire Agreement. This Agreement constitutes the entire agreement between the Parties relating to its subject matter.

### Amendment. This Agreement can only be amended by a writing signed by both Parties; provided, however, that Exhibit C may be amended from time to time by SCE in its sole discretion by providing Notice thereof to Seller.

### 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).

### Waiver. 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.

### Section Headings; Technical Terms. The headings used herein are for convenience and reference purposes only. Words having well-known technical or industry meanings have these meanings unless otherwise specifically defined in this Agreement.

### Successors and Assigns. This Agreement is binding upon each Party’s successors and permitted assigns.

### Forward Contract. The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a “forward contract” and that SCE and Seller are each “forward contract merchants” within the meaning of the United States Bankruptcy Code (11 U.S.C. §101 *et seq*.), as amended.

### Multiple Counterparts. 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, Portable Document Format (i.e., PDF) 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.

### Survival. 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, settlement, confidentiality, remedies, limitation of liabilities, posting of Project Security, dispute resolution, and limitations on third party sales, shall so survive.

### 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.

### Independent Contractors. The Parties are independent contractors. Nothing contained herein shall be deemed to create an association, joint venture, or partnership relationship between the Parties or to impose any partnership obligations or liability on either Party in any way.

### 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.

### Rules of Construction.

#### This Agreement will be considered for all purposes as prepared through the joint efforts of the Parties and may 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 is by way of example only and may not be considered in any way to be in limitation.

#### The word “or” when used in this Agreement includes the meaning “and/or” unless the context unambiguously dictates otherwise.

#### Where days are not specifically designated as Business Days, they will be considered as calendar days.

#### All references to time shall be in Pacific Daylight Time (when California observes Daylight Savings Time) and Pacific Standard Time (otherwise) unless stated otherwise.

#### No provision of this Agreement is intended to contradict or supersede any agreement, the SCE Tariff or Applicable Laws covering transmission, distribution, metering, scheduling or interconnection, including the interconnection agreement. In the event of an apparent contradiction between this Agreement and any such agreement, the SCE Tariff, or Applicable Laws, such agreement, the SCE Tariff, or Applicable Law controls. Each Party agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.

#### Whenever this Agreement specifically refers to any Applicable Laws, tariff, government department or agency, regional reliability council, Distribution Provider, accounting standard or Ratings Agency, the Parties hereby agree that the reference also refers to any successor to such law, tariff, standard or organization.

## Notices.

### Notices Generally.

All notices, requests, invoices, statements or payments must be made as specified in Exhibit F.

All Notices must, unless otherwise specified herein (including Dispatch Instructions, which can be provided in the manner described in Section 5.02(b)), be in writing and may be delivered by hand delivery, first class United States mail, overnight courier service, e-mail or facsimile.

Notice provided in accordance with this Section 14.02(a) will be deemed given as follows:

#### Notice by e-mail, facsimile or hand delivery will be deemed given at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise will be deemed given at the close of business on the next Business Day;

#### Notice by overnight United States mail or courier service will be deemed given on the next Business Day after such Notice was sent out;

#### Notice by first class United States mail will be deemed given two (2) Business Days after the postmarked date;

#### Notice of curtailment will be deemed given on the date and time made by SCE and will be effective immediately.

Notices will be 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.

A Party may change its designated representatives, addresses and other contact information by providing Notice of same in accordance herewith.

All Notices, requests, invoices, statements or payments related to this Agreement or the DR Resource must reference the ID# and clearly identify the fact, circumstance, request, issue, dispute or matter to which such Notice relates.

### N-2 Event Notifications.

*[SCE shall issue all notices of the commencement or termination of an N-2 Event (“N-2 Event Notifications”) electronically to the address(es) identified by Seller for this purpose on Exhibit F. For purposes of this Agreement, including the commencement or termination of Seller’s obligation to exercise Maximum Efforts, an N-2 Event Notification shall be deemed given and effective at the time of its transmission. Seller shall institute procedures and operations to receive and react, as per Seller’s obligations under this Agreement, to all N-2 Event Notifications at all times during the Delivery Period.]*

## Governing Law; Waiver of Jury Trial.

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. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY DISPUTE ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

## Assignment.

### Except as provided in Section 14.04(d), 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.

### Any Tax Equity Financing or 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 SCE, which consent shall not be unreasonably withheld.

### Any requests for consent to assignment shall be provided at least thirty (30) days in advance of the assignment date.

### In connection with any debt financing or refinancing of the Project by Seller that contemplates an assignment of this Agreement as collateral, SCE shall in good faith work with Seller and Lender to agree upon a consent to a collateral assignment of this Agreement (“Collateral Assignment Agreement”) substantially in the form of Exhibit G. Requests for a Collateral Assignment Agreement must be received by SCE at least thirty (30) days in advance of the anticipated closing date for the transaction in question. Seller shall also be responsible for SCE’s reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any such assignment, including attorneys’ fees.

## Confidentiality.

### Confidentiality Obligation.

Except as otherwise expressly agreed in writing by the other Party, and except as otherwise agreed in Sections 14.05(b) (Permitted Disclosures) and 14.05(c) (Duty to Seek Protection), each receiving Party shall, and shall cause its Representatives to, (i) keep strictly confidential and take reasonable precautions to protect against the disclosure of all Confidential Information, and (ii) 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 and 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.

### Permitted Disclosures.

#### SCE and Seller may disclose Confidential Information to the “Independent Evaluator,” as defined in CPUC Decision 04-12-048. SCE and the Independent Evaluator may disclose Confidential Information to Governmental Authorities, the CAISO, SCE’s Procurement Review Group established by the CPUC in Decision 02-08-071 (“PRG”), and SCE’s advisory Cost Allocation Mechanism Group established by the CPUC in Decision 07-12-052 (“CAM”), or any discovery or data request of a party to any proceeding before the CPUC, FERC or CEC. Neither SCE 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 the FERC, the CPUC and all divisions thereof, the PRG, the CAM, or the CAISO of any Confidential Information or other information disclosed to any of them by SCE or the Independent Evaluator.

#### The Parties may disclose Confidential Information to the extent necessary to comply with Applicable Laws, any accounting rule or standard, and any applicable summons, subpoena or order of a Governmental Authority, and any exchange, Control Area or CAISO rule.

#### Either Party shall be permitted to disclose the following terms with respect to this Agreement: (A) Party names, (B) technology type, (C) Delivery Period, (D) location, (E) Contract Capacity, (F) Expected Initial Delivery Date, and (G) expected load reduction (in kWh).

#### SCE may disclose the DR Resource, or any applicable portion of the DR Resource, including any amounts of EFC and Inflexible Capacity, under this Agreement to any Governmental Authority, the CPUC, and the CAISO in order to support its RA Compliance Showings, if applicable.

#### Seller may disclose non-price information to Recruited Accounts or bona fide potential Recruited Accounts for the sole purpose, and only to the extent necessary, for proper performance of this Agreement.

#### SCE may confirm with potential Participating Accounts (i) the identity of any subcontractors that Seller has provided to SCE that are acting on behalf of Seller under this Agreement, and (ii) such potential Participating Account’s eligibility to become a Participating Account in accordance with this Agreement.

### Duty to Seek Protection.

#### In connection with requests or orders to produce Confidential Information protected by this Agreement and in accordance with a summons, subpoena, order or similar request of a Governmental Authority, or pursuant to any discovery or data request of a party to any proceeding before a Governmental Authority, each Party, to the extent permitted by Applicable Laws, (a) will promptly notify the other Party of the existence, terms, and circumstances of such requirement(s) so that such other Party may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Agreement, and (b) will, and will cause its Representatives to, cooperate fully with such other Party, to the extent permitted by Applicable Laws, in seeking to limit or prevent such disclosure of such Confidential Information. Notwithstanding the preceding sentence, the requirements under this Section 14.05(c)(i) do not apply to Section 14.05(b)(i).

#### If a Party or its Representatives are compelled to make disclosure in response to a requirement described in Section 14.05(c)(i), the compelled person may disclose only that portion of the Confidential Information protected by this Agreement which its counsel advises that it is legally required to disclose and will exercise reasonable efforts to obtain assurance that confidential treatment will be accorded to the disclosed Confidential Information.

### 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 Section 14.05.

## Records.

### Performance Under This Agreement.

Each Party and its representatives shall maintain records and supporting documentation relating to this Agreement, the DR Resource, 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.

### Other Regulatory and Governmental Requirements.

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

### Audit Rights.

SCE, 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 SCE under this Section 14.06(c) and provide copies of documents, records or data to SCE. The rights and obligations under this Section 14.06(c) shall survive the termination of this Agreement for a period of two (2) years.

### Industry Standards.

Seller shall maintain and make available to SCE 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.

### California Climate Action Registry.

If applicable, in accordance with CPUC Rulemaking 06-04-009 (April 13, 2006), upon modification of the protocols of the registry contemplated therein (“California Climate Action Registry”) to allow energy storage (as applicable) facility-specific registration, Seller shall promptly (i) register with the California Climate Action Registry, (ii) send SCE Notice of such registration and (iii) remain a member of the California Climate Action Registry throughout the entire Term.

## 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 Laws, 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 Seller’s defense and indemnity obligations.

### Workers’ Compensation Insurance with the statutory limits required by the state having jurisdiction over Seller’s employees;

### Employer’s Liability Insurance with limits of not less than:

#### Bodily injury by accident – One Million dollars ($1,000,000) each accident

#### Bodily injury by disease – One Million dollars ($1,000,000) policy limit

#### Bodily injury by disease – One Million dollars ($1,000,000) each employee

### Commercial General Liability Insurance (which, except with the prior written consent of SCE and subject to Sections 14.07(c)(i) and (ii), 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) $1,000,000, per occurrence and $2,000,000 annual aggregate]*, exclusive of defense costs, for all coverages. Such insurance shall contain standard cross-liability and severability of interest provisions and no explosion, collapse, or underground exclusions.

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

#### The retroactive date of the policy must be prior to the Effective Date; and

#### Either the coverage must be maintained for a period of not less than three (3) years after this Agreement terminates, or the policy must provide for a supplemental extended reporting period of not less than three (3) years after this Agreement terminates.

### 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 this Agreement.

### Pollution Liability Insurance (which, except with the prior written consent of SCE and subject to Sections 14.07(e)(i) and (ii), 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 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 SCE’s written concurrence, to use a “claims made” form of Pollution Liability Insurance, then the following additional requirements apply:

#### The retroactive date of the policy must be prior to the Effective Date; and

#### Either the coverage must be maintained for a period of not less than three (3) years after this Agreement terminates, or the policy must provide for a supplemental extended reporting period of not less than three (3) years after this Agreement terminates.

### 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 *[TBD (or) $10,000,000, per occurrence and in the annual aggregate]* per occurrence and in the annual aggregate. The insurance requirements of this Section 14.07 can be provided by any combination of Seller’s primary and excess liability policies.

### SCE as Insured. The insurance required in this Section 14.07 shall apply as primary insurance to, without a right of contribution from, any other insurance maintained by or afforded to SCE, 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 Laws, Seller and its insurers shall be required to waive all rights of recovery from or subrogation against SCE, 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 SCE, 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.

### Certificates of Insurance. On the Effective Date, or within a reasonable time thereafter, and within a reasonable time after coverage is renewed or replaced, Seller shall furnish to SCE certificates of insurance evidencing the coverage required above, written on forms and with deductibles reasonably acceptable to SCE. 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 SCE with at least thirty (30) days’ prior written notice in the event of cancellation of coverage. SCE’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 14.07 and shall not constitute a waiver of any of the requirements in this Section 14.07.

### Failure to Comply. If Seller fails to comply with any of the provisions of this Section 14.07, Seller, among other things and without restricting SCE’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 SCE, 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.

## Consolidation of Seller’s Financial Statements.

### SCE shall determine, through consultation with its internal accountants and review with their independent registered public accounting firm, whether SCE is required to consolidate Seller’s financial statements with SCE’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 SCE accounting treatment for this Agreement (the “Financial Consolidation Requirement”).

### If the Financial Consolidation Requirement is applicable, then:

#### Within 20 days following the end of each calendar year (for each year that such treatment is required), Seller shall deliver to SCE unaudited financial statements and related footnotes of Seller as of the end of the year. It is permissible for Seller to use accruals and prior months’ estimates with true-up to actual activity, in subsequent periods, when preparing the unaudited financial statements. The annual financial statements should include quarter-to-date and yearly information. SCE shall provide to Seller a checklist before the end of each year listing the items which SCE believes are material to SCE and required for this purpose, and Seller shall provide the information on the checklist, subject to the availability of data from Seller’s records. It is permissible for Seller to use accruals and prior months’ estimates with true-up to actual activity, in subsequent periods, when preparing the information on the checklist. If audited financial statements are prepared for Seller for the year, Seller shall provide such statements to SCE within five Business Days after those statements are issued.

#### Within 15 days following the end of each fiscal quarter (for each quarter that such treatment is required), Seller shall deliver to SCE 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. SCE shall provide to Seller a checklist before the end of each quarter listing items which SCE believes are material to SCE and required for this purpose, and Seller shall provide the information on the checklist, subject to the availability of data from Seller’s records. It is permissible for Seller to use accruals and prior months’ estimates with true-up to actual activity, in subsequent periods, when preparing the unaudited financial statements.

#### If Seller regularly prepares its financial data in accordance with GAAP or IFRS, the financial information provided to SCE 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 or IFRS, the information provided to SCE 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.

### If the Financial Consolidation Requirement is applicable, then promptly upon Notice from SCE, Seller shall allow SCE’s independent registered public accounting firm such access to Seller’s records and personnel, as reasonably required so that SCE’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 work of SCE’s independent registered public accounting firm shall be borne by SCE. If SCE’s independent registered public accounting firm during or as a result of the audits permitted in this Section 14.08(c) determines a material weakness or significant deficiency, as defined by GAAP or IFRS, as applicable, exists in Seller’s internal controls over financial reporting, then within 90 days after Seller’s receipt of Notice from SCE, 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.

### SCE shall treat Seller’s financial statements and other financial information provided under the terms of this Section 14.08 in strict confidence and, accordingly:

#### Shall utilize such Seller financial information only for purposes of preparing, reviewing or certifying SCE’s or any SCE parent company financial statements, for making regulatory, tax or other filings required by law in which SCE is required to demonstrate or certify its or any parent company’s financial condition or to obtain Credit Ratings;

#### Shall make such Seller financial information available only to its officers, directors, employees or auditors who are responsible for preparing, reviewing or certifying SCE’s or any SCE parent company financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of SCE’s or any SCE parent company financial statement and to those persons who are entitled to receive Confidential Information as identified in Section 14.05; and

#### SCE shall ensure that its internal auditors and independent registered public accounting firm (1) treat as confidential any information disclosed to them by SCE pursuant to this Section 14.08, (2) use such information solely for purposes of conducting the audits described in this Section 14.08, and (3) disclose any information received only to personnel responsible for conducting the audits.

### If 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 SCE to disclose such event in a Form 8-K filing with the SEC, Seller shall provide to SCE a Notice describing such event in sufficient detail to permit SCE to make a Form 8-K filing.

### If, after consultation and review, the Parties do not agree on issues raised by Section 14.08 (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 SCE is required. Based on this recommendation, Seller and SCE shall mutually agree on how to resolve the dispute. If Seller fails to provide the data consistent with the mutually agreed upon resolution, SCE may declare an Event of Default pursuant to Section 10.01. If the independent audit firm associated with SCE still determines, after review by the third party independent audit firm, that SCE must consolidate, then Seller shall provide the financial information necessary to permit consolidation to SCE; provided, however, that in addition to the protections in Section 14.08(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.

## 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 Cor*p., 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); *NRG Power Marketing LLC v. Maine Public Utility Commission*, 558 U.S. 527 (2010).

Notwithstanding any provision of this 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.

## Seller Ownership and Control of Generation Capacity.

Seller agrees, that, in accordance with FERC Order No. 697, upon request of SCE, Seller shall submit a letter of concurrence in support of any affirmative statement by SCE that the contractual arrangement set forth in this Agreement does not transfer “ownership or control of generation capacity” from Seller to SCE 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 FERC 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 SCE.

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IN WITNESS WHEREOF, the Parties have read this Agreement, understand it, and agree to be bound by its terms as of the Effective Date.

|  |  |
| --- | --- |
| **SOUTHERN CALIFORNIA EDISON COMPANY** | ***[SELLER]*** |
| By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**EXHIBIT A**

**DEFINITIONS**

The following terms shall have the following meanings for the purposes of this Agreement.

“Acceptable Alternative Energy Baseline” means, with respect to any particular hour of the day and any particular Participating Account, a measure of demand response so long as (i) Seller’s calculation methodology for such alternative energy baseline amount(s) is pursuant to and in compliance with the applicable CAISO Tariff and SCE reasonably agrees with such calculation methodology, (ii) SCE reasonably determines that SCE will be compensated by the CAISO or in the CAISO markets for the amount of load reductions measured from such alternative energy baseline amount(s), and (iii) SCE reasonably determines that the rate or unit price at which SCE will be compensated by the CAISO or in the CAISO markets for the load reduction is not different than the rate or unit price at which SCE would be compensated by the CAISO or in the CAISO markets with respect to load reductions measured from the Energy Baseline.

“Accepted DER Costs” has the meaning set forth in Section 6.01(e).

“ACH” means the electronic funds transfer system operated by the National Automated Clearing House, or any successor entity.

“ADP” has the meaning set forth in Section 5.02(b).

“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.

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

“Applicable Laws” means the CAISO Tariff and 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, the DR Resource or the terms of this Agreement.

“Arbitrator” has the meaning set forth in Section 12.03.

“Automated Demand Response Programs” also referred to as “Auto-DR”, means the enabling technology incentive program or any successor program offered by SCE, and authorized by the CPUC, to provide reimbursement of project costs for the installation of qualifying energy management control systems equipment.

“Bankrupt” means with respect to any entity, such entity (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, (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.

“Bundled Service Customer” has the meaning set forth in Section 3.06(g).

“Business Day” means any day except a Saturday, Sunday, a Federal Reserve Bank holiday, or the Friday following Thanksgiving. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending the Notice or payment or performing a specified action.

“CAISO” means the California Independent System Operator Corporation.

“CAISO Controlled Grid” has the meaning set forth in the CAISO Tariff.

“CAISO Tariff” means the California Independent System Operator Corporation tariff, Business Practice Manuals (BPMs), Operating Agreements, and Operating Procedures, as the same may be amended or supplemented from time to time and approved by FERC, if applicable.

“California Climate Action Registry” has the meaning set forth in Section 14.06(e).

“CAM” has the meaning set forth in Section 14.05(b).

“Capacity Attributes” means, any and all current or future defined characteristics, certificates, tags, credits, or accounting constructs, howsoever entitled, including any accounting construct counted toward any Resource Adequacy Requirements, attributed to or associated with the DR Resource and Project at any time throughout the Delivery Period, including:

### resource adequacy attributes, as may be identified from time to time by the the CPUC, any other Governmental Authority, or the CAISO, that can be counted toward RAR;

### resource adequacy attributes or other locational attributes for the DR Resource and Project related to a Local Capacity Area, as may be identified from time to time by the CPUC, any other Governmental Authority, or the CAISO, associated with the physical location or points of electrical interconnection of the DR Resource and Project within the CAISO Controlled Grid, that can be counted toward Local RAR; and

### flexible capacity resource adequacy attributes for the DR Resource and Project, including the amount of EFC of the DR Resource and Project, as may be identified from time to time by the CPUC, any other Governmental Authority, or the CAISO, that can be counted toward Flexible RAR.

“Capacity Rate” has the meaning set forth in Section 1.03.

“CEC” means the California Energy Commission.

“Claiming Party” has the meaning set forth in Section 8.02.

“Collateral Assignment Agreement” has the meaning set forth in Section 14.04(d).

“Commercial and Industrial Customer” has the meaning set forth in Section 1.01(e).

“Commercial Operation” means that a Storage Unit has successfully completed the demonstration set forth in Section 5.03(a) as demonstrated by SCE’s acceptance of the test.

“Confidential Information” means this Agreement, the terms and conditions and other facts with respect to this Agreement, and 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. Confidential Information does not include information, data, analyses, documents, or materials that (a) 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 (b) 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 (c) the receiving Party or its Representatives can demonstrate that the information has been independently developed by the receiving Party’s personnel acting without access to the Confidential Information.

“Construction Report” has the meaning set forth in Section 4.06.

“Contract Capacity” has the meaning set forth in Section 1.03.

“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.

“CPD Milestone Extension Date” has the meaning set forth in Section 4.07.

“CPUC” means the California Public Utilities Commission.

“CPUC Approval” means a decision of the CPUC that (i) is final and no longer subject to appeal, which approves this Agreement in full and in the form presented on terms and conditions acceptable to SCE in its sole discretion, including terms and conditions related to cost recovery and cost allocation of amounts paid to Seller under this Agreement; (ii) does not contain conditions or modifications unacceptable to SCE, in SCE’s sole discretion*[; and (iii) finds that any procurement pursuant to this Agreement satisfies the requirement to procure resources under CPUC Decision 13-02-015*].

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancements) by S&P or Moody’s. If no rating is assigned to such entity’s unsecured, senior long-term debt or deposit obligations by any Ratings Agency, then “Credit Rating” means the general corporate credit rating or long-term issuer rating assigned to such entity by S&P or Moody’s. If an entity is rated by more than one Ratings Agency and the ratings are at different levels, then “Credit Rating” means the lowest such rating.

“Critical Path Development Milestone” means each of the milestones set forth in Section 4.07.

“Customer” means a person or entity that is a customer of SCE and has an SCE customer service account number.

“Daily Delay Liquidated Damages” has the meaning set forth in Section 2.06.

“Day-Of Adjustment” has the meaning set forth in the definition of Energy Baseline.

“Default Adjustment” has the meaning set forth in Section 6.11(b).

“Default Adjustment Value” has the meaning set forth in Section 6.11(b).

“Defaulting Party” has the meaning set forth in Section 10.01.

“Delivered Capacity Payment” has the meaning described in and is calculated pursuant to Section 3.05.

“Delivered Energy Payment” has the meaning described in and is calculated pursuant to Section 3.06.

“Delivery Days” has the meaning set forth in Section 2.02.

“Delivery Hours” has the meaning set forth in Section 2.02.

“Delivery Period” has the meaning set forth in Section 2.02.

“DER Upgrade” has the meaning set forth in Section 6.01(e).

“DERs Monitoring” has the meaning set forth in Section 6.01(e).

“Demand Response Provider” has the meaning set forth in Section 6.05.

“Development Security” means the collateral required under Section 7.01.

“Dispatch” means the act of serving all or a portion of the electrical consumption of the Participating Accounts with the DR Resource, or one or more Resource ID(s) included in the DR Resource, pursuant to a Dispatch Instruction. For purposes of this definition, failure to reduce electrical consumption pursuant to a Dispatch Instruction will be considered a Dispatch.

“Dispatch Instruction” means an instruction from SCE pursuant to Section 5.02(b) or Section 3.08 directing Seller to serve all or a portion of the electrical consumption of the Participating Accounts with the DR Resource, or one or more Resource ID(s) included in the DR Resource, pursuant to the terms of this Agreement.

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

“Distributed Energy Resources” or “DERs” means electrical power or capacity resources, such as distributed renewable generation, energy efficiency, energy storage and demand response technologies, interconnecting directly to a distribution-level grid or sited at or within a load center connecting to a distribution grid. DERs may be stand-alone resources or may be aggregated to provide power to the grid or load reduction necessary to meet the local customer’s electric need.

“Distribution Provider” means any entity or entities (other than Seller, Customer, or their respective Affiliates) responsible for the interconnection of the Project with the Distribution Provider’s distribution or transmission system.

“Diverse Business Enterprises” has the meaning set forth in Section 4.04(c).

“DR Resource” has the meaning set forth in Section 1.01(a).

“Dual Participation Programs” means the SCE demand response programs which permit service accounts in such programs to concurrently participate as a Participating Account under this Agreement (in accordance with the Dual Participation Rules), as such programs are approved, amended, added or removed from being eligible for dual participation by the CPUC from time to time.

“Dual Participation Rules” means CPUC Decisions 09-08-027 and 12-11-025, SCE’s Supplemental Compliance Advice Filing dated March 17, 2010, pursuant to Decision 09-08-027, Rule 24 of the SCE Tariff, and any other existing or subsequent decisions, resolutions, or rulings related to concurrent participation in demand response programs, in each case as may be amended from time to time by the CPUC.

“Early Termination Date” has the meaning set forth in Section 10.02(a).

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

“EFC” means the effective flexible capacity of the DR Resource and Project pursuant to the Resource Adequacy Rulings and CAISO Tariff, in each case to the extent applicable, and which such flexible capacity may be used to satisfy a load-serving entity’s Flexible RAR.

“Energy Baseline” or “EB” means, as more particularly described in parts (a) and (b) below, with respect to any particular hour of the day and any particular Participating Account, the average amount of energy consumed by such Participating Account for such particular hour of the day during a specified period of time that is used to measure the Participating Account’s reduction in energy for such hour after a Dispatch or Seller Dispatch. The Energy Baseline shall be calculated as follows:

1. Subject to subsection (b), and for each hour of the day, the EB for a particular hour for an individual Participating Account is the average recorded energy consumption (measured in kWh by the Qualifying Meter) of such Participating Account during such hour for either (i) the ten (10) non-holiday weekday Measurement Days prior to a Dispatch or a Seller Dispatch, as applicable (for non-holiday weekday hours) or (ii) the four (4) weekend or holiday Measurement Days prior to a Dispatch or a Seller Dispatch, as applicable (for weekend or holiday hours), using forty-five (45) days of meter data immediately preceding the event, provided that:
	* 1. If ten (10) non-holiday weekday Measurement Days are not able to be extracted from the 45-day lookback window, the EB for the affected non-holiday weekday hour shall be calculated using a minimum of five (5) non-holiday weekday Measurement Days.
		2. If the minimum Measurement Days are not able to be extracted from the 45-day lookback window, the EB for the affected hour shall be calculated using Event Days.
2. A Day-Of Adjustment shall be made to the initial EB calculation set forth in subsection (a) for each Participating Account. The “Day-Of Adjustment” shall be calculated and applied as follows:
	* 1. The Day-Of Adjustment shall equal the average recorded energy consumption (measured in kWh by the Qualifying Meter) of the first three of the four full hours (beginning in each case at the start of the hour, e.g., 1:00) before a Dispatch or Seller Dispatch, as applicable, divided by the EB for the same three hours calculated pursuant to subsection (a); provided, that the Day-Of Adjustment shall be capped in manner such that it may not exceed one hundred twenty percent (120%) or be less than eighty percent (80%).
		2. The Day-Of Adjustment shall be multiplied by each applicable Participating Account’s EB for each hour of the Dispatch or Seller Dispatch.
		3. The Day-Of Adjustment will be calculated and applied regardless of whether the Participating Account dropped load during the relevant hours of the Day-Of Adjustment in connection with a Dual Participation Program.
		4. If multiple Dispatch events occur on the same day, the Day-Of Adjustment for the first occurring event shall be used for each subsequent event for settlement purposes.
3. Meter data in which there is a net export of energy (i.e., where in any interval the meter output of the behind-the-meter device is greater than the facility load) at any location will be set to zero (0).

Seller may request by Notice to SCE that a CAISO-approved alternative baseline may be substituted for the Energy Baseline for all of the Participating Accounts in the DR Resource. SCE will consider Seller’s request in its reasonable discretion and if:

1. such proposed baseline is an “Acceptable Alternative Energy Baseline” approved by SCE in accordance with the standards set forth in the definition thereof;
2. the Acceptable Alternative Energy Baseline is approved by CAISO for use in connection with the DR Resource; and
3. the necessary equipment, telemetry, data transfer systems, or any other systems, as determined to be reasonably necessary by either Party or the CAISO, are operational and capable of implementing the Acceptable Alternative Energy Baseline for every Participating Account in the DR Resource;

then the Energy Baseline for all Participating Accounts shall be calculated in accordance with the Acceptable Alternative Energy Baseline. If the above criteria are not met, then the calculation methods set forth in (a), (b) and (c) of this “Energy Baseline” definition shall continue to apply.

The Energy Baseline for partial hour Dispatches will be adjusted in accordance with CAISO procedures.

Seller must be able to establish a valid EB for each Participating Account. If Seller is unable to establish an EB for a Participating Account, then such Participating Account shall be excluded from the DR Resource.

“Energy Rate” has the meaning set forth in Section 1.04.

“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.

“EPI” means any Customer information received by Seller in connection with this Agreement or the construction, ownership and operation of the DR Resource.

“Equitable Defense” 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 Day” means a day in which a Dispatch or Seller Dispatch occurs.

“Event of Default” has the meaning set forth in Section 10.01.

“Event Parameters” has the meaning set forth in Section 1.01(c).

“Expected Initial Delivery Date” has the meaning set forth in Section 2.03.

“Federal Tax Credit Legislation” means validly enacted federal legislation that provides income tax credits for owners of facilities that utilize equipment which receives, stores, and delivers electric energy using batteries.

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

“Financial Consolidation Requirement” has the meaning set forth in Section 14.08(a).

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

“Force Majeure” means an event or circumstance that was not anticipated as of the Effective Date that:

### In whole or in part:

#### Delays a Party’s performance under this Agreement;

#### Causes a Party to be unable to perform its obligations; or

#### Prevents a Party from complying with or satisfying the conditions of this Agreement;

### Is not within the control of, or the result of the negligence of, that Party; and

### The Party has been unable to overcome by the exercise of due diligence;

Including an act of God, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, terrorism, sabotage, or strike or labor dispute.

Force Majeure does not include:

### the loss of SCE’s markets;

### SCE’s inability economically to use or resell the DR Resource purchased hereunder;

### Seller’s inability to obtain or retain Recruited Accounts;

### Seller’s ability to sell the DR Resource at a price greater than that set forth in this Agreement;

### a failure of performance of any other entity, except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure; or

### the failure of equipment or parts, except to the extent that such failure is otherwise the result of a Force Majeure.

“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 shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages.

### When used in this definition, costs mean, 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. With respect to SCE, costs shall be based on replacing the DR Resource with a demand response resource with similar attributes to the DR Resource which consists of Recruited Accounts that are electrically served by a circuit or lower voltage substation in SCE’s distribution system that electrically connects directly to the *[SCE Note: insert applicable circuit], [and SCE may take into consideration that this Agreement contains non-standard covenants related to performance during an N-2 Event]*.

### When used in this definition, gains or losses mean, with respect to any Party, an amount equal to the present value of the economic benefit or loss to such Party, if any (exclusive of costs), resulting from the termination of this Agreement for what would have been the remaining Term of this Agreement, determined in a commercially reasonable manner.

Factors used in determining the economic gain and loss to a Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates 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, 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). For purposes of determining its gains or losses, SCE may also take into consideration that this Agreement is intended to provide Contract Capacity at a circuit or lower voltage substation in SCE’s distribution system that electrically connects directly to the *[SCE Note: insert applicable circuit] [and contains non-standard covenants related to performance during an N-2 Event].*

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

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

“GDERMS” or “Grid and Distributed Energy Resource Management Systems” means a software-based solution that allows for an operator’s real-time visibility into its underlying distributed asset capabilities. Such software shall allow SCE to exercise a heightened level of control and flexibility in the management of a Distributed Energy Resource. GDERMS as used in this Agreement is separate, distinct, and incremental to any software-based solution that allows for an operator’s real-time visibility into its underlying distributed asset capabilities required by the CAISO, Seller’s interconnection agreement, or by SCE in its capacity as Distribution Provider.

“GHG Regulations” means Subchapter 10 Climate Change, Article 5, Sections 95800 to 96022, Title 17, California Code of Regulations, as amended or supplemented from time to time.

“Governmental Authority” means:

* 1. Any federal, state, local, municipal or other government;
	2. 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
	3. Any court or governmental tribunal.

“Governmental Charges” has the meaning set forth in Section 13.06.

“Greenhouse Gas” or “GHG” has the meaning set forth in the GHG Regulations.

“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.

“Hourly Recorded Reduction” has the meaning set forth in Section 3.05.

“IFRS” means the International Financial Reporting Standards as in effect from time to time, consistently applied.

“Indemnified Party” has the meaning set forth in Section 13.03.

“Indemnitor” has the meaning set forth in Section 13.03.

“Independent Engineer” means an independent, non-Affiliate California registered professional engineer (with experience acceptable to SCE in its sole discretion).

“Independent Evaluator” has the meaning set forth in Section 14.05(b)(i).

“Industry Standards” means 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.

“Inflexible Capacity” means, with respect to any particular Showing Month of the Delivery Period, the number of kWs of the DR Resource and Project which are not eligible to satisfy a load-serving entity’s Flexible RAR.

“Initial Commercial Operation Test” means the demonstration described in Section 5.03.

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

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

“JAMS” has the meaning set forth in Section 12.02.

“Lender” means any and all financial institutions that provide development, bridge, construction, permanent debt, or tax equity financing or refinancing for the Project to Seller.

“Letter of Credit” means an irrevocable, nontransferable standby letter of credit, substantially in the form of Exhibit H and acceptable to SCE, provided by Seller from an issuer acceptable to SCE that is a U.S. branch of a commercial bank with total assets of at least ten billion U.S. dollars (US$10,000,000,000) and a Credit Rating of at least “A-” from S&P or “A3” from Moody’s. If such bank is rated by more than one Ratings Agency and the ratings are at different levels, the lowest rating shall be the Credit Rating for this purpose.

“Letter of Credit Default” means with respect to a Letter of Credit, the occurrence of any of the following events:

### The issuer of such Letter of Credit fails to maintain a Credit Rating of at least “A‑” from S&P or “A3” from Moody’s, as required in the definition of “Letter of Credit”;

### The issuer of the Letter of Credit fails to comply with or perform its obligations under such Letter of Credit;

### The issuer of the Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, the Letter of Credit;

### The Letter of Credit expires or terminates, or fails or ceases to be in full force and effect at any time during the Term of this Agreement, in any such case without replacement;

### Seller fails to provide an extended or replacement Letter of Credit prior to twenty (20) Business Days before the Letter of Credit expires or terminates; or

### The issuer of the Letter of Credit becomes Bankrupt;

provided, 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.

“Load Drop Amount” is the total load drop capacity of each Recruited Account as set for such Recruited Account in Section 6.09(a).

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

“Local RAR” means the local Resource Adequacy Requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, 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.

*[“Maximum Efforts” means, with respect to performance during an N-2 Event, using all possible efforts and taking all possible actions, consistent with industry accepted safety practices, to provide the full Contract Capacity from the Project as expeditiously and completely as possible by, among other things, (i) giving prompt notice to SCE if the Project is not providing at least the Contract Capacity, the reason for underperformance, and its expected duration; (ii) accelerating any and all work required to return the Project to service during the N-2 Event, including paying for alternative arrangements for quicker transportation of necessary equipment and additional labor expenses; (iii) taking any action needed to ensure maximum load reduction from the Project even if such action is detrimental to the long-term use of the Project; (iv) taking all necessary actions to operate the Project, including charging and discharging the installed batteries, as directed by the Distribution Provider or CAISO; and (v) incurring extraordinary expenses, if necessary, to accomplish the foregoing.]*

“Measurement Day” means a twenty-four (24) hour period that is a Delivery Day, but excluding (a) Event Days, (b) event days under a Dual Participation Program*[, and (c) days in which an N-2 Event occurs].*

“Mediator” has the meaning set forth in Section 12.02.

“Milestone Schedule” has the meaning set forth in Section 4.06.

“Minimum Energy Storage Capacity” has the meaning set forth in Section 1.03.

“Moody’s” means Moody’s Investors Service, Inc.

*[“N-2 Event” means a simultaneous outage of the two (2) Goleta-Santa Clara 220 kV transmission lines resulting from failure of, or damage to, any portion of the transmission infrastructure (including circuit towers, transmission lines, substations, or other related equipment), such that electrical power is unable to flow on both such lines, as notified by SCE to Seller pursuant to Section 14.02(b).]*

*[“N-2 Event Notification” has the meaning set forth in Section 14.02(b).]*

“NERC Holidays” means “Additional Off-peak Days” as defined by the North American Electric Reliability Corporation on such entity’s website at http://www.nerc.com.

“Net Energy Metering” has the meaning set forth in Rule 21 of the SCE Tariff.

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

“New Resource” means that the Storage Unit (a) has a remaining design life of at least [ # ] years after the first day of the Delivery Period *{SCE Note: remaining design life should be the greater of 10 years or the Delivery Period}*; and (b) is new capacity to the *[SCE Note: insert applicable solicitation area]*. *{SCE Note: delete for projects with storage units that are not new resources}*

“Non-Defaulting Party” has the meaning set forth in Section 10.02.

“Non-Exporting” has the meaning set forth in Rule 21 of the SCE Tariff. *{SCE Note: delete if corresponding bracketed language is removed from the agreement}*

“Notice” means notices, requests, statements or payments provided in accordance with Section 14.02.

“Operating Months” has the meaning set forth in Section 2.02.

“Participating Account” has the meaning set forth in Section 6.09(c).

“Party” or “Parties” have the meaning set forth in the preamble.

“Performance Assurance” means the collateral required under Section 7.02.

“Permit Requirements” means any requirement or limitation imposed by any Governmental Authority or the CAISO 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.

“Prevention Equipment” means all equipment necessary to prevent, suppress and contain any fire, flooding, explosion, leak of Hazardous Material or other injury or damage at the Site(s).

“PRG” has the meaning set forth in Section 14.05(b).

“Pricing Node” has the meaning set forth in the CAISO Tariff.

“Prohibited Resource” means a technology using diesel, natural gas, gasoline, propane or liquefied petroleum gas, in topping cycle combined heat and power or non-combined heat and power configuration. The following resources are not Prohibited Resources: pressure reduction turbines, waste-heat-to-power bottoming cycle combined heat and power, and energy storage systems (including storage systems coupled with renewable generation) provided such energy storage systems meet the greenhouse gas emission factor thresholds in effect from time to time under the CPUC’s Self-Generation Incentive Program.

“Prohibited Resources Plan” has the meaning set forth in Section 6.11(d).

“Project” has the meaning set forth in Section 1.02.

“Project Security” means Development Security or Performance Assurance.

“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 and demand response resources in the Western United States, similar to the Project and the DR Resource, 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, WECC standards, and Applicable Laws.

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

### Equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the needs of the Project and DR Resource;

### Sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to operate the Project and DR Resource properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions at the Project, DR Resource and transmission emergencies whether caused by events on or off any Site;

### 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 DR Resource, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;

### Appropriate monitoring and testing are performed to ensure equipment is functioning as designed;

### 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 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 loading, frequency, rotational speed, polarity, synchronization, and control system limits; and

### 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(s) and under both normal and emergency conditions.

“Qualifying Meter” means an SCE-approved interval meter capable of recording usage in 15 minute intervals and being read remotely by SCE through electronic communication.

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

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

“Recapture Payment” has the meaning described in and is calculated pursuant to Section 3.05(b).

“Recovery Plan” has the meaning set forth in Section 4.07.

“Recruited Account” means each Customer that SCE may instruct Seller to Dispatch as a part of Seller’s DR Resource as identified by Seller to SCE pursuant to Section 6.09(a).

“Reduced Price Percentage” has the meaning set forth in Section 3.07.

“Representatives” means the Party’s, or the Party’s Affiliates’, officers, directors, employees, Lenders, rating agencies, counsel, accountants and advisors.

“Requested Date Range” has the meaning set forth in Section 3.08.

“Required Permits” means the permits, licenses, certifications and approvals necessary for the construction or refurbishment, operation and maintenance of the Project.

“Required Permit Date” has the meaning set forth in Section 4.01(f).

“Residential Customer” has the meaning set forth in Section 1.01(e).

“Resource Adequacy Benefits” means the rights and privileges attached to the DR Resource and Project that satisfy any entity’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, including Capacity Attributes, associated with the DR Resource and Project.

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

“Resource Adequacy Rulings” means any CPUC Decisions, including the CPUC Filing Guide, defining or relating to resource adequacy attributes or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority or the CAISO, as such decisions, rulings, laws, rules or regulations may be amended or modified from time to time throughout the Delivery Period.

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

“Restricted Period” has the meaning set forth in Section 10.04.

“S&P” means Standard & Poor’s Financial Services LLC.

“Safety Report” means a report from an Independent Engineer certifying that Seller has a written plan for the safe operation and construction (if applicable) of the DR Resource and Project in accordance with Prudent Electrical Practices.

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

“SCE Contract Representative” shall be the person identified in Exhibit F.

“SCE Tariff” means the entire body of effective rates, rentals, charges, and rules, collectively, of SCE, including title page, preliminary statement, rate schedules, rules, sample forms, service area maps, and lists of contracts and deviations, all as may be revised from time to time, and which can be found at <http://www.sce.com/AboutSCE/Regulatory/tariffbooks/rules.htm>.

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

“SEC” means the Securities and Exchange Commission.

“Security Interest” has the meaning set forth in Section 7.04.

“Security Incident” has the meaning set forth in Section 6.10(e).

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

“Seller Dispatch” means a Dispatch performed by Seller in accordance with Section 3.08.

“Shortfall Energy” has the meaning set forth in Section 3.06(e).

“Shortfall Energy Amount” has the meaning set forth in Section 3.06(d).

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

“Site” or “Site(s)” means the real property on which the Project is, or will be located, as further described in Section 1.02(a) and Exhibit B.

“Small Commercial Customer” has the meaning set forth in Section 1.01(e).

“State of Charge” or “SOC” means the amount of electric energy in a Storage Unit expressed as a percent of the maximum amount of electric energy a Storage Unit is capable of storing (e.g., 80% SOC).

“Storage-Backed Load Drop Amount” is, for each Recruited Account that uses energy storage, the total load drop capacity of such Recruited Account by serving such load through the applicable Storage Unit as set for such Recruited Account in Section 6.09(a).

“Storage-Backed Recorded Capacity” means, for any particular Operating Month, the amount of Total Recorded Capacity attributable to Participating Accounts serving their load through the applicable Storage Units as set for such Participating Accounts in Section 6.09(a) and (c).

“Storage Unit” or “Storage Units” means the energy storage unit or units specified in Exhibit B.

“Sub-Load Aggregation Point” or “SLAP” means the geographic location corresponding to each customer service account within the distribution network located within SCE’s service territory as designated by SCE under Section 6.09 herein.

“Tax Credit Percentage” means the tax credit percentage applicable to property eligible under Federal Tax Credit Legislation for which Seller, as the owner of the DR Resource, is eligible.

“Tax Equity Financing” means a transaction or series of transactions involving one or more investors seeking a return that is enhanced by tax credits or tax depreciation and generally (i) described in Revenue Procedures 2001-28 (sale-leaseback (with or without “leverage”)), 2007-65 (flip partnership) or 2014-12 (flip partnership and master tenant partnership) as those revenue procedures are reasonably applied or analogized to a battery storage project transaction (as opposed to a wind farm or rehabilitated real estate) or (ii) contemplated by Section 50(d)(5) of the Internal Revenue Code of 1986, as amended (a pass-through lease).

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

“Term Year” means a twelve (12) month period beginning on the first day of the Delivery Period and each successive twelve (12) month period thereafter.

“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 Forward Settlement Amount is part of and included in the Termination Payment. *[If this Agreement is terminated due to an Event of Default under Section 10.01(b)(xxviii) (failure to exercise Maximum Efforts during an N-2 Event), then the Termination Payment shall be the greater of (a) the amount calculated pursuant to the preceding two sentences and (b) the Performance Assurance.]*

“Test Parameters” has the meaning set forth in Section 5.03(b).

“Total Recorded Capacity” has the meaning set forth in Section 3.05(c).

“Type One Non-Compliance” has the meaning set forth in Section 6.11(c).

“Type Two Non-Compliance” has the meaning set forth in Section 6.11(c).

“WECC” means the Western Electricity Coordinating Council.

*\*\*\*End of Exhibit A\*\*\**

**EXHIBIT B**

**SITE(S) AND STORAGE UNIT(S)**

**PROJECT AND SITE DESCRIPTION**

1. Project Description.

*{SCE Comment: Seller must provide description of the Project equipment, systems, control systems and features, including a site plan drawing showing the general arrangement of the Project, and a single-line diagram(s) showing electrical arrangement of the equipment, inverters, unit/service transformers, interconnection transformer(s), metering, breakers, and disconnects (as applicable). To the extent applicable, Seller must include the designation system by which Seller identifies individual storage units.}*

2. Site Description.

*{SCE Comment: Seller must provide a legal description of the site, including a site map.}*

*\*\*\*End of Exhibit B\*\*\**

**EXHIBIT C**

**SCE DESIGNATION OF INTENDED USE**

1. Distribution Needs *[SCE Note: initially none of the DR Resource should be allocated toward distribution needs]*
	* 1. “Delivery Days” means *[Monday through Friday or Monday through Sunday]*, excluding NERC Holidays.
		2. “Delivery Hours” means *[Beginning Time HE ## to Ending Time HE ##]*.
		3. “Operating Months” means June, July August, September and October.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Minimum Duration Per Dispatch** | **Maximum Duration Per Dispatch** | **Maximum Dispatches Per Resource ID Per Day** | **Maximum Dispatch Hours Per Resource ID Per Day** | **Maximum Dispatch Hours Per Resource ID Per Month** | **Maximum Dispatch Hours Per Term Year** |
|  |  |  |  |  |  |

1. Resource Adequacy Requirements *[SCE Note: initially all of the DR Resource should be allocated to Resource Adequacy]*
	* 1. “Delivery Days” means *[Monday through Friday or Monday through Sunday]*, excluding NERC Holidays.
		2. “Delivery Hours” means *[Beginning Time HE ## to Ending Time HE ##]*.
		3. “Operating Months” means November, December, January, February, March, April and May.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Minimum Duration Per Dispatch** | **Maximum Duration Per Dispatch** | **Maximum Dispatches Per Day** | **Maximum Dispatch Hours Per Day** | **Maximum Dispatch Hours Per Month** | **Maximum Dispatch Hours Per Term Year** |
|  |  |  |  |  |  |

*\*\*\*End of Exhibit C\*\*\**

**EXHIBIT D**

**MILESTONE SCHEDULE**

**– Project Schedule –**

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.

***[SCE Comment: This list is illustrative only. Seller to insert project specific list]***

| Line | Projected Completion Date | Milestone |
| --- | --- | --- |
| 1 |  | **Front End Engineering / Permits / Agreements** |
| 2 |  | File a CEC Certification and Verification Application |
| 3 |  | Finalize Labor Agreement Negotiations |
| 4 |  | Receive CEC Certification and Verification or APCD permit if applicable |
| 5 |  | Obtain Control Of All Lands and Rights-Of-Way Comprising The Site |
| 6 |  | Receive CEC Full Notice To Proceed |
| 7 |  | Receive All Other Required Permits |
| 8 |  | **Financing** |
| 9 |  | Verify That Seller’s Bank Has Received All Required Due Diligence Information |
| 10 |  | Complete Bank Financing  |
| 11 |  | **Engineering** |
| 12 |  | Execute EPC Contract |
| 13 |  | Begin Existing Site Re-Engineering |
| 14 |  | Begin New Storage Unit Engineering Design |
| 15 |  | Lump Sum Estimate Preparation |
| 16 |  | Complete Existing Site Re-Engineering |
| 17 |  | Complete New Storage Unit Engineering Design |
| 18 |  | **Construction – Initial Site Work** |
| 19 |  | Begin Civil Tasks - CTG’s |
| 20 |  | Begin Mechanical Tasks - U/G Piping |
| 21 |  | Begin Electrical Tasks - U/G Electrical |
| 22 |  | **Construction** |
| 23 |  | Begin Construction of the Project - Erect Equipment |
| 25 |  | Civil Tasks - Balance of Plant |
| 26 |  | Mechanical Tasks - A/G Piping |
| 27 |  | Electrical Tasks - A/G Electrical |
| 28 |  | Erect Storage Units |
| 29 |  | Commission Storage Units |
| 30 |  | Complete Construction of the Project |
| 31 |  | Commissioning |
| 32 |  | Begin Start-Up Activities - BOP Systems |
| 33 |  | Achieve Initial Operation |
| 34 |  | Demonstrate Contract Capacity |
| 35 |  | Expected Initial Delivery Date |

*\*\*\*End of Exhibit D\*\*\**

**EXHIBIT E**

**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:
	1. Engineering;
	2. Procurement;
	3. Permitting;
	4. Major construction activities in the prior month;
	5. Testing;
5. Forecast activities for next month; and
6. Potential issues affecting the Project.

Seller must notify SCE’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 SCE within two (2) Business Days of such receipt:

1. All material written commitments regarding construction work at the Project that could impact completion schedule or Initial Delivery Date;
2. Executed work orders for construction of the Project;
3. Construction agreements;
4. Letters of intent;
5. Precedent agreements; and
6. Engineering assessments of the Project or any Storage Unit.

*\*\*\*End of Exhibit E\*\*\**

**EXHIBIT F**

**NOTICES**

*Notice List*

| ***[SELLER’S NAME]*** (“Seller”) | **SOUTHERN CALIFORNIA EDISON COMPANY** (“SCE”) |
| --- | --- |
| All Notices are deemed provided in accordance with Section 14.02 if made to the address and facsimile numbers provided below: | Unless otherwise specified, all Notices are deemed provided in accordance with Section 14.02 if made to the Contract Representative at the address or facsimile number provided below: |
| **Contract Administration:**Attn: Phone: Facsimile:  | **SCE Contract Representative:**Demand Response Programs & ContractsGeneral Office Building No. 5, 2nd Floor1515 Walnut Grove Ave. Rosemead, California 91770Attention: Contract ManagerPhone: (626) 302-0530Email: DSM@sce.com  |
| **Reference Numbers:**Duns: Federal Tax ID Number:  | **Reference Numbers:**Duns: 006908818Federal Tax ID Number: 95-1240335 |
| **Preschedule Contact:**Attn: Phone: Facsimile:  | **Preschedule Contact**:Attn: Mgr of Energy OperationsPhone: (626) 302-5730E-mail: presched@sce.com |
| **Day-Ahead Scheduling:**Phone:  | **Day-Ahead Scheduling**:Attn: Manager of Day‑Ahead OperationsAttn: Scheduling DeskPhone: 626-307-4420Facsimile: 626-307-4409E-mail: presched@sce.com |
| **Real-Time Forecasting:**Phone:  | **Real-Time Scheduling:**Attn: Manager of Real-Time OperationsAttn: Operations DeskPhone: (626) 307-4405Facsimile: (626) 302-3409E-mail: realtime@sce.com |
| **Day-Ahead Trading:** | **Day-Ahead Trading:**Phone: (626) 307-4487Facsimile: (626) 302-3409 |
| **Real-Time Trading:** | **Real-Time Trading:**Phone: (626) 307-4453Facsimile: (626) 302-3409 |
| **Settlements :** | **Settlements:**Phone: (626) 302-0999Facsimile: (626) 302-6132 |
|  | **Real-Time Phone:**Phone: (626) 302-3380 |
| **Invoices and Payments:**Attn: Phone: Facsimile: E-mail: | **Invoices and Payments:**Edison’s Accounts Payable Department requires that the original invoice and one (1) copy be submitted as follows:P.O. Box 700Rosemead, California 91770626-302-6501Please indicate the Purchase Order Number *([SCE Note: TBD])* on all invoices, correspondence and inquiries.Please also submit one (1) additional copy for review and approval to: *[SCE Note: TBD]*. |
| **ACH Routing Information:**Financial Institution: [\_\_\_\_\_\_\_\_\_\_\_\_]Branch: [\_\_\_\_\_\_\_\_\_\_\_\_]Address: [\_\_\_\_\_\_\_\_\_\_\_\_]City, State, & Zip: [\_\_\_\_\_\_\_\_\_\_\_\_\_]Routing Number: [\_\_\_\_\_\_\_\_\_]Account Number: [\_\_\_\_\_\_\_\_\_] | **ACH Routing Information:**Financial Institution: JPMorgan ChaseRouting Number: 021000021Account Number: 323-394434 |
| **Wire Transfer:**BNK: ABA: ACCT:  | **Wire Transfer**:BNK: JP Morgan Chase BankABA: 021000021ACCT: 323-394434 |
| **Credit and Collections:**Attn: Phone: Facsimile: E-mail: | **Credit and Collateral:**CreditAttn: Manager of Credit RiskPhone: (626) 302-3672 CollateralSouthern California Edison CompanyAttn: Manager of Risk Operations & Collateral Management2244 Walnut Grove Avenue, GO1 Quad 2ARosemead, CA 91770Phone: (626) 302-3383Email: scecollateral@sce.com |
| **Notices of Event of Default to:** | **Notices of Event of Default to**:Law DepartmentSouthern California Edison CompanyLaw Department, Power Procurement2244 Walnut Grove Ave.Rosemead, CA 91770Attn: Director and Managing AttorneyEmail: PPLegalNotice@sce.comPurchasing DepartmentGeneral Office Building No. 3 3rd Floor2131 Walnut GroveRosemead, CA 91770Attention: Principal Manager PurchasingPhone: (626) 302-5357Demand Response Programs & ContractsGeneral Office Building No. 5, 2nd Floor1515 Walnut Grove Ave. Rosemead, California 91770Attention: DR Contract ManagerPhone: (626) 302-0530Email: DSM@sce.com |
| ***[N-2 Event Notification:]****[SCE Note: insert email, text number, server, or other electronic destination as mutually agreed by the Parties]* |  |

*\*\*\*End of Exhibit F\*\*\**

**EXHIBIT G**

**FORM OF CONSENT TO COLLATERAL ASSIGNMENT AGREEMENT**

This Consent to Collateral Assignment Agreement (this “Consent”) is entered into among (i) Southern California Edison Company, a California corporation (“SCE”), (ii) *[Name of Seller]*, a *[Legal Status of Seller]* (the “Project Company”), and (iii) *[Name of Collateral Agent]*, a *[Legal Status of Collateral Agent]*, as Collateral Agent for the secured parties under the Financing Documents referred to below (such secured parties together with their successors permitted under this Consent in such capacity, the “Secured Parties”, and, such agent, together with its successors in such capacity, the “Collateral Agent”). SCE, Project Company and Collateral Agent are hereinafter sometimes referred to individually as a “Party” and jointly as the “Parties”. Capitalized terms used but not otherwise defined in this Consent shall have the meanings ascribed to them in the DR Purchase Agreement (as defined below).

RECITALS

The Parties enter into this Consent with reference to the following facts:

1. Project Company and SCE have entered into that certain Demand Response Purchase and Sale Agreement, dated as of [Date] [List all amendments as contemplated by Section 3.4] (“DR Purchase Agreement”), pursuant to which Project Company will develop, construct, commission, test and operate the Storage Units (the “Project”) and sell the DR Resource to SCE, and SCE will purchase the DR Resource from Project Company;
2. As collateral for Project Company’s obligations under the DR Purchase Agreement, Project Company has agreed to provide to SCE certain collateral, which may include Performance Assurance and Security Interests and other collateral described in the DR Purchase Agreement (collectively, the “DR Agreement Collateral”);
3. Project Company has entered into that certain [Insert description of financing arrangements with Lender], dated as of [Date], among Project Company, the Lenders party thereto and the Collateral Agent (the “Financing Agreement”), pursuant to which, among other things, the Lenders have extended commitments to make loans to Project Company;
4. As collateral security for Project Company’s obligations under the Financing Agreement and related agreements (collectively, the “Financing Documents”), Project Company has, among other things, assigned all of its right, title and interest in, to and under the DR Purchase Agreement and Project’s Company’s owners have pledged their ownership interest in Project Company (collectively, the “Assigned Interest”) to the Collateral Agent pursuant to the Financing Documents; and
5. It is a requirement under the Financing Agreement and the DR Purchase Agreement that SCE and the other Parties hereto shall have executed and delivered this Consent.

AGREEMENT

In consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties hereto hereby agree as follows:

SECTION 1. CONSENT TO ASSIGNMENT, ETC.

1.1 Consent and Agreement.

SCE hereby acknowledges:

(a) notice of and consents to the assignment as collateral security to Collateral Agent, for the benefit of the Secured Parties, of the Assigned Interest; and

(b) the right (but not the obligation) of Collateral Agent in the exercise of its rights and remedies under the Financing Documents, to make all demands, give all notices, take all actions and exercise all rights of Project Company permitted under the DR Purchase Agreement (subject to SCE’s rights and defenses under the DR Purchase Agreement and the terms of this Consent) and accepts any such exercise; provided, however, that, insofar as the Collateral Agent exercises any such rights under the DR Purchase Agreement or makes any claims with respect to payments or other obligations under the DR Purchase Agreement, the terms and conditions of the DR Purchase Agreement applicable to such exercise of rights or claims shall apply to Collateral Agent to the same extent as to Project Company.

1.2 Project Company’s Acknowledgement.

Each of Project Company and Collateral Agent hereby acknowledges and agrees that SCE is authorized to act in accordance with Collateral Agent’s instructions, and that SCE shall bear no liability to Project Company or Collateral Agent in connection therewith, including any liability for failing to act in accordance with Project Company’s instructions.

1.3 Right to Cure.

If Project Company defaults in the performance of any of its obligations under the DR Purchase Agreement, or upon the occurrence or non-occurrence of any event or condition under the DR Purchase Agreement which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable SCE to terminate or suspend its performance under the DR Purchase Agreement (a “DR Purchase Agreement Default”), SCE will not terminate or suspend its performance under the DR Purchase Agreement until it first gives written notice of such DR Purchase Agreement Default to Collateral Agent and affords Collateral Agent the right to cure such DR Purchase Agreement Default within the applicable cure period under the DR Purchase Agreement, which cure period shall run concurrently with that afforded Project Company under the DR Purchase Agreement. In addition, if Collateral Agent gives SCE written notice prior to the expiration of the applicable cure period under the DR Purchase Agreement of Collateral Agent’s intention to cure such DR Purchase Agreement Default (which notice shall include a reasonable description of the time during which it anticipates to cure such DR Purchase Agreement Default) and is diligently proceeding to cure such DR Purchase Agreement Default, notwithstanding the applicable cure period under the DR Purchase Agreement, Collateral Agent shall have a period of sixty (60) days (or, if such DR Purchase Agreement Default is for failure by the Project Company to pay an amount to SCE which is due and payable under the DR Purchase Agreement other than to provide DR Agreement Collateral, thirty (30) days, or, if such DR Purchase Agreement Default is for failure by Project Company to provide DR Agreement Collateral, [\_\_ (\_\_)] Business Days) from the Collateral Agent’s receipt of the notice of such DR Purchase Agreement Default from SCE to cure such DR Purchase Agreement Default; provided, however, that (a) if possession of the Project is necessary to cure any such non-monetary DR Purchase Agreement Default and Collateral Agent has commenced foreclosure proceedings within sixty (60) days after notice of the DR Purchase Agreement Default and is diligently pursuing such foreclosure proceedings, Collateral Agent will be allowed a reasonable time, not to exceed one hundred eighty (180) days after the notice of the DR Purchase Agreement Default, to complete such proceedings and cure such DR Purchase Agreement Default, and (b) if Collateral Agent is prohibited from curing any such DR Purchase Agreement Default by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Project Company, then the time periods specified herein for curing a DR Purchase Agreement Default shall be extended for the period of such prohibition, so long as Collateral Agent has diligently pursued removal of such process, stay or injunction. Collateral Agent shall provide SCE with reports concerning the status of efforts to cure a DR Purchase Agreement Default upon SCE’s reasonable request.

1.4 Substitute Owner.

Subject to Section 1.7, the Parties agree that if Collateral Agent notifies (such notice, a “Financing Document Default Notice”) SCE that an event of default has occurred and is continuing under the Financing Documents (a “Financing Document Event of Default”) then, upon a judicial foreclosure sale, non-judicial foreclosure sale, deed in lieu of foreclosure or other transfer following a Financing Document Event of Default, Collateral Agent (or its designee) shall be substituted for Project Company (the “Substitute Owner”) under the DR Purchase Agreement, and, subject to Sections 1.7(b) and 1.7(c) below, SCE and Substitute Owner will recognize each other as counterparties under the DR Purchase Agreement and will continue to perform their respective obligations (including those obligations accruing to SCE and the Project Company prior to the existence of the Substitute Owner) under the DR Purchase Agreement in favor of each other in accordance with the terms thereof; provided, however, that before SCE is required to recognize the Substitute Owner, the Substitute Owner must have demonstrated to SCE’s reasonable satisfaction that the Substitute Owner has financial qualifications and operating experience *[TBD]* (a “Permitted Transferee”). For purposes of the foregoing, SCE shall be entitled to assume that any such purported exercise of rights by Collateral Agent that results in substitution of a Substitute Owner under the DR Purchase Agreement is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same.

1.5 Replacement Agreements.

Subject to Section 1.7, if the DR Purchase Agreement is terminated, rejected or otherwise invalidated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Project Company, its owner(s) or guarantor(s), and if Collateral Agent or its designee directly or indirectly takes possession of, or title to, the Project (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) (“Replacement Owner”), SCE shall, and Collateral Agent shall cause Replacement Owner to, enter into a new agreement with one another for the balance of the obligations under the DR Purchase Agreement remaining to be performed having terms substantially the same as the terms of the DR Purchase Agreement with respect to the remaining Term (“Replacement DR Purchase Agreement”); provided, that before SCE is required to enter into a Replacement DR Purchase Agreement, the Replacement Owner must have demonstrated to SCE’s reasonable satisfaction that the Replacement Owner satisfies the requirements of a Permitted Transferee. For purposes of the foregoing, SCE is entitled to assume that any such purported exercise of rights by Collateral Agent that results in a Replacement Owner is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same. Notwithstanding the execution and delivery of a Replacement DR Purchase Agreement, to the extent SCE is, or was otherwise prior to its termination as described in this Section 1.5, entitled under the DR Purchase Agreement, SCE may suspend performance of its obligations under such Replacement DR Purchase Agreement, unless and until all DR Purchase Agreement Defaults of Project Company under the DR Purchase Agreement or Replacement DR Purchase Agreement have been cured.

1.6 Transfer.

Subject to Section 1.7, a Substitute Owner or a Replacement Owner may assign all of its interest in the Project and the DR Purchase Agreement and a Replacement DR Purchase Agreement to a natural person, corporation, trust, business trust, joint venture, joint stock company, association, company, limited liability company, partnership, Governmental Authority or other entity (a “Person”) to which the Project is transferred; provided, however, that the proposed transferee shall have demonstrated to SCE’s reasonable satisfaction that such proposed transferee satisfies the requirements of a Permitted Transferee.

1.7 Assumption of Obligations.

(a) Transferee.

Any transferee under Section 1.6 shall expressly assume in a writing reasonably satisfactory to SCE all of the obligations of Project Company, Substitute Owner or Replacement Owner under the DR Purchase Agreement or Replacement DR Purchase Agreement, as applicable, including posting and collateral assignment of the DR Agreement Collateral. Upon such assignment and the cure of any outstanding DR Purchase Agreement Default, and payment of all other amounts due and payable to SCE in respect of the DR Purchase Agreement or such Replacement DR Purchase Agreement, the transferor shall be released from any further liability under the DR Purchase Agreement or Replacement DR Purchase Agreement, as applicable.

(b) Substitute Owner.

Subject to Section 1.7(c), any Substitute Owner pursuant to Section 1.4 shall be required to perform Project Company’s obligations under the DR Purchase Agreement, including posting and collateral assignment of the DR Agreement Collateral; provided, however, that the obligations of such Substitute Owner shall be no more than those of Project Company under the DR Purchase Agreement.

(c) No Liability.

SCE acknowledges and agrees that neither Collateral Agent nor any Secured Party shall have any liability or obligation under the DR Purchase Agreement as a result of this Consent (except to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner) nor shall Collateral Agent or any other Secured Party be obligated or required to (i) perform any of Project Company’s obligations under the DR Purchase Agreement, except as provided in Sections 1.7(a) and 1.7(b) and to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner, or (ii) take any action to collect or enforce any claim for payment assigned under the Financing Documents. If Collateral Agent becomes a Substitute Owner pursuant to Section 1.4 or enters into a Replacement DR Purchase Agreement, Collateral Agent shall not have any personal liability to SCE under the DR Purchase Agreement or Replacement DR Purchase Agreement and the sole recourse of SCE in seeking enforcement of such obligations against Collateral Agent shall be to the aggregate interest of the Secured Parties in the Project; provided, however, that such limited recourse shall not limit SCE’s right to seek equitable or injunctive relief against Collateral Agent, or SCE’s rights with respect to any offset rights expressly allowed under the DR Purchase Agreement, a Replacement DR Purchase Agreement or the DR Agreement Collateral.

1.8 Delivery of Notices.

SCE shall deliver to Collateral Agent, concurrently with the delivery thereof to Project Company, a copy of each notice, request or demand given by SCE to Project Company pursuant to the DR Purchase Agreement relating to (a) a DR Purchase Agreement Default by Project Company under the DR Purchase Agreement, (b) any claim regarding Force Majeure by SCE under the DR Purchase Agreement, (c) any notice of dispute under the DR Purchase Agreement, (d) any notice of intent to terminate or any termination notice, and (e) any matter that would require the consent of Collateral Agent pursuant to Section 1.11 or any other provision of this Consent. Collateral Agent acknowledges that delivery of such notice, request and demand shall satisfy SCE’s obligation to give Collateral Agent a notice of DR Purchase Agreement Default under Section 1.3. Collateral Agent shall deliver to SCE, concurrently with delivery thereof to Project Company, a copy of each notice, request or demand given by Collateral Agent to Project Company pursuant to the Financing Documents relating to a default by Project Company under the Financing Documents.

1.9 Confirmations.

SCE will, as and when reasonably requested by Collateral Agent from time to time, confirm in writing matters relating to the DR Purchase Agreement (including the performance of same by Project Company); provided, however, that such confirmation may be limited to matters of which SCE is aware as of the time the confirmation is given and such confirmations shall be without prejudice to any rights of SCE under the DR Purchase Agreement as between SCE and Project Company.

1.10 Exclusivity of Dealings.

Except as provided in Sections 1.3, 1.4, 1.8, 1.9 and 2.1, unless and until SCE receives a Financing Document Default Notice, SCE shall deal exclusively with Project Company in connection with the performance of SCE’s obligations under the DR Purchase Agreement. From and after such time as SCE receives a Financing Document Default Notice and until a Substitute Owner is substituted for Project Company pursuant to Section 1.4, a Replacement DR Purchase Agreement is entered into or the DR Purchase Agreement is transferred to a Person to whom the Project is transferred pursuant to Section 1.6, SCE shall, until Collateral Agent confirms to SCE in writing that all obligations under the Financing Documents are no longer outstanding, deal exclusively with Collateral Agent in connection with the performance of SCE’s obligations under the DR Purchase Agreement, and SCE may irrevocably rely on instructions provided by Collateral Agent in accordance therewith to the exclusion of those provided by any other Person.

1.11 No Amendments.

To the extent permitted by applicable law, SCE agrees that it will not, without the prior written consent of Collateral Agent (not to be unreasonably withheld, delayed or conditioned) (a) enter into any material supplement, restatement, novation, extension, amendment or modification of the DR Purchase Agreement (b) terminate or suspend its performance under the DR Purchase Agreement (except in accordance with Section 1.3) or (c) consent to or accept any termination or cancellation of the DR Purchase Agreement by Project Company.

SECTION 2. PAYMENTS UNDER THE DR PURCHASE AGREEMENT

2.1 Payments.

Unless and until SCE receives written notice to the contrary from Collateral Agent, SCE will make all payments to be made by it to Project Company under or by reason of the DR Purchase Agreement directly to Project Company. SCE, Project Company, and Collateral Agent acknowledge that SCE will be deemed to be in compliance with the payment terms of the DR Purchase Agreement to the extent that SCE makes payments in accordance with Collateral Agent’s instructions.

2.2 No Offset, Etc.

All payments required to be made by SCE under the DR Purchase Agreement shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than that expressly allowed by the terms of the DR Purchase Agreement.

SECTION 3. REPRESENTATIONS AND WARRANTIES OF SCE

SCE makes the following representations and warranties as of the date hereof in favor of Collateral Agent:

3.1 Organization.

SCE is a corporation duly organized and validly existing under the laws of the state of its incorporation, and is duly qualified, authorized to do business and in good standing in every jurisdiction in which it owns or leases real property or in which the nature of its business requires it to be so qualified, except where the failure to so qualify would not have a material adverse effect on its financial condition, its ability to own its properties or its ability to transact its business. SCE has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the DR Purchase Agreement, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

3.2 Authorization.

The execution, delivery and performance by SCE of this Consent and the DR Purchase Agreement have been duly authorized by all necessary corporate or other action on the part of SCE and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of SCE which, if not obtained, will prevent SCE from performing its obligations hereunder or under the DR Purchase Agreement except approvals or consents which have previously been obtained and which are in full force and effect.

3.3 Execution and Delivery; Binding Agreements.

Each of this Consent and the DR Purchase Agreement is in full force and effect, have been duly executed and delivered on behalf of SCE by the appropriate officers of SCE, and constitute the legal, valid and binding obligation of SCE, enforceable against SCE in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors’ rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

3.4 No Default or Amendment.

Except as set forth in Schedule A attached hereto: (a) Neither SCE nor, to SCE’s actual knowledge, Project Company, is in default of any of its obligations under the DR Purchase Agreement; (b) SCE and, to SCE’s actual knowledge, Project Company, has complied with all conditions precedent to the effectiveness of its obligations under the DR Purchase Agreement; (c) to SCE’s actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either SCE or Project Company to terminate or suspend its obligations under the DR Purchase Agreement; and (d) the DR Purchase Agreement has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

3.5 No Previous Assignments.

SCE has no notice of, and has not consented to, any previous assignment by Project Company of all or any part of its rights under the DR Purchase Agreement, except as previously disclosed in writing and consented to by SCE.

SECTION 4. REPRESENTATIONS AND WARRANTIES OF PROJECT COMPANY

Project Company makes the following representations and warranties as of the date hereof in favor of the Collateral Agent and SCE:

4.1 Organization.

Project Company is a *[Legal Status of Seller]* duly organized and validly existing under the laws of the state of its organization, and is duly qualified, authorized to do business and in good standing in every jurisdiction in which it owns or leases real property or in which the nature of its business requires it to be so qualified, except where the failure to so qualify would not have a material adverse effect on its financial condition, its ability to own its properties or its ability to transact its business. Project Company has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the DR Purchase Agreement, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

4.2 Authorization.

The execution, delivery and performance of this Consent by Project Company, and Project Company’s assignment of its right, title and interest in, to and under the DR Purchase Agreement to the Collateral Agent pursuant to the Financing Documents, have been duly authorized by all necessary corporate or other action on the part of Project Company.

4.3 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Project Company by the appropriate officers of Project Company, and constitutes the legal, valid and binding obligation of Project Company, enforceable against Project Company in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors’ rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

4.4 No Default or Amendment.

Except as set forth in Schedule B attached hereto: (a) neither Project Company nor, to Project Company’s actual knowledge, SCE, is in default of any of its obligations thereunder; (b) Project Company and, to Project Company’s actual knowledge, SCE, has complied with all conditions precedent to the effectiveness of its obligations under the DR Purchase Agreement; (c) to Project Company’s actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either SCE or Project Company to terminate or suspend its obligations under the DR Purchase Agreement; and (d) the DR Purchase Agreement has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

4.5 No Previous Assignments.

Project Company has not previously assigned all or any part of its rights under the DR Purchase Agreement.

SECTION 5. REPRESENTATIONS AND WARRANTIES OF COLLATERAL AGENT

Collateral Agent makes the following representations and warranties as of the date hereof in favor of SCE and Project Company:

5.1 Authorization.

The execution, delivery and performance of this Consent by Collateral Agent have been duly authorized by all necessary corporate or other action on the part of Collateral Agent and Secured Parties.

5.2 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Collateral Agent by the appropriate officers of Collateral Agent, and constitutes the legal, valid and binding obligation of Collateral Agent as Collateral Agent for the Secured Parties, enforceable against Collateral Agent (and the Secured Parties to the extent applicable) in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors’ rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

SECTION 6. MISCELLANEOUS

6.1 Notices.

All notices and other communications hereunder shall be in writing, shall be deemed given upon receipt thereof by the Party or Parties to whom such notice is addressed, shall refer on their face to the DR Purchase Agreement (although failure to so refer shall not render any such notice or communication ineffective), shall be sent by first class mail, by personal delivery or by a nationally recognized courier service, and shall be directed (a) if to SCE or Project Company, in accordance with [Notice Section of the DR Purchase Agreement] of the DR Purchase Agreement, (b) if to Collateral Agent, to [Collateral Agent Name], [Collateral Agent Address], Attn: [Collateral Agent Contact Information], Telephone: [\_\_\_], Fax: [\_\_\_], and (c) to such other address or addressee as any such Party may designate by notice given pursuant hereto.

6.2 Governing Law; Submission to Jurisdiction.

(a) THIS CONSENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND THIS CONSENT AND ALL MATTERS ARISING OUT OF THIS CONSENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, THE LAW OF THE STATE OF CALIFORNIA WITHOUT REGARD TO ANY CONFLICTS OF LAWS PROVISIONS THEREOF THAT WOULD RESULT IN THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION. *[This Section will be modified, if necessary, to match the Governing Law Section of the DR Purchase Agreement.]*

(b) All disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Consent shall be governed by the dispute resolution provisions of the DR Purchase Agreement. Subject to the foregoing, any legal action or proceeding with respect to this Consent and any action for enforcement of any judgment in respect thereof may be brought in the courts of the State of California or of the United States of America for the Central District of California, and, by execution and delivery of this Consent, each Party hereby accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts and appellate courts from any appeal thereof. Each Party further irrevocably consents 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 mail, postage prepaid, to its notice address provided pursuant to Section 6.1 hereof. Each Party hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Consent brought in the courts referred to above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Nothing herein shall affect the right of any Party to serve process in any other manner permitted by law.

6.3 Headings Descriptive.

The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

6.4 Severability.

In case any provision in or obligation under this Consent shall be 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, shall not in any way be affected or impaired thereby.

6.5 Amendment, Waiver.

Neither this Consent nor any of the terms hereof may (a) be terminated, amended, supplemented or modified, except by an instrument in writing signed by SCE, Project Company and Collateral Agent or (b) waived, except by an instrument in writing signed by the waiving Party.

6.6 Termination.

Each Party’s obligations hereunder are absolute and unconditional, and no Party has any right, and shall have no right, to terminate this Consent or to be released, relieved or discharged from any obligation or liability hereunder until SCE has been notified by Collateral Agent that all of the obligations under the Financing Documents shall have been satisfied in full (other than contingent indemnification obligations) or, with respect to the DR Purchase Agreement or any Replacement DR Purchase Agreement, its obligations under such DR Purchase Agreement or Replacement DR Purchase Agreement have been fully performed.

6.7 Successors and Assigns.

This Consent shall be binding upon each Party and its successors and assigns permitted under and in accordance with this Consent, and shall inure to the benefit of the other Parties and their respective successors and assignee permitted under and in accordance with this Consent. Each reference to a Person herein shall include such Person’s successors and assigns permitted under and in accordance with this Consent.

6.8 Further Assurances.

SCE hereby agrees to execute and deliver all such instruments and take all such action as may be necessary to effectuate fully the purposes of this Consent.

6.9 Waiver of Trial by Jury.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS CONSENT OR ANY MATTER ARISING HEREUNDER. EACH PARTY FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

6.10 Entire Agreement.

This Consent and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Consent and any such agreement, document or instrument, the terms, conditions and provisions of this Consent shall prevail.

6.11 Effective Date.

This Consent shall be deemed effective as of the date upon which the last Party executes this Consent.

6.12 Counterparts; Electronic Signatures.

This Consent may be executed in one or more counterparts, each of which will be deemed to be an original of this Consent and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Consent 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 Consent as to the Parties and may be used in lieu of the original Consent for all purposes.

*[Remainder of Page Left Intentionally Blank.]*

*\*\*\*End of Exhibit G\*\*\**

**EXHIBIT H**

**FORM OF LETTER OF CREDIT**

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT

Bank Reference Number:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Issuance Date:

Issuing Bank:

[insert bank name and address]

Applicant:

[insert applicant name and address]

Beneficiary:

Southern California Edison Company

2244 Walnut Grove Avenue

GO#1, Quad 2A

Rosemead, CA 91770

Attn: Manager of Risk Operations and Collateral Management

Available Amount: [insert amount and spell out]

Expiration Date: [insert date

Ladies and Gentlemen:

 (the “Bank”) hereby establishes this Irrevocable Nontransferable Standby Letter of Credit (“Letter of Credit”) in favor of Southern California Edison Company, a California corporation (the “Beneficiary”), for the account of \_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_ corporation, also known as ID# \_\_\_\_ (the “Applicant”), for the amount stated above (the “Available Amount”), effective immediately.

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

For the purposes hereof, “Business Day” shall mean any day other than:

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

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

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

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

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

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

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

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

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Southern California Edison Company, Manager of Risk Operations and Collateral Management, 2244 Walnut Grove Avenue, GO1 Quad 2A, Rosemead, California 91770. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

Banking charges shall be the sole responsibility of the Applicant.

This Letter of Credit sets forth in full our obligations and such obligations shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the attachment referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such attachment. Except in the case of an increase in the Available Amount or extension of the Expiration Date, this Letter of Credit may not be amended or modified without the Beneficiary’s prior written consent.

The Bank engages with the Beneficiary that Beneficiary’s drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date. Except in the case of an increase in the Available Amount, this Letter of Credit may not be amended or modified without the Beneficiary’s prior written consent.

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

AUTHORIZED SIGNATURE for Bank

By:

Name: [print name]

Title: [print title]

**ATTACHMENT A**

DRAWING CERTIFICATE

TO [ISSUING BANK NAME & ADDRESS]

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT REFERENCE NUMBER: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DATE: \_\_\_\_\_\_\_\_\_

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

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

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

[ ]C. The Beneficiary is entitled to retain all or part of the Development Security (as defined in the Agreement).

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

Authorized Signature for Beneficiary:

SOUTHERN CALIFORNIA EDISON COMPANY

By:

Name: [print name]

Title: [print title]

**ATTACHMENT B**

*SIGHT DRAFT*

[INSERT DATE]

TO:

[Issuing bank name & address]

PAY AT SIGHT TO THE ORDER OF SOUTHERN CALIFORNIA EDISON COMPANY (the “Beneficiary”) THE AMOUNT OF USD [insert amount] DRAWN UNDER [Issuing Bank Name] IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT NUMBER [insert number] ISSUED ON [insert date].

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

[insert wiring instruction]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Signature Southern California Edison Company

Name: [print name]

Title: [print title]

*\*\*\*End of Exhibit H\*\*\**