

**2013 LCR RFO PRO FORMA**

**DEMAND RESPONSE ENERGY STORAGE AGREEMENT**

*between*

***[Name of SELLER]***

*and*

**SOUTHERN CALIFORNIA EDISON COMPANY**

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**DEMAND RESPONSE ENERGY STORAGE AGREEMENT**

**BY AND BETWEEN**

***[Name of Seller]***

**SOUTHERN CALIFORNIA EDISON COMPANY**

**PREAMBLE**

This Demand Response Energy Storage Agreement, together with its exhibits (the “Agreement”), is entered into by and between Southern California Edison Company, a California corporation (“SCE”), and *[Seller]*, a *[Seller’s business registration]* (“Seller”), as of *[Date]* (“Execution Date”). SCE and Seller are referred to herein individually as a “Party” and collectively as “Parties.”

**RECITALS**

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

1. SCE is an investor-owned electric utility serving customers in central and southern California.
2. Seller is proposing to construct and own the Project located in [insert description of *location]*, and considered to be within the area described as the *[Western LA Basin or Moorpark Sub-Area]* in CPUC Decision 13-02-015, and, pursuant to the terms of this Agreement, will serve the electrical consumption of *[Western LA Basin Customers or Moorpark Sub-Area Customers]* with the Project.
3. the Parties wish to enter into this Agreement to provide for the sale by Seller and purchase by SCE of the DR Resource (as defined below).

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.

**DEFINITIONS**

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

“AB 32” means the California Global Warming Act of 2006, Assembly Bill 32 (2006) and the regulations promulgated thereunder (including, without limitation, the GHG Regulations) by any authorized Governmental Body.

“AB 32 Compliance Obligation” has the meaning set forth for “Compliance Obligation” in the GHG Regulations as it relates to Seller.

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

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

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

“Arbitrator” has the meaning set forth in Section 16.3.

“Average Performing SLAP Hour” has the meaning set forth in Section 7.2(d).

“Bankrupt” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

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

“Bundled Service Customer” means a customer of SCE who takes bundled services from SCE including having all its power requirements purchased by SCE.

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

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

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

“Capacity Attributes” means, any and all of the following, in each case which are attributed to or associated with the DR Resource and Project at any time throughout the Delivery Period: (i) resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction, that can be counted toward RAR; (ii) 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, CAISO or other Governmental Body having jurisdiction, associated with the physical location or points of electrical interconnection of the DR Resource and Project within the CAISO Control Area, that can be counted toward a Local RAR; (iii) flexible capacity resource adequacy attributes for the DR Resource and Project, including, without limitation, the amount of Effective Flexible Capacity of the DR Resource and Project, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction, that can be counted toward Flexible RAR; and (iv) other current or future defined characteristics, certificates, tags, credits, or accounting constructs, howsoever entitled, including any accounting construct counted toward any Compliance Obligations.

“Capacity Rate” has the meaning set forth in Section 1.4(b).

“Cash” means U.S. Dollars held by or on behalf of a Party as Performance Assurance or Delivery Date Security hereunder.

“CEC” means the California Energy Commission, or any successor thereto.

“Claiming Party” has the meaning set forth in Article 20.

“Collateral Assignment Agreement” has the meaning set forth in Article 21.

“Commercial Operation” means that a Storage Unit has successfully completed the demonstration set forth in Appendix 6 as demonstrated by SCE’s acceptance of the test.

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

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

“Compliance Showings” means the (i) Local RAR compliance or advisory showings (or similar or successor showings), (ii) RAR compliance or advisory showings (or similar or successor showings), and (iii) Flexible RAR compliance or advisory showings (or similar successor showings), in each case, an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, to the CAISO pursuant to the CAISO Tariff, or to any Governmental Body having jurisdiction.

“Construction Report” has the meaning set forth in Section 5.1.

“Contract Capacity” has the meaning set forth in Section 1.4(b).

“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.

“CPUC Approval” means a decision of the CPUC that (i) is final and no longer subject to appeal, which approves the Agreement in full and in the form presented on terms and conditions acceptable to SCE in its sole discretion, including without limitation terms and conditions related to cost recovery and cost allocation of amounts paid to Seller under the Agreement; (ii) does not contain conditions or modifications unacceptable to SCE, in SCE’s sole discretion; and (iii) finds that any procurement pursuant to this Agreement satisfies the requirement to procure [preferred resources/energy storage] under Commission Decision 13-02-015.

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

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

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

“Critical Peak Pricing” means the Critical Peak Pricing program as more particularly described on SCE’s Schedule CPP Critical Peak Pricing tariff sheet, Cal. PUC Sheet No. 47305-E, or any successors thereto.

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

“Daily Delay Damages” means liquidated damages in the amount of the product of $123.29/MW and the Contract Capacity for the month with the largest Contract Capacity for each day of delay.

“Delivery Date Security” has the meaning set forth in Section 9.2(a).

“Defaulting Party” has the meaning set forth in Section 11.1.

“Delivered Capacity Payment” has the meaning described in and is calculated pursuant to Section 7.2.

“Delivered Energy Payment” has the meaning described in and is calculated pursuant to Section 7.3.

“Delivery Days” has the meaning set forth in Section 1.3(x).

“Delivery Hours” has the meaning set forth in Section 1.3(y).

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

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

“DBP” means the Demand Bidding Program as more particularly described on SCE’s Schedule DBP Demand Bidding Program tariff sheet, Cal. PUC Sheet No. 50023-E, or any successors thereto.

“Dispatch” means the act of serving all or a portion of the electrical consumption of the Participating Accounts with 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 1.6 directing the Seller to serve all or a portion of the electrical consumption of the Participating Accounts with the DR Resource pursuant to the terms of the 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.

“DR Resource” means the ability to serve all or 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.

“Dual Participation Programs” means the SCE tariffed demand response programs which at such time permit service accounts in such programs to dual participate as a Participating Account under this Agreement, as such programs are approved, amended, added or removed from being able to dual participate by the Commission from time-to-time. As of July 1, 2013, the Dual Participation Programs consist of the DBP, Critical Peak Pricing, Optional Binding Mandatory Curtailment, and Real-Time Pricing.

“Early Termination Date” has the meaning set forth in Section 11.2(a).

“Effective Flexible Capacity” means the effective flexible capacity or “EFC” of the DR Resource and Project pursuant to the CPUC Decisions and CAISO Tariff, in each case to the extent applicable, and which such flexible capacity may be used to satisfy an LSEs Flexible RAR.

“Energy Baseline” or “EB” means, as more particularly described 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:

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 the ten (10) Measurement Days prior to a Seller Dispatch or a Dispatch, as applicable.

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 1.4(b).

“Environmental Costs” means 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 substances introduced to the Site, and the decontamination or remediation, on or off the Site, necessitated by the introduction of such hazardous substances on the Site.

“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.

“Event of Default” has the meaning set forth in Section 11.1.

“Event Parameters” has the meaning set forth in Section 1.4(a).

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

“Expected Initial Delivery Date” has the meaning set forth in Section 3.1(a).

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

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

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

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

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

“Full-Portfolio Dispatch” means a Dispatch or Seller Dispatch of all Participating Accounts.

“GHG Charges” means any taxes, charges or fees imposed on the Storage Units or Seller by a Governmental Body for Greenhouse Gas emitted by and attributable to the Storage Units during the Delivery Period, but excluding the AB 32 Compliance Obligation.

“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.

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

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

“Governmental Charge” has the meaning set forth in Section 12.1.

“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 SLAP Recorded Reduction” has the meaning set forth in Section 7.2(f).

“Indemnified Party” has the meaning set forth in Section 17.3.

“Indemnitor” has the meaning set forth in Section 17.3.

“Industry Standards” has the meaning set forth in Section 8.1(a).

“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 an LSEs Flexible RAR and which are associated kWs of the DR Resource and Project that not part of or outside of the Effective Flexible Capacity.

“Initial Commercial Operation Test” means, the testing procedures, requirements, and protocols set forth in Appendix 6.

“Initial Delivery Date” has the meaning set forth in Section 3.1(b).

“Interval Locational Marginal Price” means the interval prices associated with a specific hour as found on the OASIS website (http://oasis.caiso.com/).

“JAMS” has the meaning set forth in Section 16.2.

“Lender” means any and all financial institutions that provide to Seller any development, bridge, construction, permanent debt, tax equity, Performance Assurance, Delivery Date Security or other form of financing or refinancing, or other credit support, relating to the Project.

“Letter of Credit” means an irrevocable, nontransferable standby letter of credit, substantially in the form of Appendix 9 and acceptable to SCE, provided by Seller from an issuer acceptable to SCE that is either a U.S. financial institution or a U.S. commercial bank or a U.S. branch of a foreign bank with such financial institution or the bank (i) having a Credit Rating of at least (a) Credit Ratings of at least "A-" by S&P, “A-“ by Fitch and "A3" by Moody's, if such entity is rated by the Ratings Agencies; (b) if such entity is rated by only two of the three Ratings Agencies, a Credit Rating from two of the three Ratings Agencies of at least "A-" by S&P, if such entity is rated by S&P, “A-“ by Fitch, if such entity is rated by Fitch, and "A3" by Moody's, if such entity is rated by Moody’s; or (c) a Credit Rating of at least "A-" by S&P or "A3" by Moody's, or “A-” by Fitch if such entity is rated by only one Ratings Agency; and (ii) having shareholder equity (determined in accordance with generally accepted accounting principles) of at least $1,000,000,000.00 (ONE BILLION AND 00/100 DOLLARS). Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

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

“Load Drop Amount” is the total load drop capacity of a Participating Account by serving such load through the applicable Storage Unit as set for each Participating Account in Section 1.5(a).

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

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

“LSE” means load-serving entity.

“Measurement Day” means a twenty-four (24) hour period but excluding weekends, holidays, days in which a Dispatch or Seller Dispatch occurs, and event days under a Dual Participation Program; provided, that event day(s) under DBP will not be considered a Measurement Day only to the extent that a DBP bid, including any standing bid, was placed by the Participating Account on such event day(s).

“Mediator” has the meaning set forth in Section 16.2.

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

“Milestone Schedule” has the meaning set forth in Section 5.1.

“Moorpark High Voltage Substations” means the following substations located in the CAISO area: Goleta, Moorpark, Santa Clara, Mandalay, and Ormond Beach.

“Moorpark Customer” means a Customer that either (i) directly takes or receives electricity service from a Moorpark High Voltage Substation or (ii) directly takes or receives electricity services from a lower voltage substation that electrically connects to a Moorpark High Voltage Substation.

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

“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.

“New Resource” means that the Project (a) has a remaining design life of at least [ # ] years after the Initial Delivery Date as attested by an engineering assessment performed by a professional mechanical engineer (with experience acceptable to SCE in its sole discretion) licensed by the State of California; (b) is incremental capacity to the region of the CAISO’s control area known as SP15; and (c) is for use with a [Western LA Basin Customer or Moorpark Sub-Area Customer].

“Non-Defaulting Party” has the meaning set forth in Section 11.2.

“Non-Exporting” has the meaning set forth in Rule 21 of the SCE Tariff.

“Notice” means notices, requests, statements or payments provided in accordance with Article 15.

“Operating Months” has the meaning set forth in Section 1.3(z).

“Optional Binding Mandatory Curtailment” means the Optional Binding Mandatory Curtailment program as more particularly described on SCE’s Schedule OBMC Optional Binding Mandatory Curtailment tariff sheet, Cal. PUC Sheet No. 47446-E, or any successors thereto.

“Participating Account” has the meaning set forth in Section 1.5(c).

“Performance Assurance” means the collateral dollar amount as set forth in Section 9.2(c). Performance Assurance must be in the form of Cash or Letter of Credit. Any Cash received and held by a Party after drawing on any Letter of Credit will constitute Performance Assurance in the form of Cash.

“Performing SLAP Hour” has the meaning set forth in Section 7.2(e).

“Permit Requirements” means any requirement or limitation imposed as a condition of a permit or other authorization relating to construction or operation of the Project or related facilities, including limitations on any pollutant emissions levels, limitations on fuel combustion or heat input throughput, limitations on operational levels or operational time, limitations on any specified operating constraint, requirements for acquisition and provision of any emission reduction credits or marketable emission trading credits; or any other operational restriction or specification related to compliance with any Applicable Laws.

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

“Project” means the Storage Unit and Prevention Equipment together with all materials, equipment systems, structures, features and improvements necessary to store, charge and discharge electric energy at the facility, excluding the Site, land rights and interests in land and as more fully described in Appendix 1.8.

“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.

“Prevention Equipment” has the meaning set forth in Section 4.1(e).

“Procurement Review Group” has the meaning set forth in Article 19.

“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 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, and the requirements of Governmental Bodies, WECC standards, the CAISO and Applicable Laws.

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

1. Equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the needs of the Project and DR Resource;
2. 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 the Site;
3. 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;
4. Appropriate monitoring and testing are performed to ensure equipment is functioning as designed;
5. 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
6. Equipment and components are designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy storage facilities operating in the Western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.

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

“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.

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

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

“Real-Time Pricing” means the Real-Time Pricing (RTP-2) program as more particularly described on SCE’s Schedule RTP-2 General Service-Large Real Time Pricing tariff sheet, Cal. PUC Sheet No. 50061-E, or any successors thereto.

“Requested Date Range” has the meaning set forth in Section 7.4.

“Required Permits” has the meaning set forth in Section 4.1(b).

“Required Permit Date” has the meaning set forth in Section 4.1(b).

“Resource Adequacy Benefits” means the rights and privileges attached to the DR Resource and Project that satisfy any person’s or legal entity’s resource adequacy obligations, as those obligations are set forth in any CPUC Decisions, the CAISO Tariff or as determined by another Governmental Body having authority, and shall include any local, zonal, locational, flexibility and other current or future defined characteristics, certificates, tags, credits, or accounting constructs, howsoever entitled, including any accounting construct counted toward resource adequacy obligations, including without limitation all Capacity Attributes associated with the DR Resource and Project.

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

“Safety Report” means a report from an independent engineer (acceptable to both SCE and Seller) 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 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.

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

“Seller Dispatch” means a Full-Portfolio Dispatch or SLAP Dispatch performed by the Seller in accordance with Section 7.4.

“Settlement Amount” means the required Performance Assurance amount as of the date of the Early Termination Date. The Settlement Amount shall be an amount owing to the Non-Defaulting Party.

“Shortfall Amount” has the meaning set forth in Section 7.3(f).

“Shortfall Energy” has the meaning set forth in Section 7.3(g).

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

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

“Site” means the real property on which the Project is, or will be located, as further described in Section 1.8(b) and Appendix 1.8.

“SLAP Dispatch” means a Dispatch or Seller Dispatch of all Participating Accounts within a particular SLAP.

“SLAP Recorded Reduced Energy” has the meaning set forth in Section 7.3(d).

“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 Unit” or “Storage Units” means the energy storage unit or units specified in Appendix 1.8.

“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 1.5 herein.

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

“Term Year” means a twelve (12) month period beginning on the first day of the Delivery Start Date 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 Settlement Amount is part of and included in the Termination Payment.

“Total Recorded Capacity” has the meaning set forth in Section 7.2(c).

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

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

“West LA Basin High Voltage Substations” means the following substations located in the CAISO area: Alamitos, Barre, Center, Chevmain, Del Amo, Eagle Rock, El Nido, El Segundo, Ellis, Goodrich, Gould, Hinson, Huntington Beach, Johanna, La Cienega, La Fresa, Laguna Bell, Lewis, Lighthipe, Long Beach, Mesa, Olinda, Redondo, Rio Hondo, Santiago, Viejo, Villa Park, and Walnut.

“West LA Basin Customer” means a Customer that either (i) directly takes or receives electricity services from a West LA Basin High Voltage Substation or (ii) directly takes or receives electricity services from a lower voltage substation that electrically connects to a West LA Basin High Voltage Substation.

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

# TRANSACTION

## Purchase and Sale of the DR Resource.

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.

## Term.

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

## Delivery Period.

The “Delivery Period” shall (i) 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 (the “Delivery Start Date”) and shall continue in full force and effect until *[[DATE] or [11:59 p.m. of the date which is \_\_\_\_\_ months after the Delivery Start Date]]* unless terminated earlier in accordance with the terms and conditions of this Agreement, and (ii) consist of the Delivery Days, Delivery Hours, and Operating Months during such period of time as set forth below.

* + 1. “Delivery Days” means *[Seller bid, Monday through Friday only]*, 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 1.4(b) below]*.

## DR Resource.

* + 1. The “Event Parameters” for each Sub-Load Aggregation Point are:

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

* + 1. The “Energy Rate” shall be *[Bid]* per kilowatt hour (kWh). The “Contract Capacity” and corresponding “Capacity Rate” are as set forth below:

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

## Participating Accounts.

* + 1. The following are the “Participating Accounts” under this Agreement:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Name** | **Service Address** | **Bundled Service Customer (Y/N)** | **SCE service account number** | **SLAP as of the Effective Date** | **Load Drop Amount (kW)** |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |

*{SCE Note: A Storage Unit, as described in Appendix 1.8, must correspond to each Participating Account above}*

* + 1. For the entire Delivery Period, each Participating Account identified in Section 1.5(a) shall:
       1. have properly executed the disclosure form identified in Section 1.11 below, and have delivered such form to SCE;
       2. not serve under any other demand response program, except for Dual Participation Programs, and if a Participating Account is participating in one of the Dual Participation Programs, Seller shall provide the name(s) of the program(s) in which such Participating Account is participating;
       3. have installed and operating Qualifying Meter; and
       4. be a *[West LA Basin Customer or Moorpark Customer]*.
    2. No less than ten (10) days before the beginning of each Operating Month, SCE shall identify the SLAP to which each Participating Account belongs; provided, if SCE does not identify a SLAP for a Participating Account pursuant to this Section 1.5(c), then the most recent of either the SLAP identification provided by SCE or the Agreement shall apply. SCE may adjust or modify the SLAP boundaries in accordance with direction SCE receives from the CAISO or Commission.
    3. Notwithstanding any other provision in this Agreement, SCE is not obligated to make payment for any Contract Capacity or energy associated with a Participating Account that does not meet the requirements of this Agreement.

## Dispatch.

Subject to the limitations set forth in Sections 1.3 and 1.4, SCE may Dispatch the DR Resource by SLAP or as a Full-Portfolio Dispatch through a Dispatch Instruction. The Dispatch Instruction shall be made either telephonically or pursuant to a method determined by SCE in its sole discretion, to the Seller personnel designated to receive such communications as listed in Article 15. In order to be effective, the Dispatch Instruction must be given at least one (1) hour in advance of the start of the Dispatch. Each Dispatch Instruction will be effective unless and until SCE modifies such Dispatch Instruction by providing Seller with an updated Dispatch Instruction at least one (1) hour in advance of the start of the Dispatch. Once Seller has received a proper Dispatch Instruction, Seller shall Dispatch the DR Resource as instructed.

## Exclusive Rights.

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

* + 1. the DR Resource;
    2. utilize the energy storage capacity from the Project;
    3. the Contract Capacity from, and the energy benefit derived from, the DR Resource; and
    4. 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 10.1, and all revenues created from the use, sale or marketing of the DR Resource and the benefits provided under Section 10.1.

## Storage Units.

1. Storage Units’ Test Parameters. For purposes of the Initial Commercial Operation Test, the following test parameters (“Test Parameters”) shall apply:

*[SCE Comment: TBD based on storage technology]*

1. Location of Site. *[Project Addresses]*, as further described in Appendix 1.8.
2. Ownership. Seller shall maintain ownership of and demonstrable exclusive rights to the Project throughout the Term.

## Metering and Communication Equipment.

1. Upon SCE’s written request, Seller shall 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.
2. For each and every individual Site location, Seller, at its own costs, shall *[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.]*

## Limitation of Liability for Seller Service.

SCE has no obligations to any person or entity that is a Participating Account.

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

SCE shall, to the extent available and permitted by Applicable Law, provide specific information, usage, and/or meter data of a Participating Account to Seller, if Seller provides to SCE written authorization from such Participating Account to release such information. Such written authorization must be provided in a form acceptable to SCE in its sole discretion. In the event SCE is unable to provide the information contemplated under this section 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.

# CPUC APPROVAL

Notwithstanding anything to the contrary contained in this Agreement, the Delivery Period will not commence until CPUC Approval is obtained.

Within 90 days after the Execution Date, SCE shall file with the Commission 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. Seller shall use commercially reasonable efforts to support SCE in obtaining CPUC Approval. SCE has no obligation to seek rehearing or to appeal a Commission decision which fails to approve this Agreement or which contains findings required for CPUC Approval with conditions or modifications unacceptable to either Party.

Either Party has the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given, if CPUC Approval has not been obtained or waived by SCE in its sole discretion within three hundred sixty-five (365) days after SCE files its request for CPUC Approval and a Notice of termination is given on or before the three hundred ninety-fifth (395th) day after SCE files the request for CPUC Approval.

Failure to obtain CPUC Approval in accordance with this Article 2 will not be deemed to be a failure of Seller to sell or deliver the 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 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.

# conditions precedent

## Expected Initial Delivery Date.

* + 1. The Expected Initial Delivery Date for the DR Resource is *[Date]*.
    2. 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:
       1. Seller has completed, to SCE’s satisfaction, Seller’s obligations set forth in Sections 4.1(a) through 4.1(g), inclusive, in order to bring the Project and the DR Resource into full operation as contemplated by this Agreement;
       2. Each Storage Unit has achieved Commercial Operation;
       3. Seller has demonstrated, as part of the Initial Commercial Operation Test and to SCE’s reasonable satisfaction, that the Project is capable of meeting the Contract Capacity for all months set forth in Section 1.4(b), and the Event Parameters;
       4. Seller has deposited with SCE the applicable Performance Assurance amounts as set forth in Section 9.2(c);
       5. The applicable Storage Unit is installed at the applicable Participating Account as set forth in Appendix 1.8;
       6. Seller has executed and delivered to SCE all documents or instruments required under or requested pursuant to Article Nine;
       7. 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, each Storage Unit, including any obligations, requirements, or agreements required under SCE Tariff;
       8. Seller has provided SCE with certification from an independent, non-Affiliate California registered professional mechanical engineer, that (i) Seller has designed and built the Project to have a *[SCE Comment: number of years based on technology]* year design life in accordance with Prudent Electrical Practices, and (ii) the design and construction of the Project was carried out by the original equipment manufacturer or other competent organization;
       9. Seller has delivered to SCE all insurance documents required under Section 10.3; and
       10. SCE shall have obtained or waived Final CPUC Approval.

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

## Delayed Initial Delivery Date.

* + 1. Daily Delay Damages. If Seller has not satisfied the conditions set forth in Section 3.1 for the Initial Delivery Date of the Project by the Expected Initial Delivery Date, Seller shall owe and pay to SCE the Daily Delay Damages for each day of delay beyond the Expected Initial Delivery Date, up to the number of remaining days until *[Insert date that is three hundred sixty-five (365) days after the Expected Initial Delivery Date]*. SCE shall be entitled to recover the Daily Delay Damages owed by Seller by drawing on and/or retaining any Delivery Date Security.
    2. Delays Due to Force Majeure. Subject to Section 11.1(b)(iii) and Seller’s compliance with its obligations as the Claiming Party under Article 20, if Seller has not satisfied the conditions set forth in Section 3.1 for the Initial Delivery Date of the DR Resource by the Expected Initial Delivery Date due to Force Majeure, then the Expected Initial Delivery Date will be extended on a day-for-day basis for the duration of the Force Majeure.

## No Liability of SCE.

SCE shall have no liability to Seller, regardless of cause (including any act or omission of SCE, including as buyer under this Agreement or as the owner of the distribution electrical system) for (a) any delay or failure by Seller to achieve the Initial Delivery Date by the Expected Initial Delivery Date, and (b) any costs or damages incurred by Seller as a result thereof or any reduction in Seller’s Delivered Capacity Payments and Delivered Energy Payments resulting from any delay in achieving the Initial Delivery Date by the Expected Initial Delivery Date.

# DESIGN AND CONSTRUCTION OF STORAGE UNITS

## Seller’s Obligations.

At no cost to SCE, Seller shall:

* + 1. Design and construct, or refurbish the Project as required for Seller to perform its obligations under this Agreement;
    2. Within *[number] [#]* days prior to the Expected Initial Delivery Date, Seller shall file all applications or other appropriate requests to acquire and maintain all permits, licenses, certifications and approvals necessary for the construction or refurbishment, operation and maintenance of the Project (the “Required Permits”), including permits to construct from the applicable Air Pollution Control District, or a Facility and Site Certification from the CEC (pursuant to California Public Resources Code Sections 25500-25543), as applicable, and obtain all Required Permits on or before *[Date]* (the “Required Permit Date”);
    3. As applicable, complete all environmental impact assessments or studies conducted by or for Governmental Bodies pursuant to regulatory programs approved and certified under the California Environmental Quality Act, or environmental impact statements or studies conducted pursuant to the National Environmental Policy Act including obtaining public review and certification of any final documents relating to any environmental impact assessment or studies;
    4. 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 with SCE’s electric system;
    5. Furnish and install all equipment necessary to prevent, suppress and contain any fire, flooding, explosion, leak of hazardous material or other injury or damage at the Site (“Prevention Equipment”);
    6. Throughout the Delivery Period, maintain all permits, licenses, certifications and approvals necessary for the operation and maintenance of the Project; and
    7. Provide to SCE, prior to commencement of any construction activities on the Site, a report from an independent engineer (acceptable to both SCE and Seller) certifying that Seller has a written plan for the safe construction and operation of the Project in accordance with Prudent Electrical Practices.

## Changes in Operational Characteristics.

Seller shall provide to SCE Notice of any changes in the operational characteristics of the Project, 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. Seller acknowledges that provision of Notice under this Section 4.2 is for SCE’s information only and that by receiving such Notice, SCE makes no representation as to the economic or technical feasibility, operational capacity or reliability of any changes in the operational characteristics of the Project.

# CONSTRUCTION PERIOD AND MILESTONES

## Milestone Schedule.

In order to meet the Expected Initial Delivery Date, Seller shall use reasonable efforts during the construction period to meet the construction milestones set forth in Appendix 5.1(A) (“Milestone Schedule”) and avoid or minimize any delays in meeting such Milestone Schedule. No later than the tenth (10th) day of each month while the DR Resource has not yet met its Initial Delivery Date, or within five (5) days of SCE’s request, Seller shall deliver to SCE a monthly progress report, substantially in the form set forth in Appendix 5.1(B) (“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.

## Provision of Information.

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

* + 1. 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);
    2. Any reports, studies, or assessments done for Seller by an independent engineer for the Project; and
    3. No later than twenty (20) days after each semi-annual period ending on June 30th or December 31st, a report listing all WMDVBEs that supplied goods or services to Seller during such period, including any certifications or other documentation of such WMDVBEs’ status as such and the aggregate amount paid to WMDVBEs during such period.
       1. SCE has the right to disclose to the CPUC all such information provided by Seller pursuant to this Section 5.2(c).
       2. 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 5.2(c).

# COMMISSIONING AND 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 the Project. Such Initial Commercial Operation Test shall be scheduled and conducted in accordance with Appendix 6. 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. Seller shall be responsible for all costs associated with the Initial Commercial Operation Test, including any energy charging costs associated with such test.

## Inspection Rights.

SCE shall have the right at any time during the Term to enter onto the Site during normal business hours on any Business Day to inspect the Project and otherwise inspect or audit Seller’s EPC Contracts and its books and records in order to verify Seller’s compliance with the Milestone Schedule and other obligations under this Agreement. Seller shall, or shall cause its EPC Contractors to, provide SCE with access to the Site and all applicable documents and records in order to permit SCE to determine whether:

* + 1. 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
    2. All contracts described in Section 5.2(a) have been entered into and become effective on a timely basis and Seller is not in default thereunder.

# PAYMENT AND BILLING

## Invoice.

For each month of the Delivery Period, SCE shall make monthly Delivered Energy Payments and Delivered Capacity Payments in arrears and subject to the following:

* + 1. 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 in accordance with Section 7.2 below.
    2. 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 and Delivered Energy Payment for such Operating Month in accordance with Sections 7.2 and 7.3 below. Such invoice shall include recorded meter data and other performance data and calculations supporting the Delivered Capacity Payment and Delivered Energy Payment Seller claims for such Operating Month.
    3. SCE will pay Seller all undisputed invoices within ninety (90) days after receipt of Seller’s invoice.
    4. Unless otherwise agreed to in writing by the Parties, payment to Seller will be in the form of a wire transfer.
    5. SCE may offset against any future payments by any amount(s) that were previously overpaid.
    6. 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 16 below. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with Notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within thirty (30) Business Days of such resolution. Notwithstanding the timelines in this section, overpayments shall be returned upon request or offset, as appropriate, from future payments.
    7. SCE may deduct any amounts that would otherwise be due to Seller under this Agreement from any amounts owing and unpaid by Seller to SCE: (i) under this Agreement; or (ii) arising out of or related to any other agreement, tariff, obligation or liability.

## Delivered Capacity Payment.

* + 1. Before the first Full-Portfolio Dispatch is performed during the Delivery Period, the Delivered Capacity Payment shall equal the applicable Contract Capacity times the applicable Capacity Rate.
    2. After the DR Resource has been subjected to a Full-Portfolio Dispatch, Delivered Capacity Payment shall be calculated for each Operating Month as follows:
       1. If the Total Recorded Capacity is one hundred percent (100%) of the applicable Contract Capacity or greater, then the Delivered Capacity Payment shall equal the applicable Contract Capacity times the applicable Capacity Rate.
       2. If the Total Recorded Capacity is equal to or greater than ninety percent (90%), but less than one hundred percent (100%) of the applicable Contract Capacity, then the Delivered Capacity Payment shall equal the Total Recorded Capacity times the applicable Capacity Rate.
       3. If the Total Recorded Capacity is equal to or greater than seventy-five percent (75%), but less than ninety percent (90%) of the applicable Contract Capacity, then the Delivered Capacity Payment shall equal the Total Recorded Capacity times fifty percent (50%) of the applicable Capacity Rate.
       4. 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 ($0.00).
    3. The “Total Recorded Capacity” for any particular Operating Month shall equal (i) if a Full Portfolio Dispatch has occurred in such Operating Month, the sum of each SLAP’s Average Performing SLAP Hour for such Operating Month, and (ii) if a Full-Portfolio Dispatch does not occur in such Operating Month, subject to Section 7.2(a), 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 Full-Portfolio Dispatch occurred.
    4. The “Average Performing SLAP Hour” equals, with respect to each SLAP, (i) the sum of the Performing SLAP Hours (expressed in kW) for all Full-Portfolio Dispatches and SLAP Dispatches for such SLAP during the applicable Operating Month divided by (ii) the number of Full-Portfolio Dispatches and SLAP Dispatches for such SLAP, in each case which occurred during such Operating Month.
    5. The “Performing SLAP Hour” means, with respect to each particular SLAP, the hour (expressed in kW) yielding the lowest Hourly SLAP Recorded Reduction from a particular Full-Portfolio Dispatch or SLAP Dispatch during an Operating Month.
    6. The “Hourly SLAP Recorded Reduction” means:
       1. For a Full-Portfolio Dispatch:
          1. An Hourly SLAP Recorded Reduction will be calculated for each hour of the Full-Portfolio Dispatch and by SLAP.
          2. The Hourly SLAP Recorded Reduction for each hour and SLAP shall be the summation of each Participating Account’s EB in such SLAP for the corresponding hour less its recorded energy, as measured by the Qualifying Meter, for that hour; provided, in no event shall the Hourly SLAP Recorded Reduction for an hour be less than zero (0).
       2. For a SLAP Dispatch:
          1. An Hourly SLAP Recorded Reduction will be calculated for each hour of the SLAP Dispatch, and will be applicable only to such SLAP.
          2. The Hourly SLAP Recorded Reduction for each hour shall be the summation of each Participating Account’s EB in such SLAP for the corresponding hour less its recorded energy, as measured by the Qualifying Meter, for that hour; provided, in no event shall the Hourly SLAP Recorded Reduction for an hour be less than zero (0).
       3. For purposes of determining the Hourly SLAP Recorded Reduction and with respect to a Participating Account, should coincident event hours for a Full-Portfolio Dispatch or SLAP 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 SLAP Recorded Reduction calculation.

## Delivered Energy Payment.

* + 1. Notwithstanding any other provisions in this Agreement, Delivered Energy Payments will be made solely for load reductions for Participating Accounts that are Bundled Service Customers.
    2. If SCE does not provide a Dispatch Instruction during an Operating Month, then the Delivered Energy Payment shall be zero dollars ($0.00) for that Operating Month. Seller shall not receive a Delivered Energy Payment for any Seller Dispatch or reduction in load not based on a Dispatch Instruction.
    3. Delivered Energy Payment shall be calculated as follows:
       1. With respect to each Dispatch Instruction given in the Operating Month, a SLAP Recorded Reduced Energy shall be calculated for each SLAP that is the subject of the Dispatch Instruction and where at least one(1) Participating Account that is a Bundled Service Customer is within such SLAP.
       2. For each Operating Month, the Delivered Energy Payment shall equal (a) the sum of all SLAP Recorded Reduced Energy in that Operating Month times the Energy Rate less (B) the sum of all Shortfall Amounts in that Operating Month.
    4. The “SLAP Recorded Reduced Energy” equals (in kWh), with respect to a particular SLAP, the summation of each Participating Account’s EB that is a Bundled Service Account in that SLAP less its recorded energy, as measured by the Qualifying Meter, for each hour of the Dispatch; provided, that if the SLAP Recorded Reduced Energy for any hour (for purposes of this proviso expressed in kW) for any Participating Account is greater than one hundred percent (100%) of the applicable Load Drop Amount for that Participating Account, then the SLAP Recorded Reduced Energy for such hour and such Participating Account shall be the applicable Load Drop Amount; provided, further, if a SLAP Recorded Reduced Energy for any hour (for purposes of this proviso expressed in kW) for any Participating Account is less than one hundred percent (100%) of the applicable Load Drop Amount for that Participating Account, then a Shortfall Amount for that hour, and for all other hours in which the SLAP Recorded Reduced Energy is less than a one hundred percent (100%) of the applicable Load Drop Amount, shall be calculated and subtracted from the Delivered Energy Payment.
    5. For purposes of determining the SLAP Recorded Reduced Energy and 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 SLAP Recorded Reduced Energy calculation.
    6. “Shortfall Amount” means Shortfall Energy during the applicable hour times the average of each Interval Locational Marginal Price for the SCE DLAP (Node DLAP\_SCE-APND) for the corresponding day and hour during which the Shortfall Energy occurred.
    7. “Shortfall Energy” means (in kWh) the applicable Load Drop Amount less the SLAP Recorded Reduced Energy for that hour. For purposes of this Section 3.3(g), the Load Drop Amount shall be expressed in kWh.

## Seller Dispatch.

Seller may conduct a Full-Portfolio Dispatch or SLAP Dispatch for purposes of adjusting the Total Recorded Capacity in any particular Operating Month; provided:

* + 1. Seller must provide advance Notice to SCE of a range of dates during which it requests that the Full-Portfolio Dispatch or SLAP Dispatch occur (the “Requested Date Range”). Each Requested Date Range must be comprised of no less than three (3) consecutive Business Days, and the earliest date must be at least three (3) Business Days after the date such Notice becomes effective.
    2. Following its receipt of such Notice, SCE will, in its’ sole discretion select the specific timing for such Full Portfolio Dispatch or SLAP Dispatch within such Requested Range, by providing a dispatch instruction to Seller either telephonically or pursuant to a method determined by SCE in its sole discretion, to the Seller personnel designated to receive such communications as listed in Article 15. In order to be effective, such dispatch instruction must be given at least one (1) hour in advance of the start of such Seller Dispatch. Each such dispatch instruction given in accordance with this Section 7.4 will be effective and Seller shall then dispatch the DR Resource as instructed.

Notwithstanding anything to the contrary in this Agreement, (a) SCE’s provision of a dispatch instruction pursuant to this Section 7.4 shall not be considered a “Dispatch” or “Dispatch Instruction” for any purposes under this Agreement, (b) such dispatch shall solely be considered a “Seller Dispatch”, (c) Seller is not entitled to receive any Delivered Energy Payments for such a Seller Dispatch, and (d) 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 such Seller Dispatch 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 1.4(a) above.

# SELLER’S OPERATION, MAINTENANCE, AND REPAIR OBLIGATIONS

## Seller’s Operation Obligations.

* + 1. Seller shall operate the Project and DR Resource in accordance with Prudent Electrical Practices, Applicable Laws, Permit Requirements and applicable California utility industry standards, including the standards established by the California Electricity Generation Facilities Standards Committee pursuant to Public Utilities Code Section 761.3, if applicable, and enforced by the CPUC, and CAISO mandated standards, as amended from time to time (collectively, “Industry Standards”).
    2. 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 8.1(b) shall be provided to SCE, within fifteen (15) days of SCE’s request.
    3. Seller shall maintain and provide to SCE, within fifteen (15) days of SCE’s request, accurate records with respect to each Storage Unit(s)’ Initial Commercial Operation Test.
    4. 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.
    5. 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.

## Seller’s Maintenance and Repair Obligations.

* + 1. 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.
    2. 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.

## 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.

# CREDIT AND COLLATERAL

## 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:

* + 1. Within one hundred twenty (120) days following the end of each fiscal year, a copy of its annual report containing audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year, setting forth in each case in comparative form the figures for the previous year; and
    2. Within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its quarterly report containing consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year.

In all cases the statements shall be for the most recent accounting period and prepared in accordance with GAAP. In each case, the financial statements specified above must be certified in accordance with all Applicable Laws and regulations, including all applicable SEC rules and regulations, if such Party is an SEC reporting company, or certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year end audit adjustments) if such Party is not 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 9.1. 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.

## Seller’s Credit Requirements.

* + 1. Credit Requirement After Effective Date. Seller shall post and thereafter maintain delivery date security (“Delivery Date Security”) equal to *[SCE Comment: forty-five dollars ($45) for each kilowatt Contract Capacity for the month with the largest Contract Capacity]*. Seller shall post the Delivery Date Security in accordance with the following terms and conditions:
       1. Seller shall post one-half of the Delivery Date Security within two (2) Business Days following the Effective Date, with the remainder to be posted within two (2) Business Days after CPUC Approval is obtained or waived by SCE in its sole discretion;
       2. The Delivery Date Security shall be held by SCE as security for Seller’s obligation to meet the Expected Initial Delivery Date;
       3. The Delivery Date Security must be in the form of either a Cash deposit or a Letter of Credit;
       4. If Seller posts any Delivery Date Security in Cash, Seller will receive Simple Interest payments in accordance with the procedure specified in Section 9.3(a) of this Agreement; and
       5. If Seller provides the Delivery Date Security by means of a Letter of Credit, such Letter of Credit must be provided substantially in the form of Appendix 9.

In the event SCE draws Daily Delay Damages from the Delivery Date Security, Seller shall not be required to replenish the drawn amount.

* + 1. Return of Delivery Date Security. Within five (5) Business Days following the Initial Delivery Date, or upon termination of this Agreement pursuant to Article 2, SCE shall return to Seller the Delivery Date Security, less any Daily Delay Damages SCE has retained if the Initial Delivery Date is after the Expected Initial Delivery Date. If Seller achieves an Initial Delivery Date for the Project by the Expected Initial Delivery Date, SCE shall return to Seller the entire amount of the Delivery Date Security held by SCE.
    2. Credit Requirements During Delivery Period.

During the Delivery Period, Seller shall post and maintain Performance Assurance in an amount equal to ten percent (10%) of the sum of the estimated Delivered Capacity Payments for the lesser of (x) the current month and all remaining months of the Delivery Period, or (y) the current month and the next thirty-five (35) months, with such estimated Delivered Capacity Payments not being subject to reduction, change or adjustment pursuant to Article 7, or any other provision in this Agreement.

* + - 1. Performance Assurance must be in the form of either a Cash deposit or a Letter of Credit;
      2. Performance Assurance shall be posted to SCE and maintained at all times during the Term and thereafter until such time as Seller has satisfied all monetary obligations which survive any termination of this Agreement;
      3. If Seller posts any Performance Assurance in Cash, Seller will receive Simple Interest payments in accordance with the procedure specified in Section 9.3(a) of this Agreement; and
      4. If Seller provides Performance Assurance by means of a Letter of Credit, such Letter of Credit must be provided substantially in the form of Appendix 9.

## Administration of Performance Assurance and Delivery Date Security.

* + 1. Interest Payments on Cash. Performance Assurance and Delivery Date Security posted in cash shall earn Simple Interest. Seller shall provide a monthly invoice to SCE that sets forth the calculation of the interest amount due and SCE shall make payment thereof by the later of the third (3rd) Business Day (so long as no Event of Default has occurred and is continuing with respect to Seller):
       1. of the first (1st) month after the month to which the invoice relates; or
       2. after the day on which such invoice is received.
    2. On or after the occurrence of an Event of Default by Seller, SCE shall retain any such interest amount as additional Performance Assurance or Delivery Date Security hereunder for so long as such Event of Default is continuing or the obligations of Seller under this Agreement have not been satisfied.
    3. Letters of Credit. Performance Assurance and Delivery Date Security provided in the form of a Letter of Credit shall be substantially in the form set forth in Appendix 9, issued by a Qualified Institution acceptable to SCE, and subject to the following provisions:
       1. Each Letter of Credit shall be maintained for the benefit of SCE. Seller shall:
          1. renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit;
          2. if the Qualified Institution that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide a substitute Letter of Credit or alternative Performance Assurance or Delivery Date Security acceptable to SCE at least twenty (20) Business Days prior to the expiration of the outstanding Letter of Credit; and
          3. if the Qualified Institution issuing a Letter of Credit fails to honor SCE’s properly documented request to draw on an outstanding Letter of Credit, provide a substitute Letter of Credit or alternative Performance Assurance or Delivery Date Security acceptable to SCE, in its sole discretion, within one (1) Business Day after such refusal;

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

* + - 1. Upon the occurrence of a Letter of Credit Default, Seller shall provide to SCE either a substitute Letter of Credit or alternative Performance Assurance or Delivery Date Security acceptable to SCE, in each case on or before the first (1st) Business Day after the occurrence thereof (or the fifth (5th) Business Day after the occurrence thereof if only clause (a) under the definition of Letter of Credit Default applies);
      2. Upon, or at any time after SCE has determined that Seller (A) has forfeited all or part of its Delivery Date Security, or (B) owes Daily Delay Damages pursuant to Section 3.2(a), then SCE may draw on any undrawn portion of any outstanding Letter of Credit. Cash proceeds received by SCE from drawing upon the Letter of Credit shall be for the account of SCE.
      3. Upon, or at any time after, the occurrence and continuation of an Event of Default by Seller, then SCE may draw on the entire undrawn portion of any outstanding Letter of Credit upon submission to the Qualified Institution issuing such Letter of Credit of one or more certificates specifying that such Event of Default has occurred and is continuing. Cash proceeds received by SCE from drawing upon the Letter of Credit shall be deemed Performance Assurance or Delivery Date Security as 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. Notwithstanding SCE’s receipt of Cash proceeds of a drawing under the Letter of Credit, Seller shall remain liable (A) for any failure to provide sufficient Performance Assurance or Delivery Date Security, or (B) for any amounts owing to SCE and remaining unpaid after the application of the amounts so drawn by SCE.
      4. In all cases, the costs and expenses of establishing, renewing, substituting, canceling, amending and increasing the amount of a Letter of Credit shall be borne by Seller.

## First Priority Security Interest.

To secure Seller’s performance of its obligations under this Agreement, and until released as provided herein, Seller hereby grants to SCE a present and continuing first-priority security interest (“Security Interest”) in, and lien on (and right of setoff against), and assignment of the Performance Assurance and Delivery Date 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. 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 may do any one or more of the following:

* + 1. Exercise any of its rights and remedies with respect to all Performance Assurance and Delivery Date Security, including any such rights and remedies under law then in effect;
    2. Exercise the right of setoff against any and all property of Seller in SCE’s possession;
    3. Draw on any outstanding Letter of Credit issued for its benefit; and
    4. Liquidate all Performance Assurance and Delivery Date 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.
    5. 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 (Seller remaining liable for any amounts owing to SCE after such application), subject to SCE’s obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

## Uniform Commercial Code Waiver.

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

* + 1. 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
    2. will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of Article Nine and Article Eleven of this Agreement; and all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived.

# SPECIAL TERMS AND CONDITIONS

## Resource Adequacy Benefits.

* + 1. 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 Project in order for SCE to meet its Compliance Obligations. The Parties shall take all actions (including amending this Agreement and complying with all current and future CAISO Tariff provisions and decisions of the Commission, CAISO, and or any other Governmental Body that address resource adequacy performance obligations and penalties), and execute all documents or instruments necessary, to effect the use of the Resource Adequacy Benefits of the DR Resource and Project for SCE’s sole benefit throughout the Delivery Period.
    2. In the event that SCE is required to report any of the information described in the following subsections (i) or (ii) pursuant to the CAISO Tariff, the CPUC Decisions or any Applicable Law, SCE will inform Seller of such fact and thereafter:
       1. 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 not be able to provide flexible Capacity Attributes equal to the Effective Flexible Capacity in each case for any Compliance Showing during the Delivery Period, Seller shall, no later than the earlier of (y) twenty (20) Business Days after the loss of any Contract Capacity, or (z) fifteen (15) Business Days before the relevant deadlines for such Compliance Showing, notify SCE of the amount of capacity of the DR Resource or Project which can be included in such Compliance Showing; and
       2. In the event the DR Resource will not be able to provide flexible Capacity Attributes equal to the Effective Flexible Capacity for any Compliance Showing, Seller agrees to notify SCE of the amount of Inflexible Capacity which may be included in such Compliance Showing.

## Measurement and Evaluation of the DR Resource

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

## Insurance Requirements.

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

* + 1. Workers’ Compensation Insurance with the statutory limits required by the state having jurisdiction over Seller’s employees;
    2. Employer’s Liability Insurance with limits of not less than:
       1. Bodily injury by accident – One Million dollars ($1,000,000) each accident
       2. Bodily injury by disease – One Million dollars ($1,000,000) policy limit
       3. Bodily injury by disease – One Million dollars ($1,000,000) each employee
    3. Commercial General Liability Insurance (which, except with the prior written consent of SCE and subject to Sections 10.3(c)(i) and (ii) below, shall be written on an “occurrence,” not a “claims-made” basis), covering all operations by or on behalf of Seller arising out of or connected with this Agreement, including coverage for bodily injury, 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:

* + - 1. The retroactive date of the policy must be prior to the Effective Date; and
      2. Either the coverage must be maintained for a period of not less than three (3) years after the Agreement terminates, or the policy must provide for a supplemental extended reporting period of not less than three (3) years after this Agreement terminates.
    1. Commercial Automobile Liability Insurance covering bodily injury and property damage with a combined single limit of not less than One Million dollars ($1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller’s use of all owned (if any), non-owned and hired automobiles in the performance of the Agreement.
    2. Pollution Liability Insurance, (which, except with the prior written consent of SCE and subject to Sections 10.3(e)(i) and (ii) below, shall be written on an “occurrence,” not a “claims-made” basis) with limits of not less than *[TBD (or) $5,000,000, per occurrence or each claim and in the annual aggregate]*, covering losses involving hazardous material(s) and caused by pollution incidents or conditions that arise from the Project, including but not limited to, coverage for bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death, property damage including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically damaged or destroyed, and defense costs.

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

* + - 1. The retroactive date of the policy must be prior to the Effective Date; and
      2. Either the coverage must be maintained for a period of not less than 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.
    1. 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 10.3 can be provided by any combination of Seller’s primary and excess liability policies.
    2. SCE as Insured. The insurance required in Section 10.3 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 law, 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.
    3. Certificates of Insurance. At the time this Agreement is executed, or within a reasonable time thereafter, and within a reasonable time after coverage is renewed or replaced, Seller shall furnish to 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 10.3 and shall not constitute a waiver of any of the requirements in this Section 10.3.
    4. Failure to Comply. If Seller fails to comply with any of the provisions of this Section 10.3, 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.

## Interconnection.

Seller shall interconnect each Storage Unit through Rule 21 of the SCE Tariff as a Non-Exporting project.

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 related to the interconnection of the Storage Units. Seller shall be responsible for all fees and costs associated with the following:

* + 1. Obtaining all interconnection studies;
    2. Maintaining, complying with and performing Seller’s obligations under the interconnection agreement and related documents throughout the Delivery Period;
    3. any interconnection facilities that are installed for the purpose of interconnecting the Project with existing distribution systems; and
    4. All costs arising from, relating to or associated with any interconnection agreement between Seller and SCE.

# 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:

* + 1. With respect to either Party:
       1. 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;
       2. 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;
       3. The failure to perform any material covenant, obligation, term or condition of this Agreement (except to the extent constituting a separate Event of Default), where such breach is not remedied within five (5) Business Days of Notice of such breach by the Non-Defaulting Party;
       4. such Party becomes Bankrupt;
       5. a Merger Event occurs with respect to such Party; or
       6. such Party disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of this Agreement.
    2. With respect to Seller:
       1. Seller fails to comply with its obligations under Article Nine, including failing to post or maintain the Delivery Date Security or applicable Performance Assurance, within three (3) Business Days after receipt of Notice by SCE of the failure;
       2. Seller fails to comply with any of its covenants under Section 13.2, unless such failure to comply is cured within a period specifically provided elsewhere in this Agreement applicable to such failure to comply;
       3. Seller fails to achieve the Initial Delivery Date for the Project by *[Date that is three hundred sixty-five days after the Expected Initial Delivery Date]*, whether due to Force Majeure or otherwise;
       4. 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;
       5. Except as permitted under Article 21, Seller does not own or otherwise have control of the Project;
       6. Seller fails to comply with its obligations under Section 8.2 with respect to the Prevention Equipment;
       7. Seller charges any Storage Unit in violation of Section 8.3;
       8. During the Delivery Period, the measured Total Recorded Capacity is less than or equal to fifty percent (50%) of the applicable Contract Capacity for three consecutive months;
       9. Seller removes from the 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;
       10. 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;
       11. The stock, equity ownership interest in Seller or assets of Seller is directly or indirectly pledged or assigned, or caused or permitted to be pledged or assigned, as collateral to any party other than to Lender without SCE’s prior written consent, which consent may be granted or withheld in SCE’s reasonable discretion;
       12. 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 10.1;
       13. 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;
       14. 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; or
       15. Subject to the terms of a Collateral Assignment Agreement, the occurrence and continuation of a default, event of default or other similar condition or event under one or more agreements or instruments relating to indebtedness for borrowed money, which results in the indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable.

## Early Termination.

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

* + 1. To designate by Notice, which will be effective five (5) Business Days after the Notice is given, a day, no later than twenty (20) calendar days after the Notice is effective, for the early termination of this Agreement (an “Early Termination Date”);
    2. Withhold any payments due to the Defaulting Party under this Agreement;
    3. Suspend performance of this Agreement, but excluding the obligation to post and maintain Performance Assurance and Delivery Date Security in accordance with Article 9; and
    4. To pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages), except to the extent that such remedies are limited by the terms of this Agreement.

## Termination Payment.

As soon as practicable after an Early Termination Date is declared, the Non-Defaulting Party shall provide Notice to the Defaulting Party of the Termination Payment.

The Notice must include a written statement setting forth, in reasonable detail, the calculation of such Termination Payment including the Settlement Amount, together with appropriate supporting documentation.

If the Termination Payment is positive, the Defaulting Party shall pay such amount to the Non-Defaulting Party within two (2) Business Days after the Notice is provided. If the Termination Payment is negative (i.e., the Non-Defaulting Party owes the Defaulting Party more than the Defaulting Party owes the Non-Defaulting Party), then the Non-Defaulting Party shall pay such amount to the Defaulting Party within thirty (30) days after the Notice is provided.

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 16.

## Right of Set-Off.

After calculation of a Termination Payment in accordance with Section 11.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party. The remedy provided for in this section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

## Suspension of Performance.

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

## Limitation on Seller’s Ability to Make or Agree to Third Party Sales from the Project/Storage Units after Early Termination Date.

If the Agreement is terminated by SCE prior to the Initial Delivery Date due to Seller’s Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any 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 Early Termination Date due to Seller’s Event of Default, unless prior to selling, marketing or delivering such products, or entering into the agreement to sell, market or deliver such products 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 which provides SCE the right to select in its sole discretion either the terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) or the terms and conditions to which the third party agreed, and SCE fails to accept such offer within forty-five (45) days of SCE’s receipt thereof.

Neither Seller nor Seller’s Affiliates may sell or transfer the Project, or any part thereof, so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement approved by SCE.

Seller shall indemnify and hold SCE harmless from all benefits lost and other damages sustained by SCE as a result of any breach by Seller of its covenants contained within this Section 11.6.

# governmental and environmental charges

## Governmental Charges.

Seller shall pay or cause to be paid all taxes, charges or fees imposed by a Governmental Body (“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. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under Applicable Laws.

## Compliance with Laws and Indemnification.

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

## Environmental Costs and Indemnification.

Seller is solely responsible for all Environmental Costs, all GHG Charges, any AB 32 Compliance Obligation, and all other costs associated with the implementation and regulation of Greenhouse Gas emissions (whether in accordance with AB 32 or any other federal, state or local legislation to offset or reduce any Greenhouse Gas emissions implemented and regulated by an authorized Governmental Body) with respect to the Project and/or Seller, if applicable. Seller shall indemnify, defend and hold Buyer harmless from and against all liabilities, damages, claims, losses, costs and/or expenses (including, without limitation, attorneys’ fees) incurred by or brought against Buyer in connection with such Environmental Costs, GHG Charges, AB 32 Compliance Obligation, and other such costs.

# REPRESENTATIONS, WARRANTIES AND COVENANTS

## Representations and Warranties of Both Parties.

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

* + 1. It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
    2. 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;
    3. The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
    4. This Agreement constitutes its legally valid and binding obligation, enforceable against it in accordance with its terms;
    5. It is not Bankrupt and there are not proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or become Bankrupt;
    6. There is not pending or, to its knowledge, threatened against it, any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
    7. It (i) is acting for its own account, (ii) has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, (iii) is not relying upon the advice or recommendations of the other Party in so doing, and (iv) is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions, and risks of this Agreement; and
    8. 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.

## Additional Seller Representations, Warranties and Covenants.

* + 1. Seller represents and warrants to SCE that:
       1. As of the Effective Date, to the best of Seller’s knowledge, each specification and description of each Storage Unit and the Project is true and correct.
       2. As of the Initial Delivery Date, the Project is a New Resource.
    2. On each day on which Performance Assurance and Delivery Date Security is held by SCE under this Agreement, the Seller hereby represents and warrants that:

1. the Seller has good title to and is the sole owner of such Performance Assurance and Delivery Date 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, without limitation, the Performance Assurance and Delivery Date Security, other than the security interests and liens created under this Agreement;
2. upon the Transfer of Performance Assurance and Delivery Date Security by the 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
3. it is not and will not become a party to or otherwise be bound by any agreement, other than this Agreement, which restricts in any manner the rights of any present or future holder of any of the Performance Assurance and Delivery Date Security with respect hereto.
   * 1. Seller hereby covenants to SCE that throughout the Term:
4. 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;
5. Seller will not sell, assign or otherwise transfer the DR Resource or the capacity of the Project, or any portion thereof, to any third party other than to SCE pursuant to this Agreement;
6. 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;
7. Seller will use and follow Prudent Electrical Practices;
8. 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 but not limited to: (A) the receipt of Notices from SCE; (B) the receipt of capacity and energy payments from SCE; and (C) the payment of penalties to SCE;
9. Seller will deliver a Safety Report to SCE no later than thirty (30) days prior to the start of the Delivery Period;
10. For each Participating Account, 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.
11. 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;
12. Seller shall, from time to time as requested by SCE, execute, acknowledge, record, register, deliver and/or file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid and enforceable under all Applicable Laws the rights, liens and priorities of SCE with respect to its Security Interest furnished pursuant to this Agreement;
13. Seller shall ensure that no less than twenty percent (20%) of Seller’s aggregate costs to complete the initial development, engineering, procurement and construction of the Project are funded by equity contributions to Seller. The amount funded by equity contributions shall not be less than *[TBD]*. The foregoing shall not impose any obligations that survive the Initial Delivery Date, provided that if SCE determines after the Initial Delivery Date that Seller breached this obligation with respect to any time prior to the Initial Delivery Date, SCE retains all rights under this Agreement, including, without limitation under Article 11, with respect to such occurrence;
14. Seller shall provide and execute all documents and instruments reasonably necessary (including documents amending this Agreement in ways not materially adverse to Seller and documents reflecting compliance with all applicable tariff provisions and applicable decisions of the CPUC and/or any other Governmental Body 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;
15. Seller shall obtain, maintain and remain in compliance with all permits, and interconnection agreements necessary to operate the Project, and charge and discharge the Storage Units;
16. Except for (i) liens for the benefit of Lender, and (ii) liens cured or removed within thirty (30) days after their incurrence, Seller shall not create, incur, assume or suffer to be created by it or any subcontractor, employee, laborer, materialman, other supplier of goods or services or any other person any lien on Seller’s interest in the Site, the Project, or any part thereof or interest therein. Seller shall pay or discharge, or shall cause its contractors to promptly pay and discharge, and discharge of record, any such lien for labor, materials, supplies or other obligations upon Seller’s interest in the Site, the Project, or any part thereof or interest therein, unless Seller is disputing any such lien in good faith and only for so long as it does not create an imminent risk of a sale or transfer of the Site, the Project or a material part thereof or interest therein. Seller shall promptly notify SCE of any attachment or imposition of any lien against Seller’s interest in the Site, the Project, or any part thereof or interest therein;
17. Seller shall not hold any material assets, become liable for any material obligations or engage in any material business activities other than directly associated with the development, construction and operation of the Project;
18. Seller shall interconnect each Storage Unit as a Non-Exporting project under Rule 21 of the SCE Tariff, and shall not interconnect as a Net Energy Metering project under Rule 21 of the SCE Tariff; and
19. Seller shall ensure that the Project, the Site, all of the Participating Accounts, and any other retail account associated with the Site have not obtained, and will not obtain, any compensation or other benefits pursuant to the Self-Generation Incentive Program, as defined in CPUC Decision 01-03-073, the California Solar Initiative, as defined in CPUC Decision 06-01-024, SCE’s net energy metering tariff, or other similar program that exists now or in the future.

# records

## Performance Under this Agreement.

Each Party and its representatives shall maintain records and supporting documentation relating to this Agreement, the Project, and the performance of the Parties hereunder in accordance with, and for the applicable time periods required by, all Applicable Laws, but in no event less than four (4) years after final payment is made under this Agreement.

## 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 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 and the Commission shall have the right, at its sole expense and during normal working hours, to audit the documents, records or data of Seller to the extent reasonably necessary to verify the accuracy of any statement, claim, charge or calculation made pursuant to this Agreement. Seller shall have the right, at its sole expense, to hire an independent third party reasonably acceptable to SCE to audit the documents, records or data of SCE related to this Agreement during normal working hours to the extent reasonably necessary to verify the accuracy of any statement, claim, charge or calculation made pursuant to this Agreement. Such independent third party must sign a confidentiality agreement in substance reasonably acceptable to SCE before examining SCE’s documents, records or data. Each Party shall promptly comply with any reasonable request by the other Party under this Section 14.3 and provide copies of documents, records or data to the requesting Party. The rights and obligations under this Section 14.3 shall survive the termination of this Agreement for a period of two (2) years.

## California Climate Action Registry.

If applicable, in accordance with CPUC Rulemaking 06-04-009, upon modification of the protocols of the 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.

# NOTICES

## Notices.

Notices, requests, statements or payments from one Party to the other Party shall be made to the addresses and persons specified in Section 15.2. All Notices, requests, statements or payments from one Party to the other Party shall be made in writing except (a) Dispatch Instructions, which can be provided in the manner described in Section 1.6 and (b) where this Agreement expressly provides that Notice may be made by telephone. Notices required to be in writing shall be delivered by hand delivery, overnight delivery, or facsimile. Notice from one Party to the other Party by facsimile (where confirmation of successful transmission is received) shall be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it shall be deemed received on the next Business Day). Notice from one Party to the other Party by hand delivery or overnight delivery shall be deemed to have been received when delivered. Notice from one Party to the other Party by telephone shall be deemed to have been received at the time the call is received. All Notices by telephone required to be provided by one Party to the other pursuant to this Agreement, may be given by recorded telephone conversation between an authorized representative of the Party delivering the Notice and an authorized representative of the other Party. Each Party hereby consents to the recording of its authorized representatives’ telephone conversations in connection with the giving of any Notices by telephone pursuant to and in accordance with this Agreement. All recordings may be introduced into evidence and used to prove the content and sufficiency of the Notice. A Party may change its contact information by providing Notice of the same in accordance herewith.

## Contact Information.

For SCE:

Billing Representative Contract Representative

Power Procurement – Finance Mgr of Power Contracts

Phone: (626) 302-3277 Phone: (626) 302-3727

Preschedule Contact Real Time Trading

Mgr of Energy Operations Phone: (626) 307-4453

Phone: (626) 302-5730 Facsimile: (626) 302-3409

Day Ahead Trading Day Ahead Scheduling

Phone: (626) 307-4487 Phone: (626) 307-4420

Facsimile: (626) 302-3409 Facsimile: (626) 302-3409

Real Time Scheduling Settlements

Phone: (626) 307-4405 Phone: (626) 302-0999

Facsimile: (626) 302-3409 Facsimile: (626) 302-6132

Other SCE Contact Information

Real-time Phone: 626-302-3380

Wire Transfer Credit and Collections

BNK: JPMorganChase Bank Attn: Manager of Credit

ABA: 021000021 Phone: (626) 302-1129

ACCT: 323-394434 Facsimile: (626) 302-2517

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

Director and Managing Attorney

Power Procurement Section, SCE Law Department

Phone:

Facsimile:

For Seller:

Billing Representative Contract Representative

*Name] [Name]*

Phone: Phone:

Facsimile: Facsimile:

Preschedule Contact Real Time Trading

*[Name]* *[Name]*

Phone: Phone:

Facsimile: Facsimile:

Day Ahead Trading Day Ahead Scheduling

*[Name] [Name]*

Phone: Phone:

Facsimile: Facsimile:

Real Time Scheduling Settlements

*[Name] [Name]*

Phone: Phone:

Facsimile: Facsimile:

Other Seller Contact Information

Wire Transfer Credit and Collections

BNK: Attn:

ABA: Phone:

ACCT: Facsimile:

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

*[Name]*

Phone:

Facsimile:

The Parties acknowledge and agree that those persons set forth in this Section 15.2 are designated by each Party as their respective authorized representatives to act on their behalf for the purposes described therein.

# DISPUTE RESOLUTION

## Dispute Resolution.

Other than requests for provisional relief under Section 16.4, 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 16.2 below, and if the matter is not resolved through mediation, then for final and binding arbitration under the procedures described in Section 16.3 below.

The Parties waive any right to a jury and agree that there will be no interlocutory appellate relief (such as writs) available. Any Dispute resolution process pursuant to this Article 16 shall be commenced within one (1) year of the date of the occurrence of the facts giving rise to the Dispute, without regard to the date such facts are discovered; provided, if the facts giving rise to the Dispute were not reasonably capable of being discovered at the time of their occurrence, then such one (1) year period shall commence on the earliest date that such facts were reasonably capable of being discovered. If the Dispute resolution process pursuant to Article 16 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 Article 15 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 Article 15 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 16.2, above. 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 16.2 above, the Dispute resolution process shall be deemed complete and further resolution of such Dispute shall be barred, without regard to any other limitations period set forth by law or statute.

The Parties will cooperate with one another in selecting the Arbitrator 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:

* 1. 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);
  2. 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;
  3. Discovery may commence at any time after the Parties’ initial disclosure;
  4. The Parties will not be permitted to propound any interrogatories or requests for admissions;
  5. 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);
  6. Each Party is allowed a maximum of three (3) expert witnesses, excluding rebuttal experts;
  7. 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;
  8. Within thirty (30) days after the initial expert disclosure, the Parties may designate a maximum of two (2) rebuttal experts;
  9. Unless the Parties agree otherwise, all direct testimony will be in form of affidavits or declarations under penalty of perjury; and
  10. Each Party shall make available for cross examination at the arbitration hearing its witnesses whose direct testimony has been so submitted.

Subject to Article 18, the Arbitrator will have the authority to grant any form of equitable or legal relief a Party might recover in a court action. The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms of the Agreement, that money damages would not be a sufficient remedy for any breach of these provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to specific performance and injunctive or other equitable relief as a remedy for a breach of Sections 1.1, 10.1, 11.6, 13.2(c)(ii), or 13.2(c)(iii) or Article 19 of this Agreement.

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 1.1, 10.1, 11.6, 13.2(c)(ii), or 13.2(c)(iii) or Article 19 of this Agreement of this Agreement 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 16. The Parties further acknowledge and agree that the results of the arbitration may be rendered ineffectual without the provisional relief.

Such a request for provisional relief does not waive a Party’s right to seek other remedies for the breach of the provisions specified above in accordance with Article 16, notwithstanding any prohibition against claim-splitting or other similar doctrine. The other remedies that may be sought include specific performance and injunctive or other equitable relief, plus any other remedy specified in this Agreement for the breach of the provision, or if the Agreement does not specify a remedy for the breach, all other remedies available at law or equity to the Parties for the breach.

# 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 17.1, 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 13.1.

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 17.2, 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:

* + 1. any breach made by Seller of its representations, warranties and covenants in Article 13;
    2. Seller’s failure to fulfill its obligations regarding Resource Adequacy Benefits as set forth in Section 10.1;
    3. any violation of a local, state, or federal law, statute or regulation, arising out of or in connection with Seller’s performance of, or failure to perform this Agreement;
    4. 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;
    5. 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;
    6. 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; and
    7. any penalties or fines assessed against SCE by the Commission or by the CAISO resulting from and to the extent caused by any failure by Seller to perform its obligations under this Agreement, including, but not limited to Seller’s failure to provide SCE with any portion of the Contract Capacity, meet the time requirements for dispatching the DR Resource, and provide Notice of the non-availability of any portion of the Contract Capacity as required under Section 10.1(b) hereof.

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.

With respect to Section 17.2(b), 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. If Seller fails to pay such penalties or fines, or fails to reimburse SCE for such penalties and fines, then SCE may offset the cost of those penalties and fines against any future amounts it may owe to Seller under this Agreement.

## 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:

* + 1. 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.
    2. 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.
    3. 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.

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

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

UNLESS EXPRESSLY PROVIDED IN THIS AGREEMENT, INCLUDING WITHOUT LIMITATION THE PROVISIONS OF Article 17 (INDEMNITY), NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

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

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

NOTHING IN THIS ARTICLE PREVENTS, OR IS INTENDED TO PREVENT SCE FROM PROCEEDING AGAINST OR EXERCISING ITS RIGHTS WITH RESPECT TO ANY PERFORMANCE ASSURANCE and Delivery Date Security.

# CONFIDENTIALITY

Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party’s or the Party’s Affiliates’ officers, directors, employees, lenders, counsel, accountants, advisors, or rating agencies who have a need to know such information and have agreed to keep such terms confidential) except (a) in order to comply with any Applicable Law, order, regulation, ruling, summons, subpoena, exchange rule, or accounting disclosure rule or standard, or to make any showing required by any applicable Governmental Body; (b) to the extent necessary for the enforcement of this Agreement; (c) as may be obtained from a non-confidential source that disclosed such information in a manner that did not violate its obligations to the non-disclosing Party in making such disclosure; (d) to the extent such information is or becomes generally available to the public prior to such disclosure by a Party; (e) when required to be released in connection with any regulatory proceeding (provided that the releasing Party makes reasonable efforts to obtain confidential treatment of the information being released); or (f) with respect to SCE, as may be furnished to its duly authorized regulatory and governmental agencies or entities, including without limitation the Commission and all divisions thereof, to SCE’s Procurement Review Group, a group of participants including members of the Commission and other governmental agencies and consumer groups established by the Commission in Commission decisions 02-08-071 and 03-06-071, and to SCE’s Cost Allocation Mechanism Group established by the CPUC in D.07-12-052. The existence of this Agreement is not subject to this confidentiality obligation; provided that neither Party shall make any public announcement relating to this Agreement unless required pursuant to subsection (a) or (e) of the foregoing sentence of this Article 19. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. With respect to information provided in connection with this Agreement, this obligation shall survive for a period of three (3) years following the expiration or termination of this Agreement. For the purposes of this Article 19, “Affiliate” for Seller shall mean \_\_\_\_\_\_\_\_\_\_ and “Affiliate” for SCE shall mean Edison International.

# FORCE MAJEURE

A Party shall not be in default in the performance of its obligations under this Agreement when and to the extent that the failure or delay of its performance is due to an event of Force Majeure.

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 (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure) is affected or would have been required by or but for the Force Majeure only to the extent so affected, provided:

* + 1. the Claiming Party, no more than one (1) Business Day after the initial occurrence of the claimed Force Majeure, gives the other Party Notice describing the particulars of the occurrence;
    2. the Claiming Party, within five (5) Business Days of providing Notice of occurrence of the Force Majeure, provides evidence reasonably sufficient to establish that the occurrence constitutes a Force Majeure as defined in this Agreement;
    3. the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure; and
    4. as soon as Claiming Party is able to resume performance of its obligations under this Agreement, it shall do so and shall promptly give the other Party Notice of this resumption.

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

# consent to collateral assignment

## Consent to Collateral Assignment.

Subject to the provisions of this Article 21, Seller shall have the right to assign this Agreement to Lender as collateral for any financing or refinancing of the Project; *provided*, Seller shall be responsible for SCE’s reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any such assignment, including without limitation attorneys’ fees. SCE shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement (“Collateral Assignment Agreement”). The Collateral Assignment Agreement shall be in form and substance agreed to by SCE, Seller and Lender, and shall include, among others, the following provisions:

* + 1. SCE shall give Notice of an Event of Default by Seller, to the persons to be specified by Lender in the Collateral Assignment Agreement, prior to exercising its right to terminate the Agreement as a result of such Event of Default.
    2. Following an Event of Default by Seller under this Agreement, SCE may require Seller or Lender to provide to SCE a report setting forth:

1. the status of efforts by Seller or Lender to develop a plan to cure the Event of Default;
2. impediments to the cure plan or its development;
3. if a cure plan has been adopted, the status of the cure plan’s implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and
4. any other information which SCE may reasonably require related to the development, implementation and timetable of the cure plan.

Seller or Lender shall provide the report to SCE within ten (10) Business Days of Notice from SCE requesting the report. SCE shall have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured.

* + 1. Lender shall have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to SCE prior to the end of any cure period indicating Lender’s intention to cure. Lender must remedy or cure the Event of Default within the cure period under the Agreement; provided, such cure period may, in SCE’s sole discretion, be extended by no more than an additional one hundred eighty (180) days.
    2. Lender shall have the right to consent prior to any termination of the Agreement which does not arise out of an Event of Default.
    3. Lender shall receive prior Notice of, and the right to approve, material amendments to the Agreement, which approval shall not be unreasonably withheld, delayed or conditioned.
    4. In the event Lender, 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), Lender shall assume all of Seller’s obligations arising under the Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, SCE and Lender as set forth in the Collateral Assignment Agreement). Lender shall have no personal liability for any monetary obligations of Seller under the Agreement which are due and owing to SCE as of the assumption date; provided*,* if, prior to such assumption, SCE advises Lender that SCE will require that Lender cure (or cause to be cured) any Event of Default existing as of the assumption date in order to avoid the exercise by SCE (in its sole discretion) of SCE’s right to terminate the Agreement in respect of such Event of Default, then Lender, at its option and in its sole discretion, may elect to either (i) cause such Event of Default to be cured, or (ii) assume Seller’s obligations under the Agreement and all related agreements, including the pre-assumption payment obligations that are otherwise excluded.
    5. If Lender elects to sell or transfer the Project (after Lender directly or indirectly, takes possession of, or title to the Project), or sale of the Project occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender must cause the transferee or buyer to assume all of Seller’s obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity with financial qualifications (including, collateral support and any other additional security as may be required by SCE) and operating experience at least equivalent to Seller as of the Effective Date, as determined by SCE in its sole discretion.
    6. If this Agreement is rejected in Seller’s bankruptcy or otherwise terminated in connection therewith and if Lender 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), Lender shall or shall cause its designee to promptly enter into a new agreement with SCE having substantially the same terms as this Agreement. Notwithstanding the foregoing, SCE shall not be required to enter into such agreement with Lender or such designee if there has been a change in circumstances resulting from actions of Seller in its bankruptcy case that would, in SCE’s judgment, materially impact the rights or obligations of SCE under such agreement.
    7. Seller shall reimburse, or shall cause Lender to reimburse, SCE for all reasonable and direct third party expenses (including the reasonable fees and expenses of counsel of SCE’s choice) incurred by SCE in the preparation, negotiation, execution and/or delivery of any documents required under this Article 21, or otherwise requested by Seller or Lender in connection with this Article 21.

# MISCELLANEOUS

## General.

* + 1. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.
    2. The term “including,” when used in this Agreement, shall be by way of example only and shall not be considered in any way to be in limitation.
    3. The headings used herein are for convenience and reference purposes only.
    4. Each Party agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.
    5. Words having well-known technical or industry meanings have these meanings unless otherwise specifically defined in this Agreement.
    6. Whenever this Agreement specifically refers to any law, tariff, government department or agency, or credit rating agency, the Parties hereby agree that the reference also refers to any successor to such law, tariff or organization.
    7. Nothing in this Agreement relieves either Party from, or modifies, any obligation or requirement that exists in any law, tariff, rule, or regulation.
    8. The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a “forward contract” within the meaning of the Bankruptcy Code and that SCE and Seller are each “forward contract merchants” within the meaning of the Bankruptcy Code.

## Governing Law and Venue.

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

## Amendment.

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

## Assignment.

Neither Party shall assign this Agreement or its rights hereunder, as the case may be, without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof or thereof, as the case may be, in connection with any financing or other financial arrangements to any person or entity whose creditworthiness is equal to or higher than that of such Party, (ii) transfer or assign this Agreement to an Affiliate of such Party which Affiliate’s creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party and whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

## Successors and Assigns.

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

## Waiver.

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

## Obligations Surviving Termination.

Except as may be provided or limited by this Agreement, the obligations which by their nature are intended to survive termination of this Agreement, including representations, warranties, covenants and rights and obligations with respect to indemnification, payment, settlement, and confidentiality, shall so survive.

## 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.

## 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).

## Entire Agreement.

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

## 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.

## Multiple Originals.

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

## Mobile Sierra.

* + 1. Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting sua sponte, shall be the ‘public interest’ standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) (the ‘Mobile Sierra’ doctrine), and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish 554 U.S. 527 (2008).
    2. Notwithstanding any provision of Agreement, and absent the prior written agreement of the Parties, each Party, to the fullest extent permitted by applicable laws, for itself and its respective successors and assigns, hereby also expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205, 206, or 306 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation, supporting a third party seeking to obtain or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying any rate or other material economic terms and conditions agreed to by the Parties.

## Performance Under this Agreement.

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

[Remainder of Page Intentionally Left Blank]

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

|  |  |  |
| --- | --- | --- |
| ***[SELLER’S NAME]*,**  *a [Seller’s jurisdiction of organization and type of organization]*. |  | **SOUTHERN CALIFORNIA EDISON COMPANY,**  a California corporation. |
| By:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  *[Name]*  *[Title]* |  | By:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**APPENDIX 1.8**

**STORAGE UNITS**

Excel Appendices

**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.}*

**APPENDIX 5.1(A)**

**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 |

**APPENDIX 5.1(B)**

**CONSTRUCTION REPORT**

**Monthly Project Progress Report**

From the Effective Date and continuing until the Initial Delivery Date, Seller will provide a monthly project progress report containing, at a minimum, the information listed below.

1. An executive summary;
2. Project bar chart schedule (including current status of all events);
3. Assessment of percent construction complete and percent change from immediately previous report;
4. Description of general work status (including short passages as applicable) on:
   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.

**APPENDIX 6**

**TESTING PROTOCOLS**

**INITIAL COMMERCIAL OPERATION TEST**

*[SCE Note: TBD]*

*Storage Unit*

**APPENDIX 9**

**FORM OF LETTER OF CREDIT**

IRREVOCABLE NONTRANSFERBLE STANDBY

LETTER OF CREDIT

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

Transaction Date:

BENEFICIARY:

Southern California Edison Company

2244 Walnut Grove Avenue

Risk Control GO#1, Quad 2A

Rosemead, CA 91770

Attn: Manager Credit, Risk & Collateral Management

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 *[CONTRACT PARTY]*, a \_\_\_\_\_\_\_\_\_\_\_\_ corporation, (the “Applicant”), for the amount of XXX AND XX/100 Dollars ($ ) (the “Available Amount”), effective immediately and expiring at 5:00 p.m., California time, on \_\_\_\_\_\_\_\_\_\_\_\_ (the “Expiration Date”).

This Letter of Credit shall be of no further force or effect upon the close of business on the Expiration Date or, if such day is not a Business Day (as hereinafter defined), on the next Business Day.

For the purposes hereof, “Business Day” shall mean any day on which commercial banks are not authorized or required to close in Los Angeles, California.

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

* + - 1. The original or a photocopy of this Letter of Credit and all amendments; and
      2. The Drawing Certificate issued in the form of Attachment A attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the signature of an authorized representative of the Beneficiary.

Notwithstanding the foregoing, any full or partial drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at \_\_\_\_\_\_\_\_\_\_\_\_\_\_ or such other number as specified from time-to-time by the Bank.

The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

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

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

Banking charges shall be the sole responsibility of the Applicant.

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

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

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

AUTHORIZED SIGNATURE for Issuer

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ATTACHMENT A TO APPENDIX 9**

DRAWING CERTIFICATE

TO [ISSUING BANK NAME]

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT

Reference Number.

(Sample Text)

Bank

Bank Address

Subject: Irrevocable Nontransferable Standby Letter of Credit

Reference Number:

The undersigned , an authorized representative of Southern California Edison Company (the “Beneficiary”), hereby certifies to *[Issuing Bank Name]* (the “Bank”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Applicant”), with reference to Irrevocable Nontransferable Standby Letter of Credit No. , dated , (the “Letter of Credit”), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to  
   $ , for the following reason(s) [check applicable provision]:

[ ]A. An Event of Default, as defined in that certain Demand Response Energy Storage Agreement between Applicant and Beneficiary, dated as of***[Date of Execution]*** (the “Agreement”) with respect to the Applicant has occurred and is continuing.

[ ]B. An Early Termination Date (as defined in the Agreement) has been set by the Beneficiary under the Agreement.

[ ]C. The Letter of Credit will expire in fewer than twenty (20) Business Days (as defined in the Agreement) from the date hereof, and Applicant has not provided Beneficiary alternative Performance Assurance (as defined in the Agreement) or Delivery Date Security (as defined in the Agreement) acceptable to Beneficiary.

[ ]D. The Bank or Applicant has heretofore provided written notice to the Beneficiary of the Bank’s or Applicant’s intent not to renew the Letter of Credit following the present Expiration Date thereof, and Applicant has failed to provide the Beneficiary with a replacement letter of credit satisfactory to Beneficiary in its sole discretion within thirty (30) days following the date of the notice of non-renewal.

[ ]E. The Beneficiary has not been paid any or all of the Applicant’s payment obligations now due and payable under the Agreement.

[ ]F. Daily Delay Damages (as defined in the Agreement) are now due and payable under the Agreement.

[ ]G. The Beneficiary is entitled to retain the entire Delivery Date Security (as defined in the Agreement): (i) because the Initial Delivery Date (as defined in the Agreement) has not occurred on or before \_\_\_\_\_\_\_\_\_\_\_\_; or (ii) because the Agreement has been terminated due to an Event of Default by Applicant before the Initial Delivery Date.

1. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS AND \_\_\_\_/100ths (U.S.$ ), which amount does not exceed (i) the amount set forth in paragraph 1 above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.
2. Funds paid pursuant to the provisions of the Letter of Credit shall be wire-transferred to the Beneficiary in accordance with the following instructions:

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

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Beneficiary by its authorized representative as of this \_\_\_\_ day of , \_\_\_\_\_.

Beneficiary: SOUTHERN CALIFORNIA EDISON

COMPANY

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Title: