

*ACES 2 RFO Pro Forma*

**ALISO CANYON ENERGY STORAGE 2 RFO (“ACES 2 RFO”)**

**PRO FORMA**

**ENERGY STORAGE RESOURCE ADEQUACY**

**PURCHASE AND SALE AGREEMENT**

**(RA ONLY)**

*between*

**SOUTHERN CALIFORNIA EDISON COMPANY**

*and*

***[SELLER]***

*(ID# [Number])*

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**ENERGY STORAGE RESOURCE ADEQUACY**

**PURCHASE AND SALE AGREEMENT**

**(RA ONLY)**

**between**

**SOUTHERN CALIFORNIA EDISON COMPANY**

**and**

***[SELLER’S NAME]***

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

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

**RECITALS**

1. SCE is an investor-owned electric utility serving customers in central and southern California.
2. Seller is willing to sell to SCE, and SCE is willing to purchase from Seller, the Product under the terms and conditions set forth in this Agreement.

**AGREEMENT**

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

# PURCHASE AND SALE OF PRODUCT

## Product.

### The “Product” consists of all Capacity Attributes associated with the Project, provided that:

#### Product does not include any right to the energy or ancillary services from the Project; and

#### Product does not include revenues specified in Section 3.06(a).

### During the Delivery Period, Seller shall deliver and sell, and SCE shall purchase and receive the Product. Seller shall not substitute or purchase any portion of the Product from any other energy storage resource or from the market for delivery hereunder.

## Project.

### The “Project” consists of the Storage Unit(s), Interconnection Facilities (owned by Seller or Seller’s Affiliate) up to the Interconnection Point, Prevention Equipment, and Protective Apparatus together with all materials, equipment systems, structures, features and improvements necessary to store, charge and discharge electric energy at the facility, excluding the Site, land rights and interests in land and as more fully described in Exhibit B. *[SCE Comment: may require additional description in addition to Exhibit B]*

### Project Name. *[Name]*.

### Location of Project. *[Project Address]*, as further described in Exhibit B.

### Energy Delivery Point. The Energy Delivery Point shall be the *[Description],* as specified in Exhibit B.

### Interconnection Point. The Interconnection Point shall be *[Insert name and location]*, as specified in Exhibit B.

### Interconnection Queue Position. *[Number(s) to be inserted]*.

### Local Capacity Area. *[examples: CAISO System, Big Creek-Ventura, LA Basin, etc.]*.

## Capacity.

### Contract Capacity. From the Effective Date until the Initial Delivery Date, the Contract Capacity shall be equal to the Predicted Capacity. From and after the Initial Delivery Date, the Contract Capacity shall be equal to the IDD Capacity.

1. Predicted Capacity. The Predicted Capacity is *[To be inserted]* MW.
2. IDD Capacity. The IDD Capacity shall be the aggregate sum of actual Unit NQCs (in MWs), as of the Initial Delivery Date, for each of the Storage Units that are part of the Project, provided that the IDD Capacity may not exceed the Predicted Capacity.

## Monthly Capacity Price.

The “Monthly Capacity Price” shall be $*[To be inserted]*/kW-month. *[SCE Comment: may require additional description if escalation or price shaping is applicable.]*

## Exclusive Rights.

### During the Delivery Period, SCE shall have exclusive rights to the Product and all benefits derived therefrom, including the exclusive right to use, market or sell the Product and the right to all revenues generated from the use, sale or marketing of the Product. During the Delivery Period, Seller grants, pledges, assigns and otherwise commits to SCE all of the Product which may be used to meet RA Compliance Obligations under any Resource Adequacy Rulings.

## SCE’s Re-Sale of Product.

SCE shall have the exclusive right to use, market or sell the Product and any associated rights, in each case, acquired under this Agreement and the right to all revenues generated from this use, sale or marketing.

If SCE re-sells all or a portion of the Product and any associated rights acquired under this Agreement (“Resold Product”), Seller agrees, and agrees to cause the Storage Unit’s SC to:

### Follow SCE’s instructions and the CAISO Tariff with respect to providing such Resold Product to subsequent purchasers of such Resold Product.

### Take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product.

Seller acknowledges and agrees that if SCE incurs any liability to any purchaser of such Resold Product due to the failure of Seller or the Storage Unit’s SC to comply with the terms of this Agreement, and Seller would have had liability to SCE under this Agreement for such failure had SCE not sold the Resold Product to a subsequent purchaser, then Seller shall be liable to SCE under this Agreement, including pursuant to this Section 1.06, for the amounts it would have been liable to SCE for had such Resold Product not been sold to a subsequent purchaser.

# TERM AND DELIVERY PERIOD

## Term.

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

## Delivery Period.

The “Delivery Period” shall commence at 12:01 a.m. on the Initial Delivery Date, and shall continue until the earlier of: midnight on the date that is *[number of years]* years after the Expected Initial Delivery Date or the date this Agreement is otherwise terminated in accordance with its terms.

## Expected Initial Delivery Date.

The Expected Initial Delivery Date is *[Date; the first day of a calendar month]*.

If the Project (or any portion thereof) reaches Commercial Operation prior to its Expected Initial Delivery Date, Seller may dispatch and sell the output of such Storage Unit(s) to third parties prior to its Expected Initial Delivery Date (a “Third Party Sale”). Any Third Party Sale shall be limited to a delivery period that occurs before the Expected Initial Delivery Date. . Seller shall have the right to all revenues generated from such sale, and will be responsible for any costs, charges, fees, fines, or penalties associated with such sale. Once the Project reaches its Initial Delivery Date, then Seller shall not provide, convey or market the Product or any Resource Adequacy Benefits associated with the Project, in each case with respect to the Delivery Period, to any third party.

## Initial Delivery Date.

The “Initial Delivery Date” shall be no earlier than the Expected Initial Delivery Date and shall be the first day of the first full month after Initial Delivery has occurred. “Initial Delivery” shall occur when all the following conditions have been satisfied for the Project:

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

### Each Storage Unit has achieved Commercial Operation;

### Seller has received:

#### authority from FERC, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d (“Market-Based Rate Authority”) for wholesale sales of electric energy, capacity and ancillary services at market-based rates, and

#### all other approvals and authorizations required for Seller to perform its obligations under this Agreement;

### Seller has executed a “Participating Generator Agreement” and/or “Participating Load Agreement,” as applicable, “Meter Service Agreement For CAISO Metered Entities,” as those terms are defined in the CAISO Tariff, and any other forms or agreements required by the CAISO with respect to the Project, and delivered true and complete copies of all such forms and agreements to SCE;

### Seller has entered into and complied in all material respects with all obligations under all interconnection agreements required to enable parallel operation of the Project with the Transmission Provider’s electric system and the CAISO Controlled Grid;

### Seller has deposited with SCE the applicable Performance Assurance pursuant to Section 7.02(a);

### Seller has executed and delivered to SCE all other documents or instruments required under Article 7 (Credit and Collateral);

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

### Seller has delivered to SCE all insurance documents required under Section 14.07 (Insurance);

### Seller has obtained CAISO Certification for each Storage Unit;

### Seller has obtained and delivered to SCE a certification that the Project is fully deliverable, as determined by the CAISO, for the purposes of counting an amount equal to the Contract Capacity towards RA Compliance Obligations;

### Seller has paid to SCE the full amount of the Excess Network Upgrade Costs, if applicable;

### Seller has obtained a Unit NQC for each Storage Unit and the Unit NQC for each such Storage Unit is not less than seventy-five percent (75%) of the Predicted SU Capacity, as set forth in Exhibit B, for such Storage Unit; and

### Seller has obtained a Unit EFC for each Storage Unit and the Unit EFC for each such Storage Unit is not less than seventy-five percent (75%) of the Predicted SU Flexible Capacity, as set forth in Exhibit B, for such Storage Unit.

The Parties agree that, in order for Seller to obtain the Initial Delivery Date, the Parties may have to perform certain of their Delivery Period obligations in advance of the Initial Delivery Date, including providing Outage Schedules and Supply Plans. The Parties shall cooperate with each other in order for SCE to be able to utilize the Product beginning on the Initial Delivery Date and Seller agrees to cause each Storage Unit’s SC to cooperate in order to achieve the same.

## Initial Delivery Deadline.

Subject to Seller’s right to extend the Expected Initial Delivery Date as set forth in Sections 8.03(a) and 2.06, Seller must achieve Initial Delivery by the Expected Initial Delivery Date; provided, notwithstanding anything in this Agreement to the contrary, Seller must achieve Initial Delivery by *[Insert date that is ninety (90) days after the Expected Initial Delivery Date]* (the “Initial Delivery Deadline”).

## Daily Delay Liquidated Damages to Extend Expected Initial Delivery Date.

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

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

Seller may further extend the Expected Initial Delivery Date beyond the original Expected Initial Delivery Date extension period subject to the same terms applicable to the original Expected Initial Delivery Date extension.

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

Seller will be entitled to a refund (without interest) of any estimated Daily Delay Liquidated Damages payments paid by Seller which exceed the amount required to cover the number of days by which the Expected Initial Delivery Date was actually extended.

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

## CPUC Approval.

Within ninety (90) days after the Effective Date, SCE shall file with the CPUC the appropriate request for CPUC Approval. SCE shall expeditiously seek CPUC Approval, including promptly responding to any requests for information related to the request for CPUC Approval. As requested by SCE, Seller shall use commercially reasonable efforts to support SCE in obtaining CPUC Approval. SCE has no obligation to seek rehearing or to appeal a CPUC decision which fails to approve this Agreement or which contains findings required for CPUC Approval with conditions or modifications unacceptable to SCE.

Either Party has the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given, if (i) 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 (ii) a Notice of termination is given on or before the date CPUC Approval is obtained.

Failure to obtain CPUC Approval in accordance with this Section 2.07 will not be deemed to be a failure of Seller to install the Project or a failure of SCE to purchase or receive the Product, and will not be or cause an Event of Default by either Party. No Forward Settlement Amount with respect to this Agreement will be due or owing by either Party upon termination of this Agreement due solely to failure to obtain CPUC Approval.

# BILLING AND PAYMENTS

## Billing Period.

The calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments). On or before the last Business Day of the month following the applicable month for which payment obligations are calculated, SCE shall issue an invoice for the payment obligations, if any, incurred hereunder during such month together with all supporting documentation and calculations reasonably necessary to evidence all amounts charged thereunder, provided that the Monthly Capacity Payment related to a Showing Month will not be deemed to be incurred until such Showing Month has concluded (the “Obligation Month”).

An invoice can only be adjusted or amended after it was originally rendered within the time frames set forth in Section 3.03.

If an invoice is not rendered within twenty-four (24) months after the close of an Obligation Month, the right to any payment for that Obligation Month under this Agreement is waived.

## Timeliness of Payment.

SCE will make payments within ten (10) Business Days after issuing its invoice by ACH or similar method, or by other mutually agreeable methods, to the account designated by Seller. Any payment made after such ten (10) Business Day period shall include an Interest Payment.

The Parties acknowledge that data necessary to calculate certain payment obligations of SCE and Seller under this Agreement may not be available at the time SCE issues the payment invoice with respect to a particular month. Any such payment obligations, including related documentation supporting such obligations, shall be included in a subsequent payment invoice issued to Seller on or before the last Business Day of the month following the month that is the later of (x) one hundred and twenty (120) days following the last day of the calendar month to which the data relates or (y) thirty (30) days after the relevant CAISO final settlement data is available to SCE.

## Disputes and Adjustments of Invoices.

If Seller or SCE determines that a calculation is incorrect Seller or SCE, as the case may be, shall promptly recompute the amounts for the period of the inaccuracy based upon a correction of data and any payment affected by the adjustment or correction.

Any amount due from SCE to Seller, or Seller to SCE, as the case may be, will be made as an adjustment to the next monthly payment invoice that is calculated after Seller’s or SCE’s recomputation using corrected measurements.

If the recomputation results in a net amount owed to SCE after applying any amounts owing to Seller as shown on the next monthly payment invoice, any such amount owing to SCE will at SCE’s discretion be netted against amounts owed to Seller in any subsequent monthly payment invoice or separately invoiced to Seller, in which case Seller must pay the amount owing to SCE within thirty (30) days after receipt of that invoice.

A Party will be deemed to have waived any such payment adjustments, if such Party does not provide Notice of such payment adjustment within twelve (12) months after the end of the month in which the payment invoice was issued containing the error.

## Netting Rights.

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

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

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

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

## Monthly Capacity Payment.

SCE shall make a “Monthly Capacity Payment,” payable monthly after the applicable Showing Month, in arrears, to Seller for each Showing Month, provided that such Monthly Capacity Payment is subject to reduction in accordance with this Agreement. The Monthly Capacity Payment is calculated as set forth below:

#### “Monthly Capacity Payment” = (A x B x 1,000)

where:

A = applicable Monthly Capacity Price for that Showing Month

B *=*

*C* = Expected Contract Quantity provided by Seller to SCE pursuant to and consistent with Section 6.03 for the applicable day of the Showing Month, provided that, solely for purposes of calculating this item “C”, the amount of Product (in MWs) provided on any particular day of any Showing Month may not exceed the IDD Capacity during such day

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

*i* = Each day of Showing Month

*n* = number of days in the Showing Month

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

## Allocation of Other Payments and Costs.

### Seller shall retain any revenues it may receive from and pay all costs, charges charged by the CAISO or any other third party with respect to the Storage Units for (i) start-up, shutdown, charging, discharging, minimum load, and any other operational costs, (ii) ancillary services, (iii) Energy sales, and (iv) any revenues for black start or reactive power services, (v) any Bids or revisions to any market-cleared Bids made by Seller pursuant to Section 6.04(b), and (vi) sales of any other products other than the Product sold to SCE hereunder.

### Buyer shall be entitled to receive and retain all capacity revenues associated with respect to the Storage Units, including any capacity revenues from RMR Contracts, or its successor, Capacity Procurement Mechanism, or its successor, or RUC Availability Payments, or its successor, but excluding payments described in Section 3.06(a).

### In accordance with Sections 3.01, 3.02, 3.03, and 3.04, (i) all such Seller, or a Storage Unit’s SC, owner, or operator revenues described in this Section 3.06, but received by SCE shall be remitted to Seller; and (ii) all such Buyer revenues described in this Section 3.06, but received by Seller, or a Storage Unit’s SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Storage Unit’s SC, owner, or operator fails to remit those revenues to Buyer.

### If a centralized capacity market develops within the CAISO region, SCE will have exclusive rights to offer, bid, or otherwise submit the Product for each day of each Showing Month provided to SCE pursuant to this Agreement for re-sale in such market, and retain and receive any and all related revenues.

### Seller agrees that the Project and each Storage Unit is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under Section 40.9 of the CAISO Tariff. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of Seller and for Seller’s account and that any Non-Availability Charges are the responsibility of Seller and for Seller’s account.

### If (i) a Storage Unit is designated as a Resource Adequacy Resource and (ii) Applicable Laws require that, during periods that a Storage Unit is on a Planned Outage, the SC for a Resource Adequacy Resource is required to (A) replace the Storage Unit with a resource that is not a Resource Adequacy Resource or (B) face the imposition of a charge, cost, sanction or penalty for failing to replace that Storage Unit, then Seller is responsible for (x) replacing the Storage Unit with a resource that is not a Resource Adequacy Resource, and (y) any and all charges, costs, sanctions and/or penalties for failing to replace all or a portion of the Storage Unit. Seller agrees that SCE is not required to take any action, or use or change its utilization of its owned or controlled assets or market positions, to allow Seller to replace the Storage Unit with a resource that is not a Resource Adequacy Resource and that SCE shall have no liability for any of the obligations described in this Section 3.06(f).

## Federal Tax Incentives Price Reduction.

### If at any time prior to the end of the Term, any person or entity, including Seller, Seller’s Lender, Seller’s upstream parent, or any Affiliate, realizes any economic or monetary benefit from Federal Tax Credit Legislation with respect to the Project (“Economic Benefit”), the Monthly Capacity Price and the Monthly Capacity Payment shall be reduced according to the applicable Tax Credit Percentage available to Seller, as set forth in the table below (the “Reduced Price Percent”) and pursuant to the process in Section 3.07(b). The Monthly Capacity Payment shall automatically be amended to reflect the product of the Monthly Capacity Payment multiplied by the applicable Reduced Price Percent. *{SCE Note: any such price amendment may need to take escalated prices, price shaping or other variable pricing structures into account.}*

### Seller shall provide Notice to SCE within seven (7) days of realizing any Economic Benefit. If the Economic Benefit is realized on or before the Initial Delivery Date, then the Monthly Capacity Price shall automatically be amended with immediate effect. If the Economic Benefit is realized after the Initial Delivery Date, then the applicable Monthly Capacity Price shall automatically be amended effective as of the first day of the first full month after realization.

### For purposes of determining when an Economic Benefit is realized under Section 3.07(b), realization will have been deemed to have occurred upon the earliest occurrence of any of the following: (i) the closing of any Tax Equity Financing by Seller, Seller’s upstream parent or any Affiliate, (ii) a transfer of any income tax credits generated as a result of the Federal Tax Credit Legislation, (iii) the use of any income tax credits on the federal income tax return (on the date such return is filed) of any entity, or (iv) the date upon which Seller realizes an Economic Benefit not otherwise listed in this Section 3.07(c).

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

# 

# Design and construction of Project

## Seller’s Obligations.

*[Subject To Change Based On Technology]*

At no cost to SCE, Seller shall:

### Design and construct, or refurbish the Project as required for Seller to perform its obligations under this Agreement;

### Prior to the Expected Initial Delivery Date, file all applications or other appropriate requests to acquire and maintain all Permits for the Project;

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

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

### Furnish and install Prevention Equipment;

### 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;

### Throughout the Delivery Period, maintain all permits, licenses, certifications and approvals necessary for the operation and maintenance of the Project; and

### Not withdraw the Interconnection Queue Position or assign or transfer that Interconnection Queue Position to any entity or for the benefit of any other agreement other than this Agreement without SCE’s prior written consent.

## Changes in Operational Characteristics.

*[Subject To Change Based On Technology]*

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 4.02 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.

## EPC Contractor.

*[Subject To Change Based On Technology]*

Seller shall provide SCE with Notice of the name and address of Seller’s EPC Contractor on the later of the Effective Date or the first (1st) Business Day after Seller enters into a contract with an EPC Contractor.

## Provision of Information.

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

### Within ten (10) Business Days after receipt thereof, any Interconnection Study or the interconnection agreement tendered to Seller by the Transmission Provider;

### All agreements with providers of engineering, procurement, or construction services for the Project and all amendments thereto, including any EPC Contract (which may be redacted by Seller to eliminate any portions reasonably believed by Seller to contain confidential information);

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

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

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

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

## 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:

### Seller has obtained and maintained all Permits, and that such Permits do not contain Permit Requirements that might restrict SCE’s ability to obtain the benefits of the Product;

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

### All contracts or other arrangements necessary to interconnect the Project (including transmission arrangements as contemplated in Section 5.01, electrical, water supply and waste disposal) have been entered into and become effective on a timely basis pursuant to the Milestone Schedule and Seller is not in default thereunder.

## Milestone Schedule.

In order to meet the Expected Initial Delivery Date, Seller shall use reasonable efforts during the construction period to meet the various Project related milestones set forth in Exhibit C (“Milestone Schedule”) and avoid or minimize any delays in meeting such Milestone Schedule. No later than the tenth (10th) day of each month while the Project has not yet met its Initial Delivery Date, or within five (5) days after SCE’s request, Seller shall deliver to SCE a monthly progress report, substantially in the form set forth in Exhibit D (“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 Permits, and shall provide any such documents as may be reasonably requested by SCE. In addition, Seller shall advise SCE, as soon as reasonably practicable, of any problems or issues of which Seller is aware which could materially impact its ability to meet the Milestone Schedule.

## Critical Path Development Milestones.

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

|  |  |
| --- | --- |
| **Critical Path Development Milestone** | **Deadline to achieve Critical Path Development Milestone** |
| Receive a completed Phase I Interconnection Study (or equivalent) that can meet the Contract Capacity of the Project | Eighteen (18) months prior to the Expected Initial Delivery Date |
| File for all material Permits for the Project needed to meet the Contract Capacity | Twelve (12) months prior to the Expected Initial Delivery Date |
| Receive a completed Phase II Interconnection Study (or equivalent) that can meet the Contract Capacity of the Project | Twelve (12) months prior to the Expected Initial Delivery Date |
| Execute an interconnection agreement with Transmission Provider that can meet the Contract Capacity for the Project | Nine (9) months prior to the Expected Initial Delivery Date} |
| Execute purchase order for the battery system, inverter(s) and transformer(s) *{SCE Note: TBD Major Equipment}* needed to construct the Project at a size equal to the Contract Capacity | Six (6) months prior to the Expected Initial Delivery Date |
| Obtain all material Permits for the Project needed to meet the Contract Capacity | One (1) month prior to the Expected Initial Delivery Date |

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

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

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

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

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

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

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

# interconnection; Metering; Testing

## Transmission and Interconnection.

*[Subject To Change Based On Technology]*

### Interconnection Studies.

Seller represents and warrants that, as of the Effective Date, Seller has provided SCE with true and correct, up-to-date copies of all of the Interconnection Studies, if any, to enable delivery of the Storage Unit(s)’ output to the Interconnection Point pursuant to Applicable Laws and to enable Seller to provide the Product to SCE. Seller shall be responsible for all fees and costs associated with the following:

#### Obtaining all Interconnection Studies;

#### Maintaining, complying with and performing Seller’s obligations under all agreements associated with the Interconnection Facilities and related documents throughout the Delivery Period;

#### Funding for any apparatus, modifications, and upgrades to the Transmission Provider’s electric system, the CAISO Controlled Grid or, if applicable, participating transmission owner’s system that are required at or beyond the Interconnection Point to accommodate the Project’s output (“Network Upgrades”) (any refund of such fees and costs will be consistent with the CAISO Tariff);

#### Any Interconnection Facilities; and

#### All costs (including interconnection costs and transmission losses) arising from, relating to or associated with any interconnection agreement under which Energy from the Project is transmitted to the CAISO Controlled Grid.

### SCE Termination Right – Excess Network Upgrade Costs.

#### SCE has the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given to Seller, on or before the date that is sixty (60) days after Seller provides to SCE the results of any Interconnection Study or interconnection agreement tendered to Seller (including any agreement tendered for interconnecting, or establishing service for, the Project for purposes of charging the Project with electric energy) by the Transmission Provider if:

##### Such Interconnection Study or agreement as of the date of the termination Notice, estimates, includes, specifies or reflects that the maximum total cost of transmission upgrades or new transmission facilities that are, or may become, reimbursable by SCE, the CAISO, or any Transmission Provider under the jurisdiction of the CAISO, to Seller (“Aggregate Network Upgrade Costs”), may in the aggregate exceed *[dollar amount text]* dollars ($*[Number]*) (“Network Upgrades Cap”), irrespective of any subsequent amendments of such Interconnection Study or agreement or any contingencies or assumptions upon which such Interconnection Study or agreement is based; or *{SCE Note: Monetary threshold to be based upon transmission-related costs allocated to the Project that SCE would incur as estimated in the most recent Interconnection Study, or, if applicable, on value included in Seller’s offer.}*

#### If SCE exercises its termination right pursuant to this Section 5.01(b), no Termination Payment will be due or owing by either Party and Seller will be entitled to a return of any Development Security provided to SCE.

#### Notwithstanding anything to the contrary in this Section 5.01(b), SCE shall have no right to terminate this Agreement under this Section 5.01(b) if Seller, concurrently with its provision of the first Interconnection Study or interconnection agreement tendered to Seller by the Transmission Provider that may give rise to a termination right of SCE under this Section 5.01(b), provides Notice to SCE that Seller irrevocably elects to owe to SCE:

##### the amount by which the Aggregate Network Upgrade Costs exceed the Network Upgrades Cap (“Excess Network Upgrade Costs”), provided, (I) with respect to this Section 5.01(b)(ii)(A), and solely for the purpose of calculating Excess Network Upgrade Costs, Aggregate Network Upgrade Costs shall be updated to reflect the latest interconnection agreement (including any amendments or modifications thereto) tendered to Seller; and (II) under no circumstance shall the calculation of Excess Network Upgrade Costs be less than zero dollars ($0), and

##### any costs for transmission services specified in Section 5.01(b);

##### Seller’s failure to provide an election pursuant to this Section 5.01(b)(ii) shall be deemed to be an election not to exercise such rights.

##### If Seller elects to pay, without reimbursement, for the Excess Network Upgrade Costs pursuant to this Section 5.01(b), in no event shall Seller have any interest in or rights or title to any Network Upgrades or Congestion Revenue Rights in connection with the development of the Project or the delivery of Product to SCE pursuant to this Agreement.

#### The Parties agree and acknowledge that there may be an Interconnection Study and interconnection agreement for charging electric energy to the Project, and a separate Interconnection Study and interconnection agreement for discharging electric energy from the Project. If there are two separate studies and agreements for charging and discharging electric energy, the Parties agree that for purposes of Section 5.01(b)(i)(A), the Aggregate Network Upgrade Costs shall reflect the aggregate maximum cost estimates for the total cost of transmission upgrades or new transmission facilities that are, or may become, reimbursable by SCE, or any Transmission Provider under the jurisdiction of the CAISO, including costs reimbursed by SCE, or any Transmission Provider under the jurisdiction of the CAISO, to Seller as set forth in the Interconnection Study and/or interconnection agreement, as applicable, for both charging and discharging electric energy.

### Acknowledgment.

### Seller acknowledges and agrees that nothing in this Section 5.01 is intended to abrogate, amend or modify the terms of any other agreement between it and SCE, including any interconnection agreement, and that no breach under such other agreement shall excuse a Party’s nonperformance under this Agreement, unless the breach of such other agreement is also an Event of Default under this Agreement.

## Testing.

### Initial and Periodic Testing.

#### Initial Delivery Date Testing.

#### Prior to the Initial Delivery Date, Seller shall, or shall cause each Storage Unit’s SC to, schedule and complete, at Seller’s cost, all RA Capacity Qualification Tests for each Storage Unit and provide all information required by the CPUC, any other applicable Governmental Authority, or the CAISO, in order for each Storage Unit to obtain a Unit NQC and Unit EFC. Seller shall undertake such activities in sufficient time to achieve the Initial Delivery Date by the Expected Initial Delivery Date.

#### Seller Periodic Testing.

#### During the Delivery Period Seller (A) may itself elect to schedule and complete RA Capacity Qualification Tests at any time and (B) shall schedule and complete any RA Capacity Qualification Tests required by the CAISO, the CPUC, or by Applicable Laws.

#### SCE Periodic Testing.

#### Once per each Contract Year (after the initial Contract Year), upon SCE’s request, Seller shall, or shall cause each Storage Unit’s SC to, schedule and complete, at Seller’s cost, an RA Capacity Qualification Test for each Storage Unit and provide all information required by the CAISO, the CPUC or by Applicable Laws in order for each Storage Unit to obtain an updated Unit NQC and Unit EFC. In connection with such a request, SCE may request that Seller shall cause each Storage Unit’s SC to propose to the CAISO that the Unit NQC or Unit EFC for any Storage Unit be changed. Seller agrees that in such a case Seller shall, or shall cause each Storage Unit’s SC to, take all actions required under the CAISO Tariff to obtain a new Unit NQC and Unit EFC for such Storage Units, including providing any documentation necessary to justify and support such request in accordance with the CAISO Tariff.

#### No Adjustment to Contract Capacity.

#### Notwithstanding any other provision in this Agreement, the Contract Capacity shall not be adjusted to conform to the results of any RA Capacity Qualification Test.

### Notice.

#### Testing Notification and Attendance.

#### Seller shall provide SCE with at least seven (7) Business Days’ Notice of Seller’s proposed dates for all RA Capacity Qualification Tests, including any RA Capacity Qualification Tests required by the CPUC, any other applicable Governmental Authority, or the CAISO. SCE shall be entitled to have at least one (1) representative from SCE and one (1) independent third party witness present to witness each RA Capacity Qualification Test and such persons shall be allowed unrestricted access to the area from where the plant is being controlled (e.g., plant control room), and unrestricted access to inspect the instrumentation necessary for test data acquisition prior to commencement of any test. SCE shall be responsible for all costs, expenses and fees payable or reimbursable to the SCE representative and the third party, if any.

#### Testing Results Notification.

#### Seller shall provide all RA Capacity Qualification Tests results for each Storage Unit within three (3) Business Days after Seller’s receipt.

#### Within fifteen (15) Business Days after the completion of any RA Capacity Qualification Test, Seller shall prepare and submit to SCE a written report of such test. The report shall include: (i) a record of any unusual or abnormal conditions or events that occurred during such test and any actions taken in response thereto, and (ii) the measured data.

#### Updated Unit NQC or Unit EFC.

#### Seller shall notify SCE within three (3) Business Days after it, or the Storage Unit’s SC, receives notice from the CAISO, or Seller or the Storage Unit’s SC becomes aware, that the Unit NQC or Unit EFC of any Storage Unit has changed, regardless of whether there is an increase or decrease in any such Unit NQC or Unit EFC.

### Testing Costs. Seller is responsible for all costs associated with all RA Capacity Qualification Tests and all costs associated with providing any information required to be provided under this Section 5.02 or Section 5.03.

### Testing Records. Seller shall maintain and provide to SCE, within fifteen (15) days after SCE’s request, accurate records with respect to all RA Capacity Qualification Tests, including the outcomes of such tests.

## CAISO Certification.

Seller shall provide all CAISO Certification test results for each initial or subsequent test of each Storage Unit within three (3) Business Days after Seller’s receipt. Nothing in this Agreement, including the Exhibits, shall be amended to reflect the outcome of any CAISO Certification.

Notwithstanding the preceding paragraph, SCE has the right during any Local Resource Constrained Day to discharge and charge the Storage Unit(s) within the parameters established by the CAISO Certification of the Storage Unit(s) and to the Storage Unit(s)’ PMAX.

# Seller’s Operation Obligations.

*[Subject To Change Based On Technology]*

## Seller’s Operation Obligations.

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

### Seller shall maintain all records applicable to each Storage Unit, including a daily log of maintenance performed, outages, changes in operating status, inspections and any other significant events related to the operation of each Storage Unit. Information maintained pursuant to this Section 6.01(b) shall be provided to SCE within fifteen (15) days after SCE's request.

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

### DERs Monitoring.

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

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

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

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

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

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

## Seller’s Maintenance and Repair Obligations.

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

### Subject to Section 6.02(c), 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 Product to SCE in accordance with the terms of this Agreement.

### If:

#### the currently effective Unit NQC of any single Storage Unit is at any time, less than or equal to seventy-five percent (75%) of the applicable SU Capacity for such Storage Unit, or

#### the currently effective Unit EFC of any single Storage Unit is at any time, less than or equal to seventy-five percent (75%) of the applicable SU Flexible Capacity for such Storage Unit,

### Then, Seller shall repair such Storage Unit in accordance with Prudent Electrical Practices and the procedure set forth in this Section 6.02. Within fourteen (14) days after any such failure, Seller shall complete a Successful Repair or present to SCE a description of the reason for the failure and a plan and schedule for completing a Successful Repair (the “Repair Plan”).

### If SCE and Seller disagree about the Repair Plan, SCE may, at its expense, hire an independent third party engineering firm reasonably acceptable to Seller (the “Independent Engineer” or “IE”), to perform an on-site assessment of the situation and make recommendations for completing a Successful Repair. Upon two (2) Business Days’ Notice by SCE, Seller shall grant the IE and SCE personnel access to the Storage Unit(s) and all relevant information including log books, maintenance records and reports, and other applicable materials.

### After seven (7) days of the delivery to Seller of the IE’s engineering report, if the IE determines and reports, consistent with Industry Standards, that Seller fails, in any material respect to meet the IE’s recommendations for the Successful Repair (as such recommendations may be updated by the IE) or to make sufficient progress towards a Successful Repair,, SCE shall have the right in its sole discretion to (i) exercise its Storage Unit Removal Right; or (ii) declare an Event of Default pursuant to Section 10.01(b)(xii).

### If an Event of Default pursuant to Section 10.01(b)(xii) has occurred, then SCE shall have the right in its sole discretion to (i) exercise its Storage Unit Removal Right; or (ii) declare an Event of Default pursuant to Section 10.01(b)(xii).

### Seller shall not allow (i) the Unit NQC of any Storage Unit to fall below seventy-five percent (75%) of the applicable SU Capacity or (ii) the Unit EFC of any Storage Unit to fall below seventy-five percent (75%) of the applicable SU Flexible Capacity for such Storage Unit on average for a period of:

#### six (6) months (or such longer cure period identified as reasonable under the circumstances in the written report of an IE engaged by SCE) due to Force Majeure if the IE has determined in its written report that Seller should reasonably have been able to achieve a Successful Repair of the Storage Unit prior to the expiration of such six (6) month period (or longer cure period identified in the IE’s written report); or

#### sixty (60) days (whether or not consecutive) within a rolling twelve (12) month period (or a higher number of days identified as reasonable under the circumstances in the written report of an IE engaged by SCE) for any reason or circumstance other than a Planned Outage, if the IE has determined in its written report that Seller should reasonably have been able to achieve a Successful Repair of the Storage Unit within sixty (60) days (or the higher number of days identified in the IE’s written report).

## Delivery.

### Delivery

Seller shall provide SCE with the Expected Contract Quantity for each day of each Showing Month consistent with the following:

#### Seller shall, on a timely basis, submit, or cause the Storage Unit’s SC to submit, Annual Supply Plans and Monthly Supply Plans in accordance with the CAISO Tariff, and any other decisions or orders of the CPUC associated with providing the Product under this Agreement, to identify and confirm the Expected Contract Quantity provided to SCE for each day of each Showing Month so that the total amount of Expected Contract Quantity identified and confirmed for each day of such Showing Month equals the Expected Contract Quantity for such day of such Showing Month.

#### Seller shall or shall cause the Storage Unit’s SC to submit written notification to SCE, no later than fifteen (15) Business Days before the applicable RA Compliance Showing deadlines for each Showing Month, that SCE will be credited with the Expected Contract Quantity for each day of such Showing Month in the Storage Unit’s Supply Plan so that the credited Expected Contract Quantity for each day of the Showing Month equals the Expected Contract Quantity for such day of such Showing Month. For illustrative purposes only, as of the Effective Date, the applicable Compliance Showing deadlines are as follows: (A) forty-five (45) days prior to the Showing Month covered by the Supply Plan for the Monthly Supply Plan; and (B) the last Business Day of October that is prior to commencement of the year for the Annual Supply Plan. The Parties acknowledge and agree that such dates may be modified by the CAISO from time to time throughout the Term.

#### Adjustments to Product Provided.

##### Planned Outages: Seller’s obligation to deliver the Product for each day of each Showing Month may be reduced by the amount of any Planned Outages which exist with respect to any portion of any Storage Unit during the applicable Showing Month for the applicable days of such Planned Outages. Seller shall notify SCE, no later than fifteen (15) Business Days before the relevant deadlines for the corresponding RA Compliance Showings applicable to that Showing Month, of the amount of Product (in MWs) from the Storage Units that SCE is permitted to include in SCE’s RA Compliance Showings applicable to that month as a result of such Planned Outage.

##### Reductions in Unit NQC: Subject to Section 6.02, Seller’s obligation to deliver the Product for each Showing Month may also be reduced if any of the Storage Units experiences a reduction in Unit NQC after the Initial Delivery Date as determined by the CAISO.

#### Post-Showing Replacement Capacity.

#### If the CAISO determines there is Shortfall Capacity, Seller’s Monthly Capacity Payment will be reduced in accordance with Section 3.06(a) and, neither Seller nor the Storage Unit’s SC (unless the Storage Unit’s SC is SCE) shall have the right to provide SCE with “RA Replacement Capacity,” as defined in the CAISO Tariff, with respect to such Shortfall Capacity.

#### Resource Adequacy Supply Plan.

#### For any month of the Delivery Period, and no later than five (5) Business Days before the relevant deadline for the initial RA Compliance Showing with respect to a particular Showing Month, SCE may request that Seller not list, or cause the Storage Unit’s SC not to list, a portion or all of a Storage Unit’s applicable Expected Contract Quantity for any portion(s) of such Showing Month on the Supply Plan. The amount of Expected Contract Quantity that is the subject of such a request shall be deemed Expected Contract Quantity provided consistent with Section 6.03(a)(i) and (ii) for purposes of calculating a Monthly Capacity Payment pursuant to Section 3.05 and calculating any amounts due pursuant to Article 13. Seller shall, or shall cause each Storage Unit’s SC to, comply with SCE’s request under this Section 6.03(a)(v).

### Supply Plan Information.

### The Parties shall use commercially reasonable efforts to cause the required showing information listed in Exhibit E to be included in all applicable Supply Plans and cause all Supply Plans to be filed in conformance with the requirements of the CPUC Filing Guide and the CAISO Tariff. In addition, if during the Delivery Period there are changes to the information included in Exhibit N, the Parties agree to communicate such changes to each other promptly.

## Local Resource Constrained Days Dispatch.

### At any time during the Delivery Period, SCE may, in its sole discretion, designate any day during the Delivery Period as a “Local Resource Constrained Day” (or “LRCD”). SCE may not designate more than fifteen (15) days as LRCDs during any calendar year. Seller will use commercially reasonable efforts to change any scheduled outage as needed to accommodate SCE’s LRCD designation.

### Subject to this Section 6.04, and consistent with the Bid Data provided by SCE, Seller will submit, or cause to be submitted, Bids into the CAISO Day-Ahead Market (“DAM”) and Real-Time Market (“RTM”) in compliance with the Tariff. Further, given that the purpose of SCE’s Bid Data is for the Project to be dispatched by the CAISO in accordance with such Bid Data, Seller must comply with any CAISO requirement beyond Seller’s Bid submittal requirements expressly stated in this Section 6.04, in order to cause the Project to be dispatched in accordance with SCE’s Bid Data.

### On a Day-Ahead basis, or in accordance with the WECC prescheduling calendar, as applicable, SCE may provide notice to Seller no later than one (1) hour prior to the deadline for submission of Bids into the CAISO DAM (“SCE’s DAM Deadline”) designating the next Trading Day as an LRCD. Such notice may also provide Bid Data that Seller must submit for the Project in the CAISO DAM for the LRCD.

### To the extent that (i) any portion of the Bid quantity submitted in accordance with this Section 6.04(c) does not clear the DAM, (ii) Seller fails to submit Energy Supply Bids reflecting the Bid Data into the DAM in accordance with the Tariff, or (iii) Seller disregards SCE’s Bid Data instructions for any reason (in any case, such quantities that were not submitted or cleared being the “Outstanding Bid Quantity”), Seller must submit the Outstanding Bid Quantity in the RTM as a Self-Schedule, unless SCE instructs otherwise. For clarity, for any Outstanding Bid Quantity, Seller may not submit Economic Bids. Further, Seller shall be responsible for all costs, fees, fines, and/or CAISO charges related to Bid(s) of Outstanding Bid Quantities in the RTM.

### SCE may provide Seller the Bid Data within an Operating Day for such Operating Day (“Day-of Bid Data”) for an LRCD that was previously declared in the respective Day-Ahead day. Whether or not Seller’s awarded Day-Ahead Bids conflict with or otherwise impede the Energy delivery as dictated in SCE’s Day-of Bid Data (“Conflicting Bid Quantities”), whether or not Seller submitted its own Day-Ahead Bids into the DAM, and whether or not any such Day-Ahead Bids cleared the DAM, Seller shall make the necessary RTM Bid submittals and/or other adjustments, in accordance with the Tariff, that ultimately retract the Day-Ahead Bids and cause Energy Supply Bids, consistent with SCE’s Day-of Bid Data, to be awarded in the RTM (“RT Bid Revision”); provided, however, Seller is not required to execute RT Bid Revisions to the extent that SCE provided the Day-of Bid Data for hours (or, as applicable, other time periods) later than thirty (30) minutes prior to CAISO’s deadline for the submission of Bids in the RTM (“SCE’s RT Deadline”).

### For clarity, Seller shall bear all price risk and market exposure associated with RT Bid Revisions, except that SCE shall be responsible for any CAISO charges, sanctions or penalties associated with the retraction of Conflicting Bid Quantities.

### To the extent that SCE declares an LRCD within a given Operating Day (i.e., later than SCE’s DAM Deadline but prior to SCE’s RT Deadline), SCE may still provide Day-of Bid Data for specific intra-day time periods, and, if SCE does so, Seller must submit Self-Schedule Energy Supply Bids corresponding to such Bid Data in the RTM for the respective hours (or, as applicable another period of time); provided, however, Seller shall not be required to submit such Bids for specific time periods pursuant to this Section 6.04(e) to the extent that SCE provides the Day-of Bid Data later than SCE’s RT Deadline for the respective time period, or if Seller has previously submitted and been awarded any type of Bid that conflicts with SCE’s Day-of Bid Data.

### During an LRCD, Seller may not charge the Storage Units from the transmission or distribution grid unless Seller receives an instruction from Transmission Provider or CAISO directing Seller to charge the Storage Units.

### Upon SCE’s instruction, as soon as practically possible following CAISO’s notification of DAM or RTM Bid awards for any LRCD, Seller shall cause SCE to receive all Bid award information except price-related Bid components to the extent Seller submitted one or more Economic Bids.

## Outages.

### Scheduled Outages.

#### Sixty (60) days prior to the Expected Initial Delivery Date, and throughout the Delivery Period, Seller shall, no later than January 1, April 1, July 1 and October 1 of each year, submit to SCE, using the Web Client, each Storage Unit’s proposed schedule of scheduled outages (“Outage Schedule”), for the following twenty-four month period. If the Web Client is not available, Seller shall submit the Outage Schedule in substantially the form set forth in Exhibit F.

#### Seller shall provide the following information for each proposed scheduled outage:

##### Description of the work to be performed during the scheduled outage;

##### Start date and time;

##### End date and time; and

##### Capacity online, in MW, during the scheduled outage.

#### SCE shall notify Seller in writing of any request for changes to the Outage Schedule, and Seller shall, if consistent with Prudent Electrical Practices, accommodate SCE’s requests regarding the timing of any scheduled outage; provided that the CAISO agrees to such changed timing. If SCE’s request to change the timing of any scheduled outage would result in Seller incurring incremental costs, or reduction in Monthly Capacity Payments, in excess of what would have been incurred without the scheduled outage timing change requested by SCE, within five (5) Business Days after receipt of SCE’s request Seller shall provide reasonable documentation to SCE of the costs and/or revenue impact that would be incurred by Seller and SCE may either:

##### agree to reimburse (subject to audit by SCE) Seller for such costs and revenue impact, or

##### withdraw its request for such change in scheduled outage timing.

#### Seller must provide Notice to SCE at least sixty (60) days prior to the start of any scheduled outage.

#### Seller shall cooperate with SCE to arrange and coordinate all Outage Schedules with the CAISO in compliance with the CAISO Tariff.

#### If a condition occurs which causes Seller to revise its scheduled outages, Seller shall promptly provide Notice to SCE, using the Web Client (with a second Notice to SCE’s Outage Desk if the scheduled outage is more than three months in the future), of such change (including an estimate of the length of such scheduled outage) as required in the CAISO Tariff after the condition causing the change becomes known to Seller.

#### Seller shall promptly prepare and provide to SCE upon request, using the Web Client, all reports of actual or forecasted outages that SCE may reasonably require for the purpose of enabling SCE to comply with Section 761.3 of the California Public Utilities Code, the CAISO Tariff, or any Applicable Law mandating the reporting by investor owned utilities of expected or experienced outages by electric energy generating facilities under contract to supply electric energy.

### No Scheduled Outages During Summer Months.

#### Unless agreed and coordinated in advance by the Parties, no outages shall be scheduled or planned from each May 1 through September 30 during the Delivery Period. If Seller has a previously scheduled outage that becomes coincident with a CAISO-declared system emergency, Seller shall make all reasonable efforts to reschedule such scheduled outage.

## *[Additional Responsibilities during N-2 Event.*

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

### *During an N-2 Event, Seller may not charge the Storage Units from the transmission or distribution grid unless Seller receives an instruction from Transmission Provider or CAISO directing Seller to charge the Storage Units.]*

# Credit and Collateral

## Development Security.

### Amount.

### Seller shall post and thereafter maintain Development Security equal to *{SCE Comment: Development Security will be calculated based on RFP Instructions.}*.

### Posting Requirements.

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

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

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

#### The Development Security and any interest accrued thereon in accordance with Section 7.03(a) shall be held by SCE as security for Seller achieving the Initial Delivery Date on or before the Expected Initial Delivery Date.

### Return of Development Security.

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

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

#### As soon as reasonably practicable after the termination of this Agreement by either Party pursuant to Sections 2.07, 5.01(b) or 8.03(a), SCE shall return to Seller the full Development Security; provided, a termination under Article 8 only entitles Seller to a return of the Development Security if the termination is based on a Force Majeure that prevents the Initial Delivery Date from occurring on or before the Initial Delivery Deadline.

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

## Performance Assurance.

### Amount.

### At all times during the Delivery Period, Seller shall post and thereafter maintain Performance Assurance in an amount equal to *{SCE Comment:  Performance Assurance will be calculated based on RFP Instructions.}.*

### Posting Requirements.

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

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

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

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

### Return of Performance Assurance.

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

## Administration of Project Security.

### Cash.

#### SCE shall calculate and pay an Interest Payment to Seller on any Project Security posted in cash, concurrently with the return of such collateral to Seller in accordance with the terms of this Agreement.

#### On or after the occurrence of an Event of Default with respect to the Seller or an Early Termination Date as a result of an Event of Default with respect to the Seller, SCE shall retain any Interest Payment as additional Project Security until the obligations of the Seller under this Agreement have been satisfied in the case of an Early Termination Date or for so long as such Event of Default is continuing in the case of an Event of Default; provided that*,* any Interest Payment amount that is held by SCE as an additional Project Security amount shall not accrue interest in accordance with Section 7.03(a)(i).

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

### Letters of Credit.

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

#### Seller shall:

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

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

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

#### Upon the occurrence of a Letter of Credit Default, Seller shall provide to SCE alternative Project Security on or before the third (3rd) Business Day after the occurrence thereof (or the fifth (5th) Business Day after the occurrence thereof if only clause (a) under the definition of Letter of Credit Default applies).

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

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

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

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

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

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

## Grant of Security Interest.

To secure its performance of its obligations under this Agreement, and until released as provided herein, Seller hereby grants to SCE a present and continuing first-priority security interest (“Security Interest”) in, and lien on (and right of setoff against), and assignment of the Project Security and any and all proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of SCE, and Seller agrees to take such action as SCE reasonably requires in order to perfect SCE’s Security Interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

## Remedies.

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

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

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

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

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

### SCE shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller’s obligations under this Agreement, subject to SCE’s obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

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

## Credit and Collateral Covenants.

### Seller shall, from time to time as requested by SCE, execute, acknowledge, record, register, deliver and 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 the Security Interest provided for herein and therein.

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

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

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

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

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

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

## California Commercial Code Waiver.

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

### has or will have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, or

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

## Financial Information.

If requested by one Party, the other Party shall deliver the following financial statements, which in all cases must be for the most recent accounting period and prepared in accordance with GAAP or IFRS:

### Within one hundred twenty (120) days following the end of each fiscal year, a copy of its annual report containing audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year, setting forth in each case, in comparative form, the figures for the previous year for the Party; and

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

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

If a Party’s financial statements are publicly available electronically on the website of that Party or the SEC, then the Party shall be deemed to have met the requirements of this Section 7.08.

Should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the producing Party diligently pursues the preparation, certification and delivery of the statements.

# Force Majeure

## No Default for Force Majeure.

### Subject to Section 6.02(f), neither Party will be considered to be in default in the performance of any of its obligations set forth in this Agreement when and to the extent failure of performance is caused by Force Majeure; provided, a failure to make payments when due that accrued prior to the Force Majeure event shall not be excused.

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

## Force Majeure Claim.

Subject to Section 6.02(f), if, because of a Force Majeure, either Party is unable to perform its obligations under this Agreement, such Party (the “Claiming Party”) shall be excused from whatever performance is affected by the Force Majeure only to the extent so affected; provided:

### the Claiming Party, no more than fourteen (14) days after the initial occurrence of the claimed Force Majeure, gives the other Party Notice describing the particulars of the occurrence;

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

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

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

## Termination.

### If Initial Delivery does not occur on or before the Expected Initial Delivery Date as the result of a Force Majeure occurring before the Expected Initial Delivery Date and Seller is the Claiming Party, then the Expected Initial Delivery Date will, subject to Sections 2.04 (Initial Delivery Date) and 2.05 (Initial Delivery Deadline) and Seller’s compliance with its obligations as the Claiming Party under this Article 8, be extended on a day-for-day basis for the duration of the Force Majeure; provided, if (i) Initial Delivery does not occur before the Initial Delivery Deadline and (ii) such Force Majeure extension coincides with and is beyond the Initial Delivery Deadline, then either Party may terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is provided.

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

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

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

# REPRESENTATIONS, WARRANTIES AND COVENANTS

## Representations and Warranties of Both Parties.

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

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

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

### The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Laws;

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

### It is not Bankrupt and there are not proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or become Bankrupt;

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

### No Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

### It is acting for its own account and its decision to enter into this Agreement is based upon its own judgment, not in reliance upon the advice or recommendations of the other Party and it is capable of assessing the merits of and understanding, and understands and accepts the terms, conditions and risks of this Agreement;

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

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

## Additional Seller Representations and Warranties.

### Seller represents and warrants to SCE that no part of the Project was installed or operational at any time before January 1, 2010 as provided in the CPUC Decision 13-10-040 (a “New Resource”).

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

#### Seller has good title to and is the sole owner of such Project Security, and the execution, delivery and performance of the covenants and agreements of this Agreement do not result in the creation or imposition of any lien or security interest upon any of its assets or properties, including the Project Security, other than the security interests and liens created under this Agreement;

#### Upon the posting of Project Security by Seller to SCE, SCE shall have a valid and perfected first priority continuing security interest therein, free of any liens, claims or encumbrances, except those liens, security interests, claims or encumbrances arising by operation of law that are given priority over a perfected security interest; and

#### Seller is not and will not become a party to or otherwise be bound by any agreement, other than this Agreement, which restricts in any manner the rights of any present or future holder of any of the Project Security with respect hereto.

### As of the Effective Date, Seller represents and warrants to SCE that Seller has not used, granted, pledged, assigned, sold or otherwise committed any Product to meet the RA Compliance Obligations of, or conferred Resource Adequacy Benefits upon, any entity other than SCE during the Delivery Period, except to the extent such benefits are conferred on another entity pursuant to an order of the CPUC or at the direction of SCE.

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

## Seller’s Covenants.

### Seller shall own and operate the Project.

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

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

### Seller shall obtain, maintain and remain in compliance with all Permits, agreements (including interconnection agreements) and rights (including transmission rights) necessary to operate the Project and provide the Product to SCE in accordance with this Agreement.

### Seller shall maintain and preserve its existence as a *[insert applicable corporate incorporation information]* formed under the laws of the State of *[XX]* and all material rights, privileges and franchises necessary or desirable to enable it to perform its obligations under this Agreement.

### Seller shall maintain the Project as fully deliverable for the purposes of counting the Product, in an amount equal to the Contract Capacity, towards RA Compliance Obligations.

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

### Seller shall obtain Site Control by the date specified therefor in the Critical Path Development Milestone Schedule.

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

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

### Throughout the Delivery Period:

#### Seller shall own or have the exclusive right to the Product, and shall furnish SCE, the CPUC, each applicable Governmental Authority, and the CAISO with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right.

#### No portion of the Product will be committed by Seller to any third party in order to satisfy RA Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets, other than pursuant to an RMR Contract between the CAISO and Seller.

#### If the CAISO designates any portion of the Project as CPM Capacity Seller shall, and shall cause each Storage Unit’s SCE to:

##### Promptly (and in any event within one (1) Business Day of the time Seller or such SC receives notification from the CAISO) notify SCE and

##### Not accept any such designation by the CAISO unless and until SCE has agreed to accept such designation, provided that SCE shall have the exclusive right to offer the Product and Project, or any portion thereof, to the CAISO as CPM Capacity.

#### Seller shall, and shall cause each Storage Unit’s SC to comply with Applicable Laws, relating to the Product. SCE shall have no liability for the failure of Seller or the failure of any Storage Unit’s SC to comply with Applicable Laws, including any penalties, charges or fines imposed on Seller or any Storage Unit’s SC for such noncompliance.

#### Seller shall notify the SC of each Storage Unit that Seller has transferred the Product to SCE, with respect to each day of each Showing Month, and shall cause such SC to deliver the Supply Plans in accordance with the CAISO Tariff and this Agreement.

#### Seller shall cause each Storage Unit’s SC to provide to the SCE, at least fifteen (15) Business Days before the relevant deadlines for each RA Compliance Showing, the applicable Expected Contract Quantity of such Storage Unit for each day of such Showing Month, including the amount of Flexible Capacity and Inflexible Capacity, that is to be submitted in the Supply Plan associated with this Agreement for the applicable period.

#### Seller shall notify each Storage Unit’s SC that SCE is entitled to the revenues set forth in Section 3.06, and shall cause such SC to promptly deliver those revenues to SCE, along with appropriate documentation supporting the amount of those revenues.

#### Seller shall maintain Site Control.

#### Seller shall not use, grant, pledge, assign, sell or otherwise commit any Product to meet the RA Compliance Obligations of, or confer Resource Adequacy Benefits upon, any entity other than SCE during the Delivery Period, except to the extent such benefits are conferred on another entity pursuant to an order of the CPUC or at the direction of SCE.

## Resource Adequacy Covenants of the Seller and Buyer.

Notwithstanding anything to the contrary in this Agreement, the Parties shall take all actions that may be necessary to effect the use of the Resource Adequacy Benefits of the Project in accordance with Section 9.02(c) throughout the Delivery Period, including:

### amending this Agreement and complying with all current and future Applicable Laws, including all Resource Adequacy Rulings that address Resource Adequacy Benefits and RA Compliance Obligations, including all performance obligations and penalties related thereto;

### ensuring that the Project is certified by the CAISO as being fully deliverable as of the Initial Delivery Datefor the purposes of counting all of the Product towards SCE’s RA Compliance Obligations; and

### executing all documents or instruments; but excluding, in each case, any action which is inconsistent with any Applicable Laws or any Permit;

provided, however, that no such action shall require Seller to modify the Project, except to the extent set forth in Sections 6.01 and 6.02.

# EVENTS OF DEFAULT; TERMINATION

## Events of Default.

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

### With respect to either Party:

#### Such Party fails to make when due any payment required under this Agreement and this failure is not cured within five (5) Business Days after Notice of the failure;

#### Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature, provided, if the misrepresentation or breach of warranty is capable of a cure, an Event of Default will be deemed to occur if the misrepresentation or breach of warranty is not remedied within five (5) Business Days after Notice from the non-breaching Party;

#### Such Party fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied within thirty (30) days after Notice of the failure, which Notice sets forth in reasonable detail the nature of the failure; provided, if the failure is not reasonably capable of being cured within the thirty (30) day cure period specified above, the Party will have such additional time (not exceeding an additional sixty (60) days) as is reasonably necessary to cure the failure, so long as the Party promptly commences and diligently pursues the cure; or

#### Such Party becomes Bankrupt.

### With respect to Seller:

#### Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of Seller under this Agreement either by operation of law or pursuant to an agreement reasonably satisfactory to SCE;

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

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

#### Seller intentionally or knowingly delivers, or attempts to deliver, Resource Adequacy Benefits for sale under this Agreement that are not associated with the Project;

#### Seller removes from the Site equipment upon which the Contract Capacity 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;

#### A termination of service under any agreement necessary for Seller:

##### To interconnect the Project to the Transmission Provider’s electric system;

##### To transmit the electric energy on the Transmission Provider’s electric system; or

##### To comply with the CAISO Tariff;

#### provided, if SCE and Seller mutually agree that a termination of, or cessation of service under, any such agreement is not due to the fault of Seller, Seller shall have thirty (30) days from such termination or cessation to cure such default;

#### 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 in Sections 1.01(b), 1.05(a), and 9.04; or

#### Subject to the terms of a Collateral Assignment Agreement, which shall control in the event of any conflict or inconsistency with this Section 10.01(b)(viii), the occurrence and continuation of an event of default of Seller under one or more agreements or instruments relating to indebtedness for borrowed money, in the aggregate amount of not less than *[dollar amount text]* dollars ($*[Number]*) *[amount to be determined by SCE]* which results in the indebtedness having been declared immediately due and payable.

#### The stock or equity ownership interests in Seller or assets of Seller are directly or indirectly pledged or assigned, as collateral to any party other than Lender;

#### Seller makes any material misrepresentation or omission in any report, including any status report, or the Milestone Schedule (including the log, records and reports required under Sections 5.02(d), 6.01(b), 6.05, 9.03(g), and 14.06(d), and Exhibit C or Exhibit D) required to be made or furnished by Seller pursuant to this Agreement and such misrepresentation or omission is not remedied within five (5) Business Days after Notice from SCE;

#### Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, to any party other than SCE during the applicable portion of the Delivery Period;

#### Seller fails to comply with any of its obligations under Sections 6.02(b), 6.02(c), 6.02(d) or 6.02(f) within the time periods set forth therein;

#### Seller does not have Site Control in accordance with Section 9.03(h);

#### Seller transfers or assigns the Interconnection Queue Position or the interconnection agreement;

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

#### Upon any designation of a Local Resource Constrained Day by SCE, Seller fails to submit Bids into the CAISO Day-Ahead Market or Real-Time Market, as directed by SCE, pursuant to Section 6.04; or

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

## Early Termination Date.

If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the “Non-Defaulting Party”) shall have the right, by delivery of Notice to the Defaulting Party, to (a) designate a day, no earlier than the day such Notice is effective and no later than twenty (20) days after such Notice is effective, as an “Early Termination Date,” and to terminate this Agreement as of the Early Termination Date, (b) accelerate all amounts owing between the Parties under this Agreement, (c) withhold any payments due to the Defaulting Party under this Agreement, (d) suspend performance pending termination of this Agreement; and (e) pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages and, where appropriate, specific performance or injunctive relief), except to the extent that such remedies are limited by the terms of this Agreement.

## Calculation of Termination Payment.

If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Termination Payment in accordance with this Section 10.03.

### Termination Payment Prior to Initial Delivery Date.

If the Early Termination Date occurs before the Initial Delivery Date, then the Termination Payment shall be calculated in accordance with this Section 10.03(a).

#### If Seller is the Defaulting Party, then the Termination Payment shall be owed to SCE and shall be equal to the entire Development Security amount and any interest accrued thereon. SCE shall be entitled to immediately retain for its own benefit those funds held as Development Security and any interest accrued thereon, and any amount of Development Security that Seller has not yet posted with SCE will be immediately due and payable by Seller to SCE. There will be no amounts owed to Seller. The Parties agree that SCE’s damages in the event of an Early Termination Date prior to the Initial Delivery Date caused by Seller’s default would be difficult or impossible to determine and that the damages set forth in this Section 10.03(a)(i) are a reasonable approximation of SCE’s harm or loss.

#### If SCE is the Defaulting Party, then the Termination Payment shall be owed to Seller and shall equal the sum of the actual, documented and verifiable costs incurred by Seller between the Effective Date and the Early Termination Date in connection with the Project, less the fair market value (determined in a commercially reasonable manner) of (A) all Seller’s assets individually, or (B) the entire Project, whichever is greater, regardless of whether or not any Seller asset or the entire Project is actually sold or disposed of. There will be no amount owed to SCE. The Parties agree that Seller’s damages in the event of an Early Termination Date prior to the Initial Delivery Date caused by SCE’s default would be difficult or impossible to determine and that the damages set forth in this Section 10.03(a)(ii) are a reasonable approximation of Seller’s harm or loss.

### Termination Payment After the Initial Delivery Date Occurs.

### If the Early Termination Date occurs after the Initial Delivery Date, then the Termination Payment shall equal the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement, including a Forward Settlement Amount (if any), less any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date. *[Notwithstanding the foregoing, if this Agreement is terminated due to an Event of Default under Section 10.01(b)(xvii) (failure to exercise Maximum Efforts during an N-2 Event), then the Termination Payment shall be the greater of (a) the amount calculated pursuant to the preceding sentence and (b) the Performance Assurance.]*

## Notice of Termination Payment.

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

The Notice must include a written statement setting forth, in reasonable detail, the calculation of such Termination Payment, together with appropriate supporting documentation. If SCE is the Non-Defaulting Party and reasonably expects to incur penalties, fines or costs from the CAISO, the CPUC, or any other Governmental Authority, then SCE may estimate the amount of those penalties and fines and include them in the Termination Payment amount.

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

The Parties shall negotiate in good faith to resolve any disputes regarding the calculation of the Termination Payment. Any Disputes which the Parties are unable to resolve through negotiation may be submitted for resolution through mediation and arbitration as provided in Article 12 (Disputes).

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

If Seller terminates this Agreement as provided in Sections 2.07 or 8.03(a) or (b) (based on a Force Majeure as to which Seller is the Claiming Party), or if SCE terminates this Agreement due to Seller’s Event of Default prior to the Initial Delivery Date, neither Seller nor Seller’s Affiliates may sell, market or deliver any Product or Resource Adequacy Benefits associated with or attributable to any Storage Unit or the Project to a party other than SCE for a period of two (2) years following the Early Termination Date, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than SCE, Seller or Seller’s Affiliates provides SCE with a written offer to sell the Resource Adequacy Benefits and Product to SCE which provides SCE the right to select in its sole discretion to purchase such Resource Adequacy Benefits and Product on either the terms and conditions materially similar to the terms and conditions contained in this Agreement or the terms and conditions to which the third party agreed, and SCE fails to accept such offer within forty-five (45) days after SCE’s receipt thereof.

Neither Seller nor Seller’s Affiliates may sell or transfer the Project, or any part thereof, or land rights or interests in the Site (including the Interconnection Queue Position) so long as the limitations contained in this Section 10.05 apply, unless the transferee agrees to be bound by the terms set forth in this Section 10.05 pursuant to a written agreement approved by SCE.

Upon termination of this Agreement pursuant to the Sections referenced in the first paragraph of this Section 10.05, Seller shall deliver a notice of SCE’s rights in respect of the Site, in a form reasonably acceptable to SCE, that SCE may record giving notice of SCE’s rights under this Section 10.05.

## Effect of Termination.

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

# LIMITATIONS

## Limitation of Remedies, Liability and Damages.

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

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

SUBJECT TO SECTION 12.04 (PROVISIONAL RELIEF), IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR’S LIABILITY WILL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

UNLESS EXPRESSLY PROVIDED IN THIS AGREEMENT, INCLUDING THE PROVISIONS OF ARTICLE 13 (INDEMNIFICATION), NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

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

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

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

## No Representation by SCE.

Any review by SCE or its consultants of the Project, including the design, construction or refurbishment, operation or maintenance of the Project, or otherwise, is solely for SCE’s information. By making such review, SCE makes no representation as to the economic and technical feasibility, operational capability, or reliability of the Project, and Seller shall in no way represent to any third party that any such review by SCE of the Project, including any review of the design, construction or renovation, operation, or maintenance of the Project by SCE, constitutes any such representation by SCE. Seller is solely responsible for the economic and technical feasibility, operational capability, and reliability of the Project.

## Separation of Functions.

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

# DISPUTES

## Dispute Resolution.

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

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

## Mediation.

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

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

Such selection and scheduling will be completed within forty-five (45) days after Notice of the request for mediation.

Unless otherwise agreed to by the Parties, the mediation will not be scheduled for a date that is greater than one hundred twenty (120) days from the date of Notice of the request for mediation.

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

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

## Arbitration.

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

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

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

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

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

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

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

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

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

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

### Before discovery commences, the Parties shall exchange an initial disclosure of all documents and percipient witnesses which they intend to rely upon or use at any arbitration proceeding (except for documents and witnesses to be used solely for impeachment);

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

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

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

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

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

### Within sixty (60) days after the initial disclosure, or at such other time as the Arbitrator may order, the Parties shall exchange a list of all experts upon which they intend to rely at the arbitration proceeding;

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

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

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

Subject to Section 11.01 (Limitation of Remedies, Liability and Damages), 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 1.01, 2.05, 6.03(a), 9.02(e), 9.03(g), 9.03(k)(vii), 9.03(k)(viii), 9.04 (Duties Related to Resource Adequacy Resources), 10.05 or 14.05 (Confidentiality).

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

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

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

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

## Provisional Relief.

The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms of this Agreement, that money damages would not be a sufficient remedy for any breach of these provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to seek a preliminary injunction, temporary restraining order, or other provisional relief as a remedy for a breach of Sections 1.01, 2.05, 6.03(a), 9.02(e), 9.03(g), 9.03(k)(vii), 9.03(k)(viii), 9.04 (Duties Related to Resource Adequacy Resources), 10.05 or 14.05 (Confidentiality) in any court of competent jurisdiction, notwithstanding the obligation to submit all other Disputes (including all claims for monetary damages under this Agreement) to arbitration pursuant to Section 12.01 (Dispute Resolution). The Parties further acknowledge and agree that the results of the arbitration may be rendered ineffectual without the provisional relief.

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

## Consolidation of Matters.

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

# INDEMNIFICATION; Governmental charges

## SCE’s Indemnification Obligations.

In addition to any other indemnification obligations SCE may have elsewhere in this Agreement, which are hereby incorporated in this Section 13.01, SCE releases, and shall indemnify, defend and hold harmless Seller, and Seller’s directors, officers, employees, agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, fine, penalty or expense of any kind or nature (including any direct damage, claim, cost, charge, demand, or expense, and attorneys’ fees (including cost of in-house counsel) and other costs of litigation, arbitration and mediation, and in the case of third-party claims only, indirect and consequential loss or damage of such third party), arising out of or in connection with:

### any breach made by SCE of its representations and warranties in Section 9.01; and

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

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

## Seller’s Indemnification Obligations.

In addition to any other indemnification obligations Seller may have elsewhere in this Agreement, which are hereby incorporated in this Section 13.02, Seller releases, and shall indemnify, defend and hold harmless SCE, and SCE’s directors, officers, employees, agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, penalty, fine or expense of any kind or nature (including any direct damage, claim, cost, charge, demand, or expense, and attorneys’ fees (including cost of in-house counsel) and other costs of litigation, arbitration or mediation, and in the case of third-party claims only, indirect or consequential loss or damage of such third party), arising out of or in connection with:

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

### Seller’s failure to fulfill its obligations regarding the Product as set forth in Sections 1.01(b), 1.05(a), 1.06, 6.03, and 9.04;

### NERC Standards Non-Compliance Penalties or an attempt by any Governmental Authority, person or entity to assess such NERC Standards Non-Compliance Penalties against SCE;

### injury or death to persons, including SCE employees, and physical damage to property, including SCE property, where the damage arises out of, is related to, or is in connection with, Seller’s construction, ownership or operation of the Project, or obligations or performance under this Agreement;

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

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

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

### any (i) release of a Hazardous Material by Seller, its EPC Contractor, or any of Seller’s or its EPC Contractor’s subcontractors, (ii) enforcement or compliance proceeding relating to or in connection with any alleged, threatened or actual violation of any environmental law by Seller or its EPC Contractor or any of Seller’s or its EPC Contractor’s subcontractors, or (iii) action reasonably necessary to abate, investigate, remediate or prevent a violation or threatened violation of any environmental law by Seller or its EPC Contractor or any of Seller’s or its EPC Contractor’s subcontractors;

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

### any monetary penalties or fines assessed against SCE by the CPUC or the CAISO or any other entity having jurisdiction, resulting from:

#### Seller’s failure to provide any portion of the Expected Contract Quantity for any portion of the Delivery Period;

#### Seller’s failure to provide notice of the non-availability of any portion of the Expected Contract Quantity for any portion of the Delivery Period as required under Section 6.03;

#### Seller or Seller’s SC’s failure to timely submit Supply Plans that identify SCE’s right to the Expected Contract Quantity purchased hereunder for each day of the Delivery Period; or

#### Seller or Seller’s SC’s failure to submit accurate Supply Plans that identify SCE’s right to the Expected Contract Quantity purchased hereunder for each day of the Delivery Period.

### The Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, in no event will SCE be required to use or change its utilization of its owned or controlled assets or market positions to minimize such penalties, fines and costs. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse SCE for those penalties, fines or costs, then SCE may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Agreement;

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

## Indemnification Claims.

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

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

### Indemnitor will have the right to control the defense and settlement of any claims in a manner not adverse to Indemnified Party but cannot admit any liability or enter into any settlement without Indemnified Party’s approval.

### Indemnified Party may employ counsel at its own expense with respect to any claims or demands asserted or sought to be collected against it; provided, if counsel is employed due to a conflict of interest or because Indemnitor does not assume control of the defense, Indemnitor will bear the expense of this counsel.

## Survival of Indemnification Rights and Obligations.

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

## Cooperation to Minimize Tax Liabilities.

Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

## Governmental Charges.

Seller shall pay or cause to be paid all taxes, charges or fees imposed by a Governmental Authority (“Governmental Charges”) on or with respect to the Project or the Product. 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.

## Compliance with Laws and Indemnification.

Seller shall be responsible for obtaining and maintaining all 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 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 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.

## Environmental Costs and Indemnification.

Seller is solely responsible for

### all Environmental Costs,

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

### Seller’s obligations listed under “Compliance Obligation” in the GHG Regulations, and

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

# MISCELLANEOUS

## General.

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

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

### No Third-Party Beneficiaries. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).

### Waiver. The failure of either Party to insist in any one instance upon strict performance of any the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishments of such rights for the future but the same shall continue and remain in full force and effect. Waiver by either Party of any default of the other Party shall not be deemed a waiver of any other default.

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

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

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

### Multiple Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF) or by other electronic means constitutes effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes.

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

### No Agency. Except as otherwise provided explicitly herein, in performing their respective obligations under this Agreement, neither Party is acting, or is authorized to act, as the other Party’s agent.

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

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

### Rules of Construction.

#### This Agreement will be considered for all purposes as prepared through the joint efforts of the Parties and may not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

#### The term “including” when used in this Agreement is by way of example only and may not be considered in any way to be in limitation.

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

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

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

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

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

## Notices.

### Notices Generally.

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

Notices must, unless otherwise specified herein, be in writing and may be provided by hand delivery, first class United States mail, overnight courier service, e-mail or facsimile.

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

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

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

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

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

Notices will be effective on the date deemed given, unless a different date for the Notice to go into effect is stated in another section of this Agreement.

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

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

### *[N-2 Event Notifications.*

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

## Governing Law; Waiver of Jury Trial.

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

## Assignment.

### Except as provided in Section 14.04(d), neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

### Any Tax Equity Financing or a direct or indirect change of control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of SCE, which consent shall not be unreasonably withheld.

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

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

## Confidentiality.

### Confidentiality Obligation.

### Except as otherwise expressly agreed in writing by the other Party, and except as otherwise agreed in Sections 14.05(b) (Permitted Disclosures) and 14.05(c) (Duty to Seek Protection), each receiving Party shall, and shall cause its Representatives to, (i) keep strictly confidential and take reasonable precautions to protect against the disclosure of all Confidential Information, and (ii) use all Confidential Information solely for the purposes of performing its obligations under this Agreement and not for any other purpose; provided, a Party may disclose Confidential Information to those of its Representatives who need to know such information for the purposes of performing the receiving Party’s obligations under this Agreement (and, in the case of Representatives of Seller engaged wholly or in part in the purchase and sale of electrical power or natural gas, are directly engaged in performing Seller’s obligations under this Agreement) if, prior to being given access to Confidential Information, such Representatives are informed of the confidentiality thereof and the requirements of this Agreement and are obligated to comply with the requirements of this Agreement. Each Party will be responsible for any breach of this Agreement by its Representatives.

### Permitted Disclosures.

#### SCE and Seller may disclose Confidential Information to the “Independent Evaluator,” as defined in CPUC Decision 04-12-048. SCE and the Independent Evaluator may disclose Confidential Information to Governmental Authorities, the CAISO, SCE’s Procurement Review Group established by the CPUC in Decision 02-08-071 (“PRG”), and SCE’s advisory Cost Allocation Mechanism Group established by the CPUC in Decision 07-12-052 (“CAM”), or any discovery or data request of a party to any proceeding before the CPUC, FERC or CEC. Neither SCE nor the Independent Evaluator shall have any liability whatsoever to Seller in the event of any unauthorized use or disclosure by any Governmental Authority, the PRG, the CAM, or the CAISO of any Confidential Information or other information disclosed to any of them by SCE or the Independent Evaluator.

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

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

#### Seller may disclose the transfer of the Product and the applicable Expected Contract Quantity and any amounts of Flexible Capacity and Inflexible Capacity for each day of each Showing Month under this Agreement to the SC of each Storage Unit in order for such SC to timely submit accurate Supply Plans; provided, that Seller shall use reasonable efforts to limit, to the extent possible, the ability of the SC to further disclose such information.

#### If SCE resells all or any portion of the Product to another party or the Product is to be provided to another party in accordance with Section 1.05, SCE may disclose to the other party to such transaction all such information necessary to effect such transaction.

### Duty to Seek Protection.

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

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

### Ownership and Return of Information.

### All Confidential Information shall be and remain the property of the Party providing it. Nothing in this Agreement shall be construed as granting any rights in or to Confidential Information to the Party or Representatives receiving it, except the right of use in accordance with the terms of this Agreement. Notwithstanding the foregoing, the Parties shall have the right to retain copies of Confidential Information, subject to the confidentiality obligations in this Section 14.05.

## Records.

### Performance Under This Agreement.

### Each Party and its Representatives shall maintain records and supporting documentation relating to this Agreement, the 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, or its designee, shall have the right, at its sole expense and during normal working hours, to audit the documents, records or data of Seller to the extent reasonably necessary to verify the accuracy of any statement, claim, charge or calculation made pursuant to this Agreement. Seller shall promptly comply with any reasonable request by SCE under this Section 14.06(c) and provide copies of documents, records or data to SCE. The rights and obligations under this Section 14.06(c) shall survive the termination of this Agreement for a period of two (2) years.

### Industry Standards.

### Seller shall maintain and make available to SCE and the CPUC, or any division thereof, records including logbooks, demonstrating that the Project is operated and maintained in accordance with Industry Standards, including CPUC General Order 167. Seller shall comply with all reporting requirements and permit on-site audits, investigations, tests and inspections permitted or required under any Industry Standards.

## Insurance.

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

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

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

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

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

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

### Commercial General Liability Insurance (which, except with the prior written consent of SCE and subject to Sections 14.07(c)(i) and (ii), shall be written on an “occurrence,” not a “claims-made” basis), covering all operations by or on behalf of Seller arising out of or connected with this Agreement, including coverage for bodily injury, property damage, personal and advertising injury, products/completed operations, and contractual liability. Such insurance shall bear a per occurrence limit of not less than One Million dollars ($1,000,000) and annual aggregate of not less than Two Million Dollars ($2,000,000), exclusive of defense costs, for all coverages. Such insurance shall contain standard cross-liability and severability of interest provisions.

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

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

#### Either the coverage must be maintained for a period of not less than four (4) years after this Agreement terminates, or the policy must provide for a supplemental extended reporting period of not less than four (4) years after this Agreement terminates.

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

### Pollution Liability Insurance, (which, except with the prior written consent of SCE and subject to Sections 14.07(e)(i) and (ii), below, may be written on an “occurrence” or a “claims-made” policy form) with limits of not less than *[\_\_]* Million dollars ($*[\_\_]*,000,000) *{SCE Comment: Amount will be capped at $5 million}*, covering losses involving hazardous material(s) and caused by pollution incidents or conditions that arise from the Project, including coverage for bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death, property damage including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically damaged or destroyed, and defense costs.

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

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

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

### Umbrella/Excess Liability Insurance, written on an “occurrence,” not a “claims-made” basis, providing coverage excess of the underlying Employer’s Liability, Commercial General Liability, Pollution Liability Insurance, and Commercial Automobile Liability insurance, on terms at least as broad as the underlying coverage, with limits of not less than *[\_\_]* Million dollars ($*[\_\_]*,000,000) *{SCE Comment: Amount will be equal to $1 million per MW of Contract Capacity, capped at $20 million}* per occurrence and in the annual aggregate. The insurance requirements under this Section 14.07 can be provided in part by the combination of Seller’s primary commercial general liability and excess liability policies.

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

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

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

All policies required by Sections 14.07(a) through (f) shall be written on a “per project” or “per contract” basis.

### SCE as Additional Insured. The insurance required in this Section 14.07 shall apply as primary insurance to, without a right of contribution from, any other insurance or self-insurance maintained by or afforded to SCE, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, and employees, regardless of any conflicting provision in Seller's policies to the contrary. To the extent permitted by Applicable Laws, Seller and its insurers shall be required to waive all rights of recovery from or subrogation against SCE, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees and insurers. The Commercial General Liability, Commercial Automobile Liability, Pollution Liability and Umbrella/Excess Liability insurance required above shall include, either by policy terms and conditions or by endorsement, SCE, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents and employees, as additional insureds for liability arising out of Seller’s construction, ownership or operation of the Project, or obligations or performance, under this Agreement.

### Proof of Insurance. Within ten (10) Business Days after the Effective Date, and within ten (10) Business Days after coverage is renewed or replaced, Seller shall furnish to SCE the entire policy forms, including endorsements, and certificates of insurance evidencing the coverage required above, written on forms and with deductibles reasonably acceptable to SCE. All deductibles and co-insurance retentions applicable to the insurance above shall be paid by Seller. Seller, or its insurance broker or agent, shall provide SCE with at least thirty (30) days’ prior written notice in the event of cancellation of coverage. SCE’s receipt of documents that do not comply with the requirements stated herein, or Seller’s failure to provide documents that comply with the requirements stated herein, shall not limit or relieve Seller of the duties and responsibility of maintaining insurance in compliance with the requirements in this Section 14.07 and shall not constitute a waiver of any of the requirements in this Section 14.07.

### Reporting. Seller agrees to report to SCE in writing within ten (10) Business Days following all accidents or occurrences resulting in bodily injury to any person, and to any property where such property damage is greater than One Hundred Thousand Dollars ($100,000).

### Failure to Comply. If Seller fails to comply with any of the provisions of this Section 14.07, Seller, among other things and without restricting SCE’s remedies under the law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required Commercial General Liability, Umbrella/Excess Liability, Pollution 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. In addition, an alleged violation of the provisions of this Section 14.07 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

## Consolidation of Seller’s Financial Statements.

### SCE shall determine, through consultation with its internal accountants and review with their independent registered public accounting firm, whether SCE is required to consolidate Seller’s financial statements with SCE’s financial statements for financial accounting purposes under Accounting Standards Codification (ASC) 810/Accounting Standards Update 2009-17, “Consolidation of Variable Interest Entities” (ASC 810), or future guidance issued by accounting profession governance bodies or the SEC that affects SCE accounting treatment for this Agreement (the “Financial Consolidation Requirement”).

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

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

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

#### If Seller regularly prepares its financial data in accordance with GAAP or IFRS, the financial information provided to SCE shall be prepared in accordance with such principles. If Seller is not a SEC registrant and does not regularly prepare its financial data in accordance with GAAP or IFRS, the information provided to SCE shall be prepared in a format consistent with Seller’s regularly applied accounting principles, e.g., the format that Seller uses to provide financial data to its auditor.

### If the Financial Consolidation Requirement is applicable, then promptly upon Notice from SCE, Seller shall allow SCE’s independent registered public accounting firm such access to Seller’s records and personnel, as reasonably required so that SCE’s independent registered public accounting firm can conduct financial statement audits in accordance with the standards of the Public Company Accounting Oversight Board (United States), as well as internal control audits in accordance with Section 404 of the Sarbanes-Oxley Act of 2002, as applicable. All expenses for the foregoing work of SCE’s independent registered public accounting firm shall be borne by SCE. If SCE’s independent registered public accounting firm during or as a result of the audits permitted in this Section 14.08(c) determines a material weakness or significant deficiency, as defined by GAAP or IFRS, as applicable, exists in Seller’s internal controls over financial reporting, then within 90 days after Seller’s receipt of Notice from SCE, Seller shall remediate any such material weakness or significant deficiency; provided, however, that Seller has the right to challenge the appropriateness of any determination of material weakness or significant deficiency. Seller’s true up to actual activity for yearly or quarterly information as provided herein shall not be evidence of material weakness or significant deficiency.

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

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

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

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

### If the Financial Consolidation Requirement is applicable, then, within two (2) Business Days following the occurrence of any event affecting Seller which Seller understands, during the Term, would require SCE to disclose such event in a Form 8-K filing with the SEC, Seller shall provide to SCE a Notice describing such event in sufficient detail to permit SCE to make a Form 8-K filing.

### If, after consultation and review, the Parties do not agree on issues raised by Section 14.08(a), then such dispute shall be subject to review by another independent audit firm not associated with either Party’s respective independent registered public accounting firm, reasonably acceptable to both Parties. This third independent audit firm will render its recommendation on whether consolidation by SCE is required. Based on this recommendation, Seller and SCE shall mutually agree on how to resolve the dispute. If Seller fails to provide the data consistent with the mutually agreed upon resolution, SCE may declare an Event of Default pursuant to Section 10.01. If the independent audit firm associated with SCE still determines, after review by the third party independent audit firm, that SCE must consolidate, then Seller shall provide the financial information necessary to permit consolidation to SCE; provided, however, that in addition to the protections in Section 14.08(d), such information shall be password protected and available only to those specific officers, directors, employees and auditors who are preparing and certifying the consolidated financial statements and not for any other purpose.

## Mobile Sierra.

Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver below is unenforceable or ineffective as to such Party), a non-party or FERC acting sua sponte, shall be the ‘public interest’ standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp*., 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co*., 350 U.S. 348 (1956), and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008); *NRG Power Marketing LLC v. Maine Public Utility Commission*, 558 U.S. 527 (2010).

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

## Seller Ownership and Control of Project.

Seller agrees, that, in accordance with FERC Order No. 697, upon request of SCE, Seller shall submit a letter of concurrence in support of any affirmative statement by SCE that the contractual arrangement set forth in this Agreement does not transfer “ownership or control of generation capacity” from Seller to SCE as the term “ownership or control of generation capacity” is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to FERC Order Nos. 652 and 697, claim that the contractual arrangement set forth in this Agreement conveys ownership or control of generation capacity from Seller to SCE.

## NERC Standards Non-Compliance Penalties.

During the Delivery Period, Seller shall be

### responsible for complying with any NERC Reliability Standards applicable to the Project, including registration with NERC as the Generator Operator for the Project or other applicable category under the NERC Reliability Standards and implementation of all applicable processes and procedures required by FERC, NERC, WECC, the CAISO or other Governmental Authority for compliance with the NERC Reliability Standards;

### liable for all penalties assessed by FERC, NERC (through WECC or otherwise) or other Governmental Authority for violations of the NERC Reliability Standards by the Project or Seller, as Generator Operator or other applicable category.

[Remainder of this 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 Effective 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:*  *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  *[Name]*  *[Title]* |
| Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**EXHIBIT A**

**DEFINITIONS**

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

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

“Affiliate” means, with respect to a Party, any entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such Party.

“Aggregate Network Upgrade Costs” has the meaning set forth in Section 5.01(b)(i)(A).

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

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

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

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

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

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

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

“Bid,” “Bids” or “Bidding” has the meaning set forth in the CAISO Tariff.

“Bid Data” means the Bid quantity (in MW) and the time periods instructed by SCE for Seller to submit as Bids in the respective CAISO market(s) in accordance with this Agreement for designated LRCDs.

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

“CAISO” means the California Independent System Operator Corporation.

“CAISO Certification” means the certification and testing requirements for a storage unit set forth in the CAISO Tariff, including certification and testing for all ancillary services, PMAX, and PMIN associated with such storage units.

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

“CAISO Tariff” means the California Independent System Operator Corporation Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by FERC.

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

“Capacity Attributes” means any and all current or future defined characteristics, certificates, tags, credits, ancillary service attributes, or accounting constructs, howsoever entitled, including any accounting construct counted toward any RA Compliance Obligations, attributed to or associated with a Storage Unit throughout the Delivery Period, including:

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

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

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

If any change by the CAISO, CPUC or other Governmental Authority occurs that defines new or re-defines existing:

### Local Capacity Areas results in a decrease or increase in the amount of Capacity Attributes related to a Local Capacity Area provided hereunder there will be no change in payments made pursuant to this Agreement;

### Flexible RAR, Capacity Attributes related to Flexible RAR, or attributes of the Project related to Flexible RAR, results in a decrease or increase in the amount of Capacity Attributes related to Flexible RAR provided hereunder there will be no change in payments made pursuant to this Agreement;

### Local Capacity Areas results in the Project subsequently qualifying for a Local Capacity Area, the Capacity Attributes will change to include all Resource Adequacy Benefits related to such Local Capacity Area; and

### Flexible RAR, Capacity Attributes related to Flexible RAR, or attributes of any Storage Unit related to Flexible RAR results in any Storage Unit, or a portion of any Storage Unit which did not previously qualify to satisfy Flexible RAR, subsequently qualifying to satisfy Flexible RAR, the Capacity Attributes will change to include all Capacity Attributes of all Storage Units related to Flexible RAR, including any Capacity Attributes related to Flexible RAR with respect to any portion of the Storage Units which previously were not able to satisfy Flexible RAR.

“CEC” means the California Energy Commission.

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

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

“Commercial Operation” has the meaning set forth in the CAISO Tariff.

“Confidential Information” means this Agreement, the terms and conditions and other facts with respect to this Agreement, and any and all written or recorded or oral information, data, analyses, documents, and materials furnished or made available by a Party or its Representatives to the other Party or its Representatives in connection with this Agreement, including any and all analyses, compilations, studies, documents, or other material prepared by the receiving Party or its Representatives to the extent containing or based upon such information, data, analyses, documents, and materials. Confidential Information does not include information, data, analyses, documents, or materials that (a) are when furnished or thereafter become available to the public other than as a result of a disclosure by the receiving Party or its Representatives, or (b) are already in the possession of or become available to the receiving Party or its Representatives on a nonconfidential basis from a source other than the disclosing Party or its Representatives, provided, to the best knowledge of the receiving Party or its Representatives, as the case may be, such source is not and was not bound by an obligation of confidentiality to the disclosing Party or its Representatives, or (c) the receiving Party or its Representatives can demonstrate that the information has been independently developed by the receiving Party’s personnel acting without access to the Confidential Information.

“Conflicting Bid Quantities” has the meaning set forth in Section 6.04(d).

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

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

“Contract Year” means the months within each calendar year during the Delivery Period. The initial Contract Year will be from the Initial Delivery Date until December 31st of such year. The second Contract Year will be from January 1st through December 31st of the year immediately following the initial Contract Year. The final Contract Year will be January 1st of the last year during which the Delivery Period occurs, through the last day of the Delivery Period.

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

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

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

“CPUC” means the California Public Utilities Commission.

“CPUC Approval” means a decision of the CPUC that (a) 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 terms and conditions related to cost recovery and cost allocation of amounts paid to Seller under the Agreement; (b) does not contain conditions or modifications unacceptable to SCE, in SCE’s sole discretion*[; and (c) finds that any procurement pursuant to this Agreement satisfies the requirement to procure resources under CPUC Decision 13-02-015]*.

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

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

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

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

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

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

“Day-of Bid Data” has the meaning set forth in Section 6.04(d).

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

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

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

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

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

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

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

“Diverse Business Enterprise” has the meaning set forth in Section 4.04(d).

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

“Economic Benefit” has the meaning set forth in Section 3.07(a).

“Economic Bids” has the meaning set forth in the CAISO Tariff.

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

“Emission Reduction Credits” or “ERC” means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby a district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.

“Energy” means all electrical energy produced, flowing or supplied by a Storage Unit or the Project, as applicable, measured in kilowatt-hours or multiple units thereof. Energy shall include all electrical energy products that may be developed or evolve from time to time during the Term.

“Energy Delivery Point” means the point set forth in Section 1.02(c).

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

“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.

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

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

“Excess Network Upgrade Costs” has the meaning set forth in Section 5.01(b)(ii)(A).

“Expected Contract Quantity” means, with respect to any particular day of any Showing Month of the Delivery Period, the Product (in MWs) for such day of such Showing Month, less any reductions to the amount of Product (in MWs) that must be provided for such day as specified in Section 6.03(a)(iii).

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

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

“FERC” means the Federal Energy Regulatory Commission.

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

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

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

“Force Majeure” means any occurrence that was not anticipated as of the Effective Date that:

### In whole or in part:

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

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

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

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

### The Party has been unable to overcome by the exercise of due diligence, including an act of God, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, terrorism, sabotage, or strike or labor dispute.

Force Majeure does not include:

### Reductions in the ability of the Storage Unit(s) to store, charge or discharge energy resulting from ordinary wear and tear, deferred maintenance, operator error, or the failure of equipment or parts except to the extent such failure is otherwise the result of a Force Majeure;

### Curtailment or reduction in deliveries at the direction of a Transmission Provider or the CAISO when the basis of the curtailment or reduction in deliveries ordered by a Transmission Provider or the CAISO is congestion arising in the ordinary course of operations of the Transmission Provider’s system or the CAISO Controlled Grid, including congestion caused by outages or capacity reductions for maintenance, construction or repair;

### Any delay in providing, or cancellation of, any Permit by the issuing Governmental Authority, except to the extent such delay or cancellation is otherwise the result of a Force Majeure;

### Any delay in providing, or cancellation of, interconnection service by a Transmission Provider, except to the extent such delay or cancellation is otherwise the result of a Force Majeure; or

### 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.

“Forward Settlement Amount” means the Non-Defaulting Party’s costs and losses, on the one hand, netted against its gains, on the other. If the Non-Defaulting Party’s costs and losses exceed its gains, then the Forward Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s gains exceed its costs and losses, then the Forward Settlement Amount shall be zero dollars ($0). The Forward Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

### When used in this definition, costs mean, with respect to the Non-Defaulting Party, brokerage fees, commissions, legal expenses and other similar third-party transaction costs and expenses reasonably incurred by the Non-Defaulting Party in entering into any new arrangement which replaces this Agreement, including, if SCE is the Non-Defaulting Party, with respect to credit towards SCE’s procurement requirements under CPUC Decision 13-10-040. With respect to SCE, costs shall be based on replacing the Product with product from Storage Unit(s) with similar attributes to the Project that is connected to SCE’s distribution system at the Interconnection Point set forth in Section 1.02(d) *[and SCE may take into consideration that this Agreement contains non-standard covenants related to performance during an N-2 Event]*.

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

### Factors used in determining economic gain and loss to a Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which shall be based on replacing the Product with product from new energy storage capacity with similar attributes, including, if SCE is the Non-Defaulting Party, with respect to credit towards SCE’s procurement requirements under the CPUC Decision 13-10-040. For purposes of determining gains or losses, SCE may also take into consideration that the Agreement is intended to provide the Product at [SCE note: insert applicable circuit] *[and contains non-standard covenants related to performance during an N-2 Event]*.

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

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

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

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

“Generator Owner” means an entity that owns the Project and has registered with NERC as the entity responsible for complying with those NERC Reliability Standards applicable to owners of generating units as set forth in the NERC Reliability Standards.

“GHG Regulations” means Title 17, Division 3 (Air Resources), Chapter 1 (Air Resources Board), Subchapter 10 (Climate Change), Article 5 (Emissions Cap), Sections 95800 to 96023 of the California Code of Regulations, as amended or supplemented from time to time.

“Governmental Authority” 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; or

### Any court or governmental tribunal.

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

“Greenhouse Gas” or “GHG” has the meaning set forth in the GHG Regulations or in any other Applicable Laws.

“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.

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

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

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

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

“Independent Engineer” or “IE” has the meaning set forth in Section 6.02(d).

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

“Industry Standards” mean 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 and enforced by the CPUC, and CAISO mandated standards.

“Inflexible Capacity” means, with respect to any particular Showing Month of the Delivery Period, the MWs of the Product which are not eligible to satisfy Flexible RAR and which are associated MWs of the Project that are not part of or outside of the Unit EFC. Inflexible Capacity is also known as “generic capacity”.

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

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

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

“Interconnection Facilities” means all apparatus installed between a Storage Unit and the Interconnection Point on the Transmission Provider’s electrical system, other participating transmission owner’s system, or the CAISO Controlled Grid, to interconnect the Project to make the Product available to SCE and to charge and discharge the Storage Unit(s), including connection, tie-line, transformation, switching, metering, communications, control, and safety equipment, such as equipment required to protect (a) the Transmission Provider’s electric system (or other participating transmission owner’s system to which the Transmission Provider’s electric system is connected, including the CAISO Controlled Grid) and SCE’s customers from faults occurring at the Storage Unit(s), and (b) the Storage Unit(s) from faults occurring on the Transmission Provider’s electric system or on other participating transmission owner’s system to which the Transmission Provider’s electric system is connected.

“Interconnection Point” means the location where the Project first interconnects with the existing electrical transmission or distribution system, as described in Section 1.02(d).

“Interconnection Queue Position” is the order of Seller’s valid request for interconnection relative to all other valid interconnection requests, as specified in Section 1.02(e).

“Interconnection Study” means any of the studies defined in the CAISO Tariff or any Transmission Provider’s tariff that reflect methodology and costs to interconnect the Project to the Transmission Provider’s electric grid.

“Interest Payment” means a payment amount that results from the product of the following three factors:

1. the dollar amount on which an interest payment is based;
2. for any given month in which the payment is made, the average of the annual interest rates reported for all weekdays in such month opposite the caption “Federal funds (effective)” as set forth in the H.15 release, or any successor publication, published by the Board of Governors of the Federal Reserve System; and
3. the number of days in the calculation period divided by 360.

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

“kW” means a kilowatt of alternating current electric energy generating capacity.

“Lender” means any financial institutions that provide(s) development, bridge, construction, permanent debt or Tax Equity Financing or refinancing for the Project to Seller.

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

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

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

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

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

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

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

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

provided, no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Agreement.

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

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

“Local Resource Constrained Day” has the meaning set forth in Section 6.04(a).

“Market-Based Rate Authority” has the meaning set forth in Section 2.04(c).

“Marketable Emission Trading Credits” means emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (42 U.S.C. § 7651b (a) to (f)).

*[“Maximum Efforts” means, with respect to performance during an N-2 Event, using all possible efforts and taking all possible actions, consistent with industry accepted safety practices, to make the Project’s capacity available to the Transmission Provider or CAISO as expeditiously and completely as possible by, among other things:*

*(a) giving prompt notice to SCE of each outage affecting the Project, the reason for the outage, and its expected duration;*

*(b) accelerating any and all work required to return the Project to service during the N-2 Event, including paying for alternative arrangements for quicker transportation of necessary equipment and additional staffing at the Project;*

*(c) taking any action needed to ensure maximum generation output from the Project even if such action is detrimental to the long-term use of the Project;*

*(d) taking all necessary actions to charge the Storage Units and operate the Project as directed by Transmission Provider or CAISO, regardless of related market clearing prices or other CAISO or market costs;*

*(e) not engaging in any activity, such as submitting and maintaining Bids or Schedules, that would result in the discharge of the Storage Units outside any discharge order from the Transmission Provider, or CAISO pursuant to a declared Emergency or other operational order that would take precedence over this Agreement; and*

*(f) incurring extraordinary expenses, if necessary, to accomplish the foregoing.]*

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

“Milestone Schedule” means Seller’s schedule to develop the Project as set forth in Exhibit C, including any revisions thereto in accordance with this Agreement.

“Monthly Capacity Payment” has the meaning set forth in Section 3.05.

“Monthly Capacity Price” means the price for each applicable Showing Month set forth in Section 1.04, as may be reduced pursuant to Section 3.07.

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

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

“MW” means megawatt or megawatts.

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

*[“N-2 Event Notification” has the meaning set forth in Section 22.02(b).]*

“NERC” means the North American Electric Reliability Corporation.

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

“NERC Standards Non-Compliance Penalties” means any and all monetary fines, penalties, damages, interest or assessments by NERC, the CAISO, WECC, a Governmental Authority or any entity acting at the direction of a Governmental Authority arising from or relating to a failure to perform obligations as set forth in the NERC Reliability Standards.

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

“Network Upgrades” has the meaning set forth in Section 5.01(a).

“Network Upgrades Cap” has the meaning set forth in Section 5.01(b)(i)(A).

“New Resource” has the meaning set forth in Section 9.02(a).

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

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

“Notice” has the meaning set forth in Section 14.02.

“Obligation Month” has the meaning set forth in Section 3.01.

“Operating Day” has the meaning set forth in the CAISO Tariff.

“Outage Schedule” has the meaning set forth in Section 6.05(a).

“Outstanding Bid Quantity” has the meaning set forth in Section 6.04(c).

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

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

“Permits” means all applications, approvals, authorizations, consents, filings, licenses, orders, permits or similar requirements imposed by any Governmental Authority, or the CAISO, in order to develop, construct, operate, maintain, improve, refurbish and retire the Project.

“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.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Phase I Interconnection Study” has the meaning set forth in the CAISO Tariff.

“Phase II Interconnection Study” has the meaning set forth in the CAISO Tariff.

“Planned Outage” means, an Approved Maintenance Outage (as defined in the CAISO Tariff), but does not include an RA Maintenance Outage With Replacement (as defined in the CAISO Tariff), a Short-Notice Opportunity RA Maintenance Outage (as defined in the CAISO Tariff) or an Off-Peak Opportunity RA Maintenance Outage (as defined in the CAISO Tariff).

“PMAX” means the applicable CAISO-certified maximum operating level of a Storage Unit.

“PMIN” means the applicable CAISO-certified minimum operating level of a Storage Unit.

“Predicted Capacity means the aggregate sum of the expected Unit NQCs for each of the Storage Units that are part of the Project. The Predicted Capacity of the Project is set forth in Section 1.03.

“Predicted SU Capacity” means the expected Unit NQC for any particular Storage Unit as set forth for such Storage Unit in Exhibit B.

“Predicted SU Flexible Capacity” means the expected Unit EFC for any particular Storage Unit as set forth for such Storage Unit in Exhibit B.

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

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

“Product” has the meaning set forth in Section 1.01.

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

“Project Security” means Development Security or Performance Assurance.

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

“Prudent Electrical Practices” means those practices, methods and acts that would be implemented and followed by prudent operators of electric energy storage facilities in the Western United States, similar to the Project, during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known or that should reasonably have been known at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety.

Prudent Electrical Practices shall include, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with manufacturers’ warranties, restrictions in this Agreement, WECC standards, and Applicable Laws.

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

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

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

### Preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe operation of the Project, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;

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

### Equipment is not operated in a reckless manner, in violation of manufacturer’s guidelines or in a manner unsafe to workers, the general public, or the Transmission Provider’s electric system or contrary to environmental laws, permits or regulations or without regard to defined limitations such as, flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and

### 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.

“RA Capacity Qualification Tests” means any and all tests, certifications or performance evaluations required by the CPUC, any other applicable Governmental Authority, or the CAISO pursuant to any Applicable Laws, in order for a Storage Unit to obtain, maintain or update a Unit NQC and Unit EFC, including testing for PMAX.

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

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

“RA Replacement Capacity” has the meaning set forth in Section 6.03(a)(iv).

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

“Real-Time Market” or “RTM” has the meaning set forth in the CAISO Tariff.

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

“Reduced Price Percent” shall have the meaning set forth in Section 3.07.

“Reliability Must-Run Contract” or “RMR Contract” has the meaning set forth in the CAISO Tariff.

“Repair Plan” has the meaning set forth in Section 6.02(c).

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

“Resold Product” has the meaning set forth in Section 1.06.

“Resource Adequacy Benefits” means the rights and privileges attached to the Project relating to Capacity Attributes that satisfy any entity’s Resource Adequacy Requirements, as those obligations are set forth in any Resource Adequacy Rulings and shall include any local, zonal or otherwise locational attributes associated with the Project.

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

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

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

“RT Bid Revision” has the meaning set forth in Section 6.04(d).

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

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

“SCE’s DAM Deadline” has the meaning set forth in Section 6.04(c).

“SCE’s RT Deadline” has the meaning set forth in Section 6.04(c).

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

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

“SEC” means the Securities and Exchange Commission.

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

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

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

“Shortfall Capacity” means any portion of the Expected Contract Quantity for any portion of a Showing Month which was shown by SCE in its RA Compliance Showings and which requires outage replacement in accordance with the CAISO Tariff.

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

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

“Site Control” means that Seller shall:

### Own the Site;

### Be the lessee of the Site under a lease;

### Be the holder of a right-of-way grant or similar instrument with respect to the Site; or

### Be the managing partner or other person or entity authorized to act in all matters relating to the control and operation of the Site and the Project.

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

“Storage Unit Removal Right” means, with respect to any Storage Unit that is subject to Sections 6.02(d)(i) or 6.02(e)(i), SCE’s right to designate such affected Storage Unit(s) for removal from this Agreement. Upon Notice of such designation: (i) SCE shall have no obligation to compensate Seller for Product from such Storage Unit(s), (ii) IDD Capacity, Predicted Capacity, Project, Product, and Exhibit B and any other information specific to such Storage Unit(s) shall automatically be amended to reflect the removal of such Storage Unit(s), (iii) Seller shall not be permitted to market, dispatch, provide, or convey Product from such Storage Units for SCE or any other third party, (iv) SCE shall calculate, and Seller shall be obligated to pay, a Termination Payment attributable to and associated with the Product from such Storage Unit(s) with SCE being considered the Non-Defaulting Party in all circumstances, and (v) notwithstanding clause (iv), this Agreement will otherwise remain in full force and effect.

“SU Capacity” means the actual Unit NQC, as of the Initial Delivery Date, for any particular Storage Unit.

“SU Flexible Capacity” means that actual Unit EFC, as of the Initial Delivery Date, for any particular Storage Unit.

“Successful Repair” means that, immediately upon completion of the repairs to a particular Storage Unit, Seller conducts an RA Capacity Qualification Test, at Seller’s expense, and obtains (a) a Unit NQC for the applicable Storage Unit equal to or greater than ninety-eight percent (98%) of SU Capacity for such Storage Unit and (b) a Unit EFC for the applicable Storage Unit equal to or greater than ninety-eight (98%) of the SU Flexible Capacity for such Storage Unit.

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

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

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

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

“Termination Payment” means the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement, as calculated under Section 10.03.

“Third Party Sale” has the meaning set forth in Section 2.03.

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

“Transmission Provider” means any entity or entities responsible for (i) the interconnection of the Project to the distribution or, if applicable, transmission system; (ii) the operation of the distribution or transmission system; or (iii) transmitting the Energy on behalf of Seller from the Project to the Energy Delivery Point.

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

“Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Storage Unit.

“Web Client” means a web-based system approved by SCE.

“WECC” means the Western Electricity Coordinating Council.

*\*\*\* End of EXHIBIT A \*\*\**

**EXHIBIT B**

**PROJECT DESCRIPTION**

PART I. DESCRIPTION OF STORAGE UNIT.

|  |  |
| --- | --- |
| Project Name |  |
| Storage Unit(s) |  |
| Predicted SU Capacity |  |
| Predicted SU Flexible Capacity |  |
| Site Address | [ # Street Name, City, CA, zip code] |
| Existing Zone | [SP15] |
| Storage Unit Technology |  |
| Primary Storage Fuel Type | Electricity |
| Configuration |  |
| Rated Power Capacity (MW) |  |
| Inverter Limit (MW) |  |
| CAISO Resource ID | TBD |
| Air Pollution Control District | [e.g., SCAQMD] |
| California Air Resources Board ID # | TBD |
| Resource Category for RA Counting | 4 |
| Local area reliability region | [e.g., Western LA Basin] |
| Deliverability restrictions | None |
| Interconnection Queue Number |  |
| Interconnection Voltage (kV) |  |
| A-Bank Substation |  |

PART II. PROJECT AND SITE DESCRIPTION.

1. Site Legal Description

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

2. Site Map

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

PART III. ELECTRICAL SINGLE LINE DIAGRAM.

*{SCE Comment: Seller must provide an electrical single line diagram that depicts all of the major electrical equipment that is part of the site. This includes inverters, transformers, meters, breakers, etc. Include ratings when possible. This drawing must also show the Interconnection Point and the Energy Delivery Point.}*

*\*\*\* End of EXHIBIT B \*\*\**

**EXHIBIT C**

**MILESTONE SCHEDULE**

*[SCE Note: Exhibit is subject to modification for technology specific differences]*

– 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 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 |  | Submit Applicable Transmission Provider Interconnection Application |
| 3 |  | File a CEC Certification and Verification Application |
| 4 |  | Receive a Completed Interconnection System Impact Study (or equivalent) |
| 5 |  | Receive a Completed Interconnection Facilities Study (or equivalent) |
| 6 |  | Finalize Labor Agreement Negotiations |
| 7 |  | Execute a Transmission Provider Interconnection Agreement |
| 8 |  | Receive FERC Acceptance of Interconnection Agreement and Transmission Agreement(s) |
| 9 |  | Receive CEC Certification and Verification or APCD permit if applicable |
| 10 |  | Obtain Control Of All Lands and Rights-Of-Way Comprising The Site |
| 11 |  | Receive CEC Full Notice To Proceed |
| 12 |  | Receive All Other Permits |
| 13 |  | **Financing** |
| 14 |  | Verify That Seller’s Bank Has Received All Required Due Diligence Information |
| 15 |  | Complete Bank Financing |
| 16 |  | **Engineering** |
| 17 |  | Execute EPC Contract |
| 18 |  | Begin Existing Site Re-Engineering |
| 19 |  | Begin New Storage Unit Engineering Design |
| 20 |  | Lump Sum Estimate Preparation |
| 21 |  | Complete Existing Site Re-Engineering |
| 22 |  | Complete New Storage Unit Engineering Design |
| 23 |  | **Construction – Initial Site Work** |
| 24 |  | Begin Civil Tasks - CTG’s |
| 25 |  | Begin Mechanical Tasks - U/G Piping |
| 26 |  | Begin Electrical Tasks - U/G Electrical |
| 27 |  | **Construction** |
| 28 |  | Begin Construction of the Project - Erect Equipment |
| 29 |  | Civil Tasks - Balance of Plant |
| 30 |  | Mechanical Tasks - A/G Piping |
| 31 |  | Electrical Tasks - A/G Electrical |
| 32 |  | Erect Storage Units |
| 33 |  | Commission Storage Units |
| 34 |  | Complete Construction of the Project |
| 35 |  | Commissioning |
| 36 |  | Begin Start-Up Activities - BOP Systems |
| 37 |  | Achieve Initial Operation |
| 38 |  | Demonstrate Storage Unit Capacity |
| 39 |  | Expected Initial Delivery Date |
| 40 |  | **Front End Engineering / Permits / Agreements** |
| 41 |  | Submit Applicable Transmission Provider Interconnection Application |
| 42 |  | File a CEC Certification and Verification Application |
| 43 |  | Receive a Completed Interconnection System Impact Study (or equivalent) |
| 44 |  | Receive a Completed Interconnection Facilities Study (or equivalent) |

*\*\*\* End of EXHIBIT C \*\*\**

**EXHIBIT D**

**CONSTRUCTION REPORT**

*[SCE Note: Exhibit is subject to modification for technology specific differences]*

Monthly Project Progress Report

From the Effective Date of this Agreement 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:

Engineering;

Procurement;

Permitting (include status of any required regulatory determinations for approval of Federal New Source Review permitting exemptions, expedited permitting processes, and status of acquisition of required ERCs and other emission credits in terms of impact on the Project’s permitting schedule, over-all Project schedule, and ability of Project to meet Initial Delivery Date);

Major construction activities in the prior month;

Testing;

Electrical interconnection status; and

Any other required interconnections.

1. Forecast activities for next month; and
2. 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 7 – 12) below, and make such documents available to SCE within two (2) Business Days after such receipt:

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

*\*\*\* End of EXHIBIT D \*\*\**

**EXHIBIT E**

**SUPPLY PLAN INFORMATION**

Resource ID: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Benefitting load serving entity SC identification number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*\*\*\* End of EXHIBIT E \*\*\**

**EXHIBIT F**

**OUTAGE SCHEDULE REPORT**

Actual Outage Schedule reports submitted under this Agreement should be provided in Excel.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **DATE OF UPDATE** | | |  | | |
| **RESOURCE NAME** | | |  | | |
| Replicate for each Storage Unit | | | |  |  |
|  |  | |  |  |  |
| **Scheduled Outages** | |  |  |  |  |
| **Start Date** | **HE** | | **End Date** | **HE** | **MW Available** |
|  |  | |  |  |  |
|  |  | |  |  |  |
|  |  | |  |  |  |
|  |  | |  |  |  |
|  |  | |  |  |  |

*\*\*\* End of EXHIBIT F \*\*\**

**EXHIBIT G**

*Notice*

| ***[SELLER’S NAME]*** (“Seller”) | **SOUTHERN CALIFORNIA EDISON COMPANY** (“SCE”) |
| --- | --- |
| All Notices are deemed provided in accordance with Section 14.02 if made to the address and facsimile numbers provided below: | Unless otherwise specified, all Notices are deemed provided in accordance with Section 14.02 if made to the Contract Sponsor at the address or facsimile number provided below: |
| **Contract Sponsor:**  Attn:    Street:  City:  Phone:  Facsimile: | **Contract Sponsor:**  Attn: Vice President of Energy Procurement & Management  Street: 2244 Walnut Grove Avenue  City: Rosemead, California 91770  Phone: 626-302-4023  Facsimile: 626-302-9622 |
| **Reference Numbers:**  Duns:  Federal Tax ID Number: | **Reference Numbers:**  Duns: 006908818  Federal Tax ID Number: 95-1240335 |
| **Contract Administration:**  Attn:  Phone:  Facsimile: | **Contract Administration:**  Attn: Director, Contract Management and Administration  Phone: 626-302-6060  Email: Energycontracts@sce.com |
| **Payment Invoices:**  Attn:  Phone:  Facsimile:  E-mail: | **Payment Invoices:**  Attn: Contract Settlements  Phone: 626-302-8908  Facsimile: 626-302-3276  E-mail: PPFDPowerSettle@sce.com |
| **Payments:**  Attn:  Phone:  Facsimile:  E-mail: | **Payments:**  Attn: Contract Settlements  Phone: 626-302-8908  Facsimile: 626-302-3276  E-mail: PPFDPowerSettle@sce.com |
|  | Outage Desk:  Phone:  Facsimile:  E-mail: |
| **ACH Routing Information:**  Financial Institution: [\_\_\_\_\_\_\_\_\_\_\_\_\_]  Branch: [\_\_\_\_\_\_\_\_\_\_\_\_\_]  Address: [\_\_\_\_\_\_\_\_\_\_\_\_\_]  City, State, & Zip: [\_\_\_\_\_\_\_\_\_\_\_\_\_]  Routing Number: [\_\_\_\_\_\_\_\_\_\_\_\_\_] Account Number: [\_\_\_\_\_\_\_\_\_\_\_\_\_] | **ACH Routing Information:**  Financial Institution: JPMorgan Chase  Routing Number: 021000021 Account Number: 323-394434 |
| **Wire Transfer:**  BNK:  ABA:  ACCT: | **Wire Transfer:**  BNK: JP Morgan Chase Bank  ABA: 021000021  ACCT: 323-394434 |
| **Credit and Collections:**  Attn:  Phone:  Facsimile:  E-mail: | **Credit and Collateral:**  Credit  Attn: Manager of Credit Risk  Phone: (626) 302-3672    Collateral  Southern California Edison Company  Attn: Manager of Risk Operations & Collateral Management  2244 Walnut Grove Avenue, GO1 Quad 2A  Rosemead, CA 91770  Phone: (626) 302-3383  Email: [scecollateral@sce.com](mailto:scecollateral@sce.com) |
| **With additional Notices of an Event of Default to:**  Attn:  Phone:  Facsimile:  E-mail: | **With additional Notices of an Event of Default to:**  Southern California Edison Company  Law Department, Power Procurement  2244 Walnut Grove Ave.  Rosemead, CA 91770  Attn: Director and Managing Attorney  Email: PPLegalNotice@sce.com |
| **Lender:**  Attn:  Phone:  Facsimile:  E-mail: |  |
| **N-2 Event Notification:**  *[SCE Note: insert email, text number, server, or other electronic destination as mutually agreed by the Parties]* |  |

*\*\*\* End of EXHIBIT G \*\*\**

**EXHIBIT H**

FORM OF CONSENT TO COLLATERAL ASSIGNMENT AGREEMENT

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

RECITALS

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

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

AGREEMENT

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

SECTION 1. CONSENT TO ASSIGNMENT, ETC.

1.1 Consent and Agreement.

SCE hereby acknowledges:

* + - * 1. notice of and consents to the assignment as collateral security to Collateral Agent, for the benefit of the Secured Parties, of the Assigned Interest; and

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

1.2 Project Company’s Acknowledgement.

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

1.3 Right to Cure.

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

1.4 Substitute Owner.

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

1.5 Replacement Agreements.

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

1.6 Transfer.

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

1.7 Assumption of Obligations.

(a) Transferee.

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

(b) Substitute Owner.

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

(c) No Liability.

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

1.8 Delivery of Notices.

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

1.9 Confirmations.

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

1.10 Exclusivity of Dealings.

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

1.11 No Amendments.

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

SECTION 2. PAYMENTS UNDER THE RESOURCE ADEQUACY PURCHASE AGREEMENT

2.1 Payments.

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

2.2 No Offset, Etc.

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

SECTION 3. REPRESENTATIONS AND WARRANTIES OF SCE

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

3.1 Organization.

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

3.2 Authorization.

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

3.3 Execution and Delivery; Binding Agreements.

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

3.4 No Default or Amendment.

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

3.5 No Previous Assignments.

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

SECTION 4. REPRESENTATIONS AND WARRANTIES OF PROJECT COMPANY

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

4.1 Organization.

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

4.2 Authorization.

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

4.3 Execution and Delivery; Binding Agreement.

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

4.4 No Default or Amendment.

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

4.5 No Previous Assignments.

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

SECTION 5. REPRESENTATIONS AND WARRANTIES OF COLLATERAL AGENT

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

5.1 Authorization.

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

5.2 Execution and Delivery; Binding Agreement.

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

SECTION 6. MISCELLANEOUS

6.1 Notices.

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

6.2 Governing Law; Submission to Jurisdiction.

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

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

6.3 Headings Descriptive.

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

6.4 Severability.

In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

6.5 Amendment, Waiver.

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

6.6 Termination.

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

6.7 Successors and Assigns.

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

6.8 Further Assurances.

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

6.9 Waiver of Trial by Jury.

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

6.10 Entire Agreement.

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

6.11 Effective Date.

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

6.12 Counterparts; Electronic Signatures.

This Consent may be executed in one or more counterparts, each of which will be deemed to be an original of this Consent and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Consent and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this Consent as to the Parties and may be used in lieu of the original Consent for all purposes.

*[Remainder of Page Left Intentionally Blank.]*

IN WITNESS WHEREOF, the Parties hereto have caused this Consent to be duly executed and delivered by their duly authorized officers on the dates indicated below their respective signatures.

|  |  |  |
| --- | --- | --- |
| *[NAME OF PROJECT COMPANY],*  *[Legal Status of Project Company]*. |  | SOUTHERN CALIFORNIA EDISON COMPANY,  a California corporation. |
| **By:**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  *[Name]*  *[Title]*  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | **By:**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  *[Name]*  *[Title]*  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  |  |
| *[NAME OF COLLATERAL AGENT],*  *[Legal Status of Collateral Agent].*    By:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  *[Name]*  *[Title]*  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |  |

**SCHEDULE A**

[Describe any disclosures relevant to representations and warranties made in Section 3.4]

**SCHEDULE B**

[Describe any disclosures relevant to representations and warranties made in Section 4.4]

**EXHIBIT I**

**Form of Letter of Credit**

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT

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

Issuance Date:

Issuing Bank:

[insert bank name and address]

Applicant:

[insert applicant name and address]

Beneficiary:

Southern California Edison Company

2244 Walnut Grove Avenue

GO#1, Quad 2A

Rosemead, CA 91770

Attn: Manager of Risk Operations and Collateral Management

Available Amount: [insert amount and spell out]

Expiration Date: [insert date]

Ladies and Gentlemen:

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

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

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

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

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

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

1. A copy of this Letter of Credit and all amendments;

2. A copy of the Drawing Certificate in the form of Attachment “A” attached hereto and which forms an integral part hereof, duly completed and bearing the signature of an authorized representative of the Beneficiary signing as such; and

3. A copy of the Sight Draft in the form of Attachment “B” attached hereto and which forms an integral part hereof, duly completed and bearing the signature of an authorized representative of the Beneficiary.

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

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

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

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

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

Banking charges shall be the sole responsibility of the Applicant.

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

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

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

AUTHORIZED SIGNATURE for Bank

By

Name: [print name]

Title: [print title]

**ATTACHMENT A**

DRAWING CERTIFICATE

TO [ISSUING BANK NAME & ADDRESS]

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

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

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

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

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

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

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

Authorized Signature for Beneficiary:

SOUTHERN CALIFORNIA EDISON COMPANY

By:

Name: [print name]

Title: [print title]

**ATTACHMENT B**

*SIGHT DRAFT*

[INSERT DATE]

TO:

[Issuing bank name & address]

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

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

[insert wiring instruction]

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

Authorized Signature Southern California Edison Company

Name: [print name]

Title: [print title]