MASTER POWER PURCHASE AND SALE AGREEMENT

Confirmation Letter

BETWEEN

[INSERT Counterparty NAME ]

AND

SOUTHERN CALIFORNIA EDISON COMPANY

This Confirmation Letter including all appendices hereto (“Confirmation”) confirms the Transaction between [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] (“Buyer” or [“SCE”/“Counterparty”]) {*SCE Comment: Select appropriate selection. Where SCE is acting as the buyer, the term “Counterparty” should be deleted.}* and [\_\_\_\_\_\_\_\_\_\_\_] (“Seller” or [“SCE”/ “Counterparty”]) *{SCE Comment: Select appropriate selection. Where SCE is acting as the seller, the term “Counterparty” should be deleted.}*,[[1]](#footnote-2) each individually a “Party” and together the “Parties”, dated as of [Date] (the “Confirmation Effective Date”) in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in this Confirmation, in the amounts described in this Confirmation. This Transaction is governed by the Edison Electric Institute (“EEI”) Master Power Purchase and Sale Agreement between the Parties, effective as of [Date], along with the Cover Sheet, any amendments and annexes thereto (the “Master Agreement”), and including, the EEI Collateral Annex to the Master Agreement along with the Paragraph 10 to the Collateral Annex between the Parties (such Paragraph 10 and the Collateral Annex are referred to collectively herein as the “Collateral Annex”) (the Master Agreement and the Collateral Annex shall be collectively referred to as the “EEI Agreement”). The EEI Agreement and this Confirmation shall be collectively referred to herein as the “Agreement”. Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the EEI Agreement, or the CAISO Tariff (defined herein below). To the extent this Confirmation is inconsistent with any provision of the EEI Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

# article 1. TRANSACTION TERMS

## **Product; Elections**

## Buyer: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

## Seller: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

### **Flexible Capacity**: **[ ]** Applicable

### **[ ]** Not applicable

## **Product**: The product, including the Capacity Attributes of the Unit(s), Alternate Unit(s) or Shown Unit(s), is as defined in Appendix B.

## **Delivery of Product**

Seller shall sell and deliver to Buyer, and Buyer shall receive and purchase from Seller the Product in the amount of the applicable Contract Quantity for each day of each month of the Delivery Period.

## **Delivery Period and Term**

### Delivery Period. The Delivery Period shall be: [Start Date] through [End Date], inclusive, unless terminated earlier in accordance with the terms of this Agreement.

### Term. The Term of this Transaction shall commence upon the Confirmation Effective Date and shall continue until the later of (i) the expiration of the Delivery Period or (ii) the date the Parties’ obligations under this Confirmation have been satisfied. This Confirmation shall be effective and binding as of the Confirmation Effective Date.

## **Contract Quantity**

The Contract Quantity for each day of each applicable Showing Month is as follows:

Contract Quantity (MWs for each day of such Showing Month)

| **Showing Month** | **2019** | **2020** |
| --- | --- | --- |
| January |  |  |
| February |  |  |
| March |  |  |
| April |  |  |
| May |  |  |
| June |  |  |
| July |  |  |
| August |  |  |
| September |  |  |
| October |  |  |
| November |  |  |
| December |  |  |

## **Flexible Capacity**

If the Parties have designated Flexible Capacity as “Applicable”, then the Flexible Capacity included in the Contract Quantity for each day of each applicable Showing Month is as follows:

**Flexible Capacity (MWs for each day of such Showing Month)**

| **Showing Month** | **2019** | **2020** |
| --- | --- | --- |
| January |  |  |
| February |  |  |
| March |  |  |
| April |  |  |
| May |  |  |
| June |  |  |
| July |  |  |
| August |  |  |
| September |  |  |
| October |  |  |
| November |  |  |
| December |  |  |

## **Contract Price**

The Contract Price means, for any Showing Month, the price specified in the Contract Price table as set forth below, for such Showing Month:

CONTRACT PRICE TABLE

|  |  |
| --- | --- |
| Showing Month, Year | Contract Price($/kW-month) |
| [Month, Year] |  |
| [Month, Year] |  |

# ARTICLE 2. delivery obligations

## **2.1 Delivery of Product**

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

### Seller shall, on a timely basis, submit, or cause the Unit’s SC to submit, (i) Monthly Supply Plans and (ii) Annual Supply Plans if the Confirmation Effective Date is prior to the year-ahead Compliance Showing deadline applicable for the Showing Months as specified in Sections 1.4 and 1.5 herein, in accordance with the CAISO Tariff to identify and confirm the Expected Contract Quantity provided to Buyer 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 Unit’s SC to submit written notification to Buyer, no later than fifteen (15) Business Days before the initial Compliance Showing deadline for each Showing Month, confirming that Buyer will be specified as the recipient of the Expected Contract Quantity for each day of such Showing Month in the Unit’s SC Supply Plan. For illustrative purposes only, as of the Confirmation 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.

## **2.2 Adjustments to Contract Quantity**

Seller shall deliver to Buyer the Contract Quantity of Product for each day of each Showing Month consistent with the following:

### Planned Outages: Seller’s obligation to deliver the Contract Quantity for each day of each Showing Month may be reduced at Seller’s option by the amount of any Planned Outages which exist with respect to any portion of the Unit during the applicable Showing Month for the applicable days of such Planned Outages; provided*,* (i) Seller notifies Buyer, no later than fifteen (15) Business Days before the initial deadline for the Compliance Showing applicable to that Showing Month, of the amount of Product from the Unit Buyer is permitted to include in Buyer’s Compliance Showings applicable to that month as a result of such Planned Outage, and (ii) such reduction is able to be reflected on the Supply Plans in accordance with the CAISO Tariff.

### Reductions in Unit NQC and Unit EFC: Seller’s obligation to deliver the applicable Contract Quantity for each Showing Month may also be reduced in the event the Unit experiences a reduction in Unit NQC or Unit EFC after the Confirmation Effective Date as determined by the CAISO. In the event the Unit experiences such a reduction in Unit NQC or Unit EFC, Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 2.3.

## **2.3 Seller’s Option To Provide Substitute Capacity**

If Seller is unable to provide the full Contract Quantity in accordance with Section 2.2 for any Showing Month for any reason, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Buyer, provide Buyer with replacement Product from one or more Replacement Units in an amount such that the total amount of Product provided to Buyer from the Unit and Replacement Units for each day of the Showing Month is not more than the Contract Quantity in accordance with Section 2.2 for the applicable Showing Month, provided that in each case:

### Seller shall notify Buyer of its intent to provide replacement Product and identify like-for-like replacement units, similar to the Unit originally identified in Appendix B (“Replacement Units”), meeting the above Contract Quantity requirements no later than fifteen (15) Business Days before the initial deadline for Buyer’s Compliance Showing related to such Showing Month;

### [Reserved];

### Seller shall cause such Replacement Units to be approved in CAISO’s CIRA Tool (or successor platform) prior to CAISO issuing its Planned Outage Substitution Obligation (“POSO”) requirement to SCE; and

### if Seller does not cause the approval of the Replacement Units in CAISO’s CIRA Tool (or successor platform) as set forth in Section 2.3(c) for the applicable Showing Month, then any such Replacement Units shall not be deemed a Unit for purposes of this Confirmation for that Showing Month and Seller shall not receive payment for such replacement Product.

#### Subject to the satisfaction of the conditions contained in subsections (a) – (d) of this Section 2.3, once Seller has identified in writing any Replacement Units that meet the requirements of this Section 2.3, then any such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month.

## **2.4 Damages for Failure to Provide Capacity**

If Seller fails to provide Buyer with the Expected Contract Quantity of Product for any day of any Showing Month, in accordance with Section 2.1 (the “Replacement Obligation”), in each case as applicable, then the following shall apply:

### Buyer may, but shall not be required to, replace all or any portion of the Replacement Obligation for the applicable Showing Month with capacity having equivalent Capacity Attributes as the Expected Contract Quantity; provided, if, using commercially reasonable efforts, Buyer is unable to acquire capacity having equivalent Capacity Attributes for any portion of any Showing Month, Buyer may replace such portion of the Replacement Obligation with capacity having Capacity Attributes in excess of the Contract Quantity (the “Replacement Capacity”). Buyer may enter into purchase transactions with one or more parties to purchase Replacement Capacity. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party, and such arrangements shall be considered the procurement of Replacement Capacity. Buyer shall act in a commercially reasonable manner to minimize damages in procuring any Replacement Capacity.

### Seller shall pay to Buyer at the time set forth in Section 4.1 of the Master Agreement, the following damages in lieu of damages specified in Section 4.1 of the Master Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, including any transaction costs and expenses incurred in connection with such procurement, plus (B) each applicable Replacement Capacity Price multiplied by the aggregate amount of Replacement Obligation neither provided by Seller as Substitute Capacity nor purchased by Buyer as Replacement Capacity, for all applicable portions of the applicable Showing Month pursuant to Section 2.4(a), and (ii) the Replacement Obligation minus the Substitute Capacity, not provided for all applicable portions of the applicable Showing Month times the Contract Price for that month.

##  **Indemnities for Failure to Deliver Expected Contract Quantity**

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

### Seller’s failure to provide any portion of the 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 2.2;

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

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

### any other failure by Seller to perform its obligations under this Confirmation.

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

## **Buyer’s Re-Sale of Product**

### Buyer may re-sell all or a portion of the Product and any associated rights, in each case, acquired under this Confirmation. Subject to Article 6 below, in the event Buyer re-sells all or a portion of the Product and any associated rights acquired under this Confirmation (“Resold Product”) Seller agrees, and agrees to cause the Unit’s SC, to follow Buyer’s instructions with respect to providing such Resold Product to subsequent purchasers of such Resold Product. Subject to Article 6 below, Seller further agrees, and agrees to cause the Unit’s SC, to take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product. Seller acknowledges and agrees that with respect to any Resold Product, if Buyer incurs any liability to any purchaser of such Resold Product due to the failure of Seller or the Unit’s SC to comply with the terms of this Confirmation, and Seller would have had liability to Buyer under this Confirmation for such failure had Buyer not sold the Resold Product to a subsequent purchaser, then Seller shall be liable to Buyer under this Confirmation, including without limitation, pursuant to Sections 2.4 and 2.5, for the amounts it would have been liable to Buyer for had such Resold Product not been sold to a subsequent purchaser.

### In the event there is any Resold Product, Buyer agrees to notify Seller that such a sale has occurred and agrees to provide Seller with the information described in Appendix D promptly following such sale. Buyer also agrees to promptly notify Seller of any subsequent changes to the information in Appendix D with respect to any particular sale.

## **CAISO Offer Requirements**

Seller shall, or cause each Unit’s SC to, schedule with, or make available to, the CAISO the Expected Contract Quantity for each Unit in compliance with the CAISO Tariff, and shall, or shall cause each Unit’s SC, owner, or operator, as applicable, to perform all obligations under the CAISO Tariff that are associated with the sale and delivery of Product hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit’s SC, owner, or operator to comply with such CAISO Tariff provisions, including any penalties, charges or fines imposed on Seller or such Unit’s SC, owner, or operator for such noncompliance.

## **Unit SC’s Replacement Obligation**

After the obligation to replace all or any portion of the Expected Contract Quantity transfers from the load serving entity to the Unit’s SC for a Showing Month in accordance with the CAISO Tariff, and if the CAISO determines that any portion of the Expected Contract Quantity for any portion of a Showing Month that was shown by Buyer in its Compliance Showings requires outage replacement in accordance with Section 40.7(b) of the CAISO Tariff because the Unit, or Replacement Unit, as applicable, is scheduled to take an outage (planned or otherwise) (such amount requiring outage replacement, the “SC Replacement Capacity”), then: (a) Seller shall have no liability under Sections 2.4 or 2.5 with respect to such SC Replacement Capacity; and (b) Seller shall have no liability to Buyer for any costs that are allocated to Buyer by the CAISO for any CPM Capacity procured by the CAISO pursuant to the Capacity Procurement Mechanism and that are related to such SC Replacement Capacity. For illustrative purposes only, as of the Confirmation Effective Date, the obligation to replace all or any portion of the Expected Contract Quantity transfers from the load serving entity to the Unit’s SC eight (8) days prior to the Showing Month covered by the Supply Plan for the Monthly Supply Plan. The Parties acknowledge and agree that such date may be modified by the CAISO from time to time throughout the Term.

# PAYMENT

## **Monthly Payment**

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a Monthly Payment to Seller, after the applicable Showing Month, as follows:

***Monthly Payment = (A x B x 1,000)***

where:

*A* = applicable Contract Price for that Showing Month

B = $\sum\_{i}^{n}[(C\_{i}-D\_{i}) ×(\frac{1}{n})]$

C = Expected Contract Quantity provided by Seller to Buyer for the applicable day of the Showing Month

D = Aggregate megawatts of Shortfall Capacity associated with the applicable day of the Showing Month

i = Each day of Showing Month

n = number of days in the Showing Month

The Monthly 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 charged by the CAISO or any other third party with respect to the Unit for (i) start-up, shutdown, and minimum load costs, (ii) energy sales, and (iii) any revenues for black start or reactive power services.

### Buyer shall be entitled to receive and retain all revenues associated with the Aggregate Contract Quantity (including any capacity revenues from RMR Contracts for the Unit, Capacity Procurement Mechanism or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(iv)).

### In accordance with Section 3.1 of this Confirmation and Article Six of the Master Agreement,

#### all such Buyer revenues described in this Section 3.2, but received by Seller, or a Unit’s SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit’s SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues pursuant to Article Six of the Master Agreement against any future amounts Buyer may owe to Seller. In order to verify the accuracy of such revenues, Buyer shall have the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity; and

### all such Seller, or a Unit’s SC, owner, or operator revenues described in this Section 3.2, but received by Buyer shall be remitted to Seller. If Buyer fails to pay such revenues to Seller, Seller may offset any amounts owing to it for such revenues pursuant to Article Six of the Master Agreement against any future amounts it may owe to Buyer.

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

### Seller agrees that the 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 the Seller and for Seller’s account and that any Non-Availability Charges are the responsibility of the Seller and for Seller’s account.

## **Offset Rights**

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

# Other Buyer and Seller Covenants

## **4.1 Seller’s and Buyer’s Duty to Take Action to Allow the Utilization of the Product**

Buyer and Seller shall, throughout the Delivery Period: (a) cause the required showing information listed in Appendix C to be included in all applicable Supply Plans; (b) execute any and all documents or instruments reasonably necessary to ensure Buyer’s right to the use of the Aggregate Contract Quantity for the sole benefit of Buyer or any subsequent purchaser under Section 2.6; and (c) cause all Supply Plans to be filed in conformance with the requirements of the CPUC Filing Guide and the CAISO Tariff. If during the Delivery Period, there are changes to the information included in Appendix C, the Parties agree to communicate such changes to each other promptly. The Parties further agree to negotiate in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, CAISO or other Governmental Authority having jurisdiction to administer Compliance Obligations, so as to maintain the benefits of the bargain struck by the Parties on the Confirmation Effective Date.

## **Seller’s Representations, Warranties and Covenants**

### Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

#### Seller owns or has the exclusive right to the Product sold under this Confirmation from the Unit, and shall furnish Buyer, CAISO, CPUC or other Governmental Authority with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

#### No portion of the Aggregate Contract Quantity has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit’s owner or operator;

#### Seller and the Unit’s SC, owner and operator shall each obligated to, comply with Applicable Laws relating to the Product;

#### (A) Seller shall, and shall cause the Unit’s SC to promptly (and in any event within one (1) Business Day of the time Seller receives notification from the CAISO) notify Buyer in the event the CAISO designates any portion of the Aggregate Contract Quantity as CPM Capacity and (B) in the event the CAISO makes such a designation Seller shall, and shall cause the Unit’s SC to not accept any such designation by the CAISO unless and until Buyer has agreed to accept such designation;

#### Buyer shall have the exclusive right to offer the Aggregate Contract Quantity, or any portion thereof, to the CAISO as CPM Capacity and Seller shall not, and shall cause the Unit’s SC not to, offer any portion of the Aggregate Contract Quantity to the CAISO as CPM Capacity or accept any designation of any portion thereof as CPM Capacity;

#### The Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;

#### Seller shall, and the Unit’s SC, owner and operator is obligated to, comply with Applicable Laws relating to the Product;

#### Buyer shall have no liability for the failure of Seller or the failure of the Unit’s SC, owner, or operator to comply with such CAISO Tariff provisions, including any penalties, charges or fines imposed on Seller or the Unit’s SC, owner, or operator for such noncompliance.

#### If Seller is the owner of the Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for the Unit does not exceed the Unit NQC or Unit EFC for that Unit;

#### Seller has notified the SC of the Unit that Seller has transferred the Contract Quantity, including the amount of Flexible Capacity and Inflexible Capacity, to the extent applicable, with respect to each day of each Showing Month to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the CAISO Tariff and this Confirmation;

#### Seller has notified the SC of the Unit that Seller is obligated to cause the Unit’s SC to provide to the Buyer, at least fifteen (15) Business Days before the initial deadline for each Compliance Showing, the applicable Expected Contract Quantity of the Unit for each day of such Showing Month, including the amount of Flexible Capacity and Inflexible Capacity, to the extent applicable, that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and

#### Seller has notified the Unit’s SC that Buyer is entitled to the revenues set forth in Section 3.2, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

### If the Parties have designated Flexible Capacity as “Applicable”, then the following representation and warranty shall apply to Seller throughout the Delivery Period:

### If Seller is the owner of the Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for the Unit and which are eligible to satisfy a load serving entity’s Flexible RAR, does not exceed the Unit EFC for that Unit.

### Seller represents, warrants and covenants to Buyer that, as of the Confirmation Effective Date, all of the information set forth on Appendix B hereto is true, correct and complete.

### If the Parties have designated Flexible Capacity as “Applicable”, then Seller represents, warrants and covenants to Buyer that, as of the Confirmation Effective Date, the CAISO has given the Unit the Unit EFC set forth on Appendix B hereto.

# CONFIDENTIALITY

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that: (i) Buyer may disclose the Aggregate Contract Quantity or any applicable portion of the Aggregate Contract Quantity, including any amounts of Flexible Capacity and Inflexible Capacity, to the extent applicable, under this Transaction to any Governmental Authority, the CPUC, the CAISO in order to support its Compliance Showings, if applicable; (ii) Seller may disclose the transfer of the Aggregate Contract Quantity and the applicable Contract Quantity and Expected Contract Quantity (as well as any amounts of Flexible Capacity and Inflexible Capacity, to the extent applicable) for each day of each Showing Month under this Transaction to the SC of the Unit in order for such SC to timely submit accurate Supply Plans; (iii) both Parties may disclose the terms and conditions of the Agreement and any and all written or recorded or oral information, data, analyses, documents, and materials furnished or made available by a Party to the other Party in connection with this Agreement to the Independent Evaluator; and (iv) Buyer and the Independent Evaluator may disclose the terms and conditions of the Agreement and any and all written or recorded or oral information, data, analyses, documents, and materials furnished or made available by a Party to the other Party in connection with this Agreement to the CAISO, the CPUC, and all divisions thereof, the California Energy Commission, and participants of the Procurement Review Group established pursuant to D.02-08-071 and D.03-06-071; provided, that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Authority, CAISO, or SC to further disclose such information. In addition, in the event Buyer resells all or any portion of the Aggregate Contract Quantity to another party, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction.

# HOLDBACK AND SUBSTITUTE CAPACITY

No later than five (5) Business Days before the deadline for the initial Compliance Showing with respect to a particular Showing Month, Buyer may request that Seller not list, or cause the Unit’s SC not to list, a portion or all of a Unit’s applicable Expected Contract Quantity for 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 2.1 for purposes of calculating a Monthly Payment pursuant to Section 3.1 and calculating any amounts due pursuant to Section 2.4 or 2.5. Seller shall, or shall cause the Unit’s SC to, comply with Buyer’s request under this Article 6.

# MARKET BASED RATE AUTHORITY

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

# COLLATERAL REQUIREMENTS

# Counterparty Collateral Requirements

Notwithstanding anything to the contrary contained in the EEI Agreement, Counterparty shall provide to, and maintain with, SCE a Full Floating Independent Amount as long as Counterparty or its Guarantor, if any, does not maintain Credit Ratings of at least (a) BBB- from S&P and Baa3 from Moody’s, if such entity is rated by the Ratings Agencies, or (b) BBB- by S&P or Baa3 by Moody’s if such entity is rated by only one Ratings Agency. The Full Floating Independent Amount shall be equal to $ [\_\_\_\_\_\_\_\_]. *{SCE Comment: amount equals twenty percent (20%) of the sum of the expected Monthly Payments for all months of the Delivery Period.}* Commencing after the last day of the first Showing Month of the Delivery Period and continuing throughout the Delivery Period, upon Notice, Counterparty may reduce the Full Floating Independent Amount to twenty percent (20%) of the sum of the Monthly Payments for the Current Month, as defined below, and all remaining months of the Delivery Period. For the purposes of the foregoing calculation: (i) each Monthly Payment shall be calculated using the Contract Quantity rather than the Expected Contract Quantity; and (ii) the Current Month shall be the next calendar month for which a showing will be made. For the purposes of calculating the Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, the Full Floating Independent Amount for Counterparty shall be added to the Exposure Amount for SCE and subtracted from the Exposure Amount for Counterparty.

# Current Mark-To-Market Value

The Parties further agree that for the purposes of calculating the Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, the Current Mark-to-Market Value for this Transaction is deemed to be zero. If at any time prior to the expiration of the Delivery Period, a liquid market for a resource adequacy Capacity product develops wherein price quotes for such a product can be obtained, the Parties agree to amend the Confirmation to include a methodology for calculating the Current Mark-to-Market Value for this Transaction.

# Credit Terms

The Parties agree that the credit and collateral provisions of the EEI Agreement shall govern this Transaction; provided, however, that for purposes of calculating a Party’s Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, with respect to this Transaction only (a) if Counterparty has Exposure to SCE, then the amount of Exposure for this Transaction is deemed to be zero dollars ($0), and (b) in no event shall SCE be required to post or maintain an Independent Amount with Counterparty.

# OTHER

## **Declaration of an Early Termination Date and Calculation of Settlement Amounts**

The Parties shall determine the Settlement Amount for this Transaction in accordance with Section 5.2 of the Master Agreement, provided that, with respect to this Transaction only, the following language is added at the end of Section 5.2 of the Master Agreement, with any terms which are defined in this Confirmation being used in the Master Agreement with the definitions given to such terms in this Confirmation:

“If Buyer is the Non-Defaulting Party and Buyer reasonably expects to incur penalties, fines or costs from the CPUC, the CAISO, or any Governmental Authority having jurisdiction, because Buyer is not able to include the applicable Contract Quantity in any applicable Compliance Showing due to Seller’s Event of Default, then Buyer may, in good faith, estimate the amount of those penalties or fines and include this estimate in its determination of the Settlement Amount, subject to accounting to Seller when those penalties or fines are finally ascertained. If this accounting establishes that Buyer’s estimate exceeds the actual amount of penalties or fines, Buyer shall promptly remit to Seller the excess amount. The rights and obligations with respect to determining and paying any Settlement Amount or Termination Payment, and any dispute resolution provisions with respect thereto, shall survive the termination of this Transaction and shall continue until after those penalties or fines are finally ascertained.”

*[Remainder of Page Intentionally Left Blank]*

|  |
| --- |
| In WITNESS WHEREOF, the Parties have caused this Confirmation to be duly executed as of the Confirmation Effective Date first written: |
| ***[BUYER’S/SELLER’S NAME]*,***a [[Buyer’s/Seller’s] jurisdiction of organization and type of organization]*. |  | **SOUTHERN CALIFORNIA EDISON COMPANY,**a California corporation. |
| By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*[Name]**[Title]* |  | By:*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**[Name]**[Title]* |
| Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

# APPENDIX A

DEFINED TERMS

“Aggregate Contract Quantity” means the aggregate amount of Product associated with the MWs set forth in the table in Section 1.4 which Seller has agreed to provide to Buyer from the Unit throughout the entire term of the Delivery Period.

“Agreement” has the meaning specified in the introductory paragraph of this Confirmation.

 “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, the Unit or the terms of this Agreement.

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

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

“Buyer” has the meaning specified in the introductory paragraph of this Confirmation.

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

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

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

“CAISO Tariff” means the California Independent System Operator Corporation Tariff, Business Practice Manuals (BPMs), Operating Agreements, and Operating Procedures, 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, if applicable.

“Capacity Attributes” means, with respect to a Unit, any and all of the following, in each case which are attributed to or associated with the Unit at any time throughout the Delivery Period:

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

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

### other current or future defined characteristics, certificates, tags, credits, or accounting constructs, howsoever entitled, including any accounting construct counted toward any Compliance Obligation;

#### provided that, notwithstanding the foregoing, Capacity Attributes shall exclude all flexible capacity resource adequacy attributes, characteristics, certificates, tags, credits, or accounting constructs, howsoever entitled associated with the Unit.

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

“CIRA Tool” means the CAISO’s Customer Interface for Resource Adequacy application.

“Collateral Annex” has the meaning specified in the introductory paragraph of this Confirmation.

“Compliance Obligations” means the RAR and Local RAR.

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

“Confirmation” has the meaning specified in the introductory paragraph of this Confirmation.

“Confirmation Effective Date” has the meaning specified in the introductory paragraph of this Confirmation.

“Contract Price” means, for any Showing Month, the price specified in the Contract Price Table in Section 3.1 for such Showing Month.

“Contract Quantity” means, with respect to any particular Showing Month of the Delivery Period, the amount of Product associated with the number of MWs set forth in the table in Section 1.4, which Seller has agreed to provide to Buyer from the Unit for each day of such Showing Month.

“Cover Sheet” has the meaning specified in the introductory paragraph of this Confirmation.

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

“CPUC” means the California Public Utilities Commission.

“CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, and any other existing or subsequent decisions, resolutions, or rulings related to resource adequacy, including, without limitation, the CPUC Filing Guide, in each case as may be amended from time to time by the CPUC.

“CPUC Filing Guide” is the document issued annually 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.

“Current Mark-to-Market Value” has the meaning specified in Section 8.2

“Delivery Period” has the meaning specified in Section 1.3(a).

“EEI” has the meaning specified in the introductory paragraph of this Confirmation.

“EEI Agreement” has the meaning specified in the introductory paragraph of this Confirmation.

“Expected Contract Quantity” means, with respect to any particular day of any Showing Month of the Delivery Period, the Contract Quantity of Product for such day of such Showing Month, including the amount of Contract Quantity of Product that Seller has elected to provide Substitute Capacity for such day, and after giving effect to any reductions to Contract Quantity for such day as specified in Section 2.1 with respect to which Seller has not elected to provide Substitute Capacity.

“Good Utility Practice” has the meaning set forth in the CAISO Tariff.

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

“Independent Evaluator” has the meaning set forth in CPUC Decision 04-12-048.

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

“Master Agreement” has the meaning specified in the introductory paragraph of this Confirmation.

“Monthly Payment” has the meaning specified in Section 3.1.

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

“MW” means megawatt (or 1,000 kilowatts) of alternating current electric energy generating capacity.

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

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

“North” means north of Path 26.

“Outage Schedule” has the meaning specified in Article 4.

“Path 26” 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 a 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).

“Product” means the Capacity Attributes of the Unit, including any capacity from RMR Contracts for the Unit, or its successor, Capacity Procurement Mechanism, or its successor, and RUC Availability Payments, or its successor; provided that:

(a) Product does not include any right to the energy or ancillary services from the Unit;

(b) any change by the CAISO, CPUC or other Governmental Authority that defines new or re-defines existing Local Capacity Areas that results in a decrease or increase in the amount of Capacity Attributes related to a Local Capacity Area provided hereunder will not result in a change in payments made pursuant to this Transaction; and

(c) the Parties agree that, under this Confirmation, if the CAISO, CPUC or other Governmental Authority defines new or re-defines existing Local Capacity Areas whereby the Unit subsequently qualifies for a Local Capacity Area, the Product shall include all Capacity Attributes related to such Local Capacity Area.

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

“Replacement Capacity” has the meaning specified in Section 2.4.

“Replacement Capacity Price” means the market price for Product with Capacity Attributes reasonably equivalent to the quantity of Product not provided by Seller under this Confirmation, as determined in the manner upon which market prices are determined under Section 5.2(b) of the Master Agreement. For purposes of this Transaction and Confirmation, the “Replacement Capacity Price” shall be deemed to be the “Replacement Price” as defined in Section 1.51 of the Master Agreement.

“Replacement Obligation” has the meaning specified in Section 2.4.

“Replacement Unit” means a generating unit meeting the requirements specified in Section 2.3.

“Resold Product” has the meaning specified in Section 2.6.

“Resource Category” shall be as described in the annual CPUC Filing Guide*,* as such may be modified, amended, supplemented or updated from time to time.

“RMR Contracts” has the meaning set forth in the CAISO Tariff.

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

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

“SC Replacement Capacity” has the meaning set forth in Section 2.8.

“Seller” has the meaning specified in the introductory paragraph of this Confirmation.

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

“South” means south of Path 26.

“Substitute Capacity” means replacement Product which Seller has elected to provide to Buyer in accordance with the terms of Section 2.3.

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

“Term” has the meaning specified in Section 1.3(b).

“Unit” shall mean the generation assets described in Appendix B (including any Replacement Units), from which Product is provided by Seller to Buyer.

“Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, that for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.

**ADDITIONAL DEFINED TERMS**

To the extent that the Parties have selected Flexible Capacity as being “Applicable”, the following definitions shall be utilized in lieu of the corresponding definition, where appropriate, or in addition to the definitions set forth in the above Defined Terms:

“Aggregate Contract Quantity” means the aggregate amount of Product associated with the MWs set forth in the table in Section 1.4 which Seller has agreed to provide to Buyer from the Unit throughout the entire term of the Delivery Period and which includes Product which is Flexible Capacity in an amount equal to the aggregate amount identified in Section 1.5. All Product identified in Section 1.4 is Inflexible Capacity except to the extent identified as Flexible Capacity in Section 1.5.

“Capacity Attributes” means, with respect to a Unit, any and all of the following, in each case which are attributed to or associated with the Unit at any time throughout the Delivery Period:

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

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

### other current or future defined characteristics, certificates, tags, credits, or accounting constructs, howsoever entitled, including any accounting construct counted toward any Compliance Obligations; and

### flexible capacity resource adequacy attributes for the Unit, including, without limitation, the amount of Unit EFC and MWs associated with Unit EFC as may be identified from time to time by the CPUC, CAISO, or other Governmental Authority having jurisdiction, that can be counted toward Flexible RAR.

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

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

“Contract Quantity” means, with respect to any particular Showing Month of the Delivery Period, the amount of Product associated with the number of MWs set forth in the table in Section 1.4, which Seller has agreed to provide to Buyer from the Unit for each day of such Showing Month, and which includes Product which is Flexible Capacity in an amount equal to the amount identified in Section 1.5. All Product identified in Section 1.4 is Inflexible Capacity except to the extent identified as Flexible Capacity in Section 1.5.

“Flexible Capacity” means, with respect to any particular Showing Month of the Delivery Period, the number of MWs of Product set forth in the table in Section 1.5 which Seller has agreed to provide to Buyer from the Unit as part of the Contract Quantity for each day of such Showing Month, and which such MWs of Product are eligible to satisfy a load serving entity’s Flexible RAR and which such MWs of Product are associated with MWs of the Unit that are part of the Unit EFC.

“Flexible RAR” means the flexible capacity requirements established for load serving entities by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction and includes any non-binding advisory showings which a load serving entity is to make with respect to flexible capacity.

“Inflexible Capacity” means, with respect to any particular Showing Month of the Delivery Period, the number of MWs of Product set forth in the table in Section 1.4 minus the number of MWs of Product set forth in the table in Section 1.5, which Seller has agreed to provide to Buyer from the Unit as part of the Contract Quantity for each day of such Showing Month, and which such MWs of Product are not eligible to satisfy a load serving entity’s Flexible RAR and which are Product associated MWs of the Unit that are not part of or outside the Unit EFC. Inflexible Capacity is also known as ‘generic capacity’.

“Product” means the Capacity Attributes of the Unit, provided that:

(a) Product does not include any right to the energy or ancillary services from the Unit;

(b) any change by the CAISO, CPUC or other Governmental Authority that defines new or re-defines existing Local Capacity Areas that results in a decrease or increase in the amount of Capacity Attributes related to a Local Capacity Area provided hereunder will not result in a change in payments made pursuant to this Transaction;

(c) any change by the CAISO, CPUC or other Governmental Authority that defines new or re-defines existing Flexible RAR, Capacity Attributes related to Flexible RAR, or attributes of the Unit related to Flexible RAR, that results in a decrease or increase in the amount of Capacity Attributes related to Flexible RAR provided hereunder will not result in a change in payments made pursuant to this Transaction;

(d) the Parties agree that, under this Confirmation, if the CAISO, CPUC or other Governmental Authority defines new or re-defines existing Local Capacity Areas whereby the Unit subsequently qualifies for a Local Capacity Area, the Product shall include all Capacity Attributes related to such Local Capacity Area; and

(e) the Parties agree that, under this Confirmation, if the CAISO, CPUC or other Governmental Authority defines new or re-defines existing Flexible RAR, Capacity Attributes related to Flexible RAR, or attributes of the Unit related to Flexible RAR whereby the Unit, or a portion of the Unit which did not previously qualify to satisfy Flexible RAR, subsequently qualifies to satisfy Flexible RAR, the Product shall include all Capacity Attributes of the Unit related to Flexible RAR, including any Capacity Attributes related to Flexible RAR with respect to any portion of the Unit which previously was not able to satisfy Flexible RAR.

“Unit EFC” means the effective flexible capacity (in MWs) of the Unit pursuant to the counting conventions set forth in the CPUC Decisions and which such flexible capacity may be used to satisfy a load serving entity’s Flexible RAR. The Parties agree that if the effective flexible capacity of the Unit is adjusted pursuant to the CPUC Decisions after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit EFC shall be deemed the lesser of (i) the Unit EFC as of the Confirmation Effective Date, or (ii) the effective flexible capacity of the Unit as adjusted by such subsequent CPUC Decisions.

**APPENDIX B**

**Unit Information**

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

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

Unit NQC (as of the Confirmation Effective Date): \_\_\_\_[*Insert applicable number, or in the event Unit NQC varies by month insert table to reflect]*\_\_\_\_\_\_ MW

Unit EFC (as of the Confirmation Effective Date): \_[Insert applicable number, or in the event Unit EFC varies by month insert table to reflect]\_\_\_\_\_\_\_\_\_\_ MW

Resource Type: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *{SCE Comment: insert technology}*

Resource Category (1, 2, 3 or 4): \_\_\_\_\_\_\_\_\_

Unit EFC Category (1, 2, or 3): \_\_\_\_\_\_\_\_\_

Path 26 (North, South or None): \_\_\_\_\_

Local Capacity Area (if any, as of Confirmation Effective Date): \_\_\_\_\_\_\_\_

**APPENDIX c**

**Supply Plan Information**

Benefitting load serving entity SCID: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**APPENDIX D**

**Subsequent Sale Information**

Volume (in MW): \_\_\_\_\_\_\_\_\_\_\_\_

Subsequent Sale delivery period: \_\_\_\_\_\_\_\_

Amount of Inflexible Capacity included in Volume: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

1. *Drafting Note: Please insert the appropriate names of the Parties depending upon whether the party is acting as Seller or Buyer.* [↑](#footnote-ref-2)