

**2013 LCR RFO PRO FORMA**

**DEMAND RESPONSE RESOURCE PURCHASE AGREEMENT**

*between*

***[Name of Aggregator]***

*and*

**SOUTHERN CALIFORNIA EDISON COMPANY**

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**DEMAND RESPONSE RESOURCE PURCHASE AGREEMENT**

**BY AND BETWEEN**

***[Name of Aggregator]***

**SOUTHERN CALIFORNIA EDISON COMPANY**

**PREAMBLE**

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

Whereas, the Parties wish to enter into this Agreement to provide for the sale by Seller and purchase by SCE of the DR Resource (as defined below).

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

**DEFINITIONS**

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

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

“Arbitrator” has the meaning set forth in Section 9.3.

“Average Best-Performing SLAP Hour” has the meaning set forth in Section 3.2(e).

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

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

“Best-Performing SLAP Hour” has the meaning set forth in Section 3.2(d).

“Bundled Service Account Load Drop Estimates” has the meaning set forth in Section 1.5(c)(i).

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

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

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

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

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

 “Capacity Bidding Program” means the SCE tariff program described in Schedule CBP, Cal. PUC sheet No. 46774-E, or any successors thereto.

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

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

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

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

“Claiming Party” has the meaning set forth in Article 13.

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

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

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

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

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

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

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

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

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

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

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

“Defaulting Party” has the meaning set forth in Section 8.1.

“Delivered Capacity Payment” has the meaning described in and is calculated pursuant to Section 3.2.

“Delivered Energy Payment” has the meaning described in and is calculated pursuant to Section 3.3.

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

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

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

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

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

“Dispatch” means the act of reducing all or a portion of the electrical consumption of the Participating Accounts in the DR Resource pursuant to a Dispatch Instruction. For purposes of this definition, failure to reduce electrical consumption pursuant to a Dispatch Instruction will be considered a Dispatch.

“Dispatch Instruction” means an instruction from SCE pursuant to Section 1.6 directing the Seller to reduce all or a portion of the electrical consumption of the Participating Accounts in the DR Resource pursuant to the terms of the Agreement.

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

“DR Resource” means the ability to reduce all or portion of the electrical consumption of all or a portion of the Participating Accounts for an Operating Month pursuant to the terms of this Agreement.

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

“Early Termination Date” has the meaning set forth in Section 8.2(a).

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

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

1. Subject to subsection (b), and for each hour of the day, the EB for a particular hour for an individual Participating Account is the average recorded energy consumption (measured in kWh by the Qualifying Meter) of such Participating Account during such hour for the ten (10) Measurement Days prior to a Seller Dispatch or a Dispatch, as applicable.
2. A Day-Of Adjustment shall be made to the initial EB calculation set forth in subsection (a) for each Participating Account selected to receive a Day-Of Adjustment pursuant to Section 1.5(c)(ii). The “Day-Of Adjustment” shall be calculated and applied as follows:
	* 1. The Day-Of Adjustment shall equal the average recorded energy consumption (measured in kWh by the Qualifying Meter) of the first three of the four hours before a Seller Dispatch or Dispatch, as applicable, divided by the EB for the same three hours calculated pursuant to subsection (a); provided, that the Day-Of Adjustment shall be capped in manner such that it may not exceed one hundred forty percent (140%) or be less than sixty percent (60%).
		2. The Day-Of Adjustment shall be multiplied by each applicable Participating Account’s EB for each hour of the Dispatch or Seller Dispatch.
		3. The Day-Of Adjustment will be calculated and applied regardless of whether the Participating Account dropped load during the relevant hours of the Day-Of Adjustment in connection with a Dual Participation Program.

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

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

“Event of Default” has the meaning set forth in Section 8.1.

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

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

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

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

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

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

“Full-Portfolio Dispatch” means a Dispatch or Seller Dispatch of all Participating Accounts submitted and verified pursuant to Section 1.5 for a given Operating Month.

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

“Hourly SLAP Recorded Reduction” has the meaning set forth in Section 3.2(f).

“Inflexible Capacity” means, with respect to any particular Showing Month of the Delivery Period, the number of kWs of the DR Resource which are not eligible to satisfy an LSEs Flexible RAR and which are associated kWs of the DR Resource that not part of or outside of the Effective Flexible Capacity.

“Interest Amount” means with respect to a Party and an Interest Period, the sum of the daily interest amounts for all days in such Interest Period; each daily interest amount to be determined by such Party as follows: (i) the amount of Cash held by such Party on that day; multiplied by (ii) the Cash Interest Rate for that day, divided by (iii) 360.

“Interest Period” means the period from (and including) the last Business Day on which an Interest Amount was Transferred by a Party (or if no Interest Amount has yet been Transferred by such Party, the Business Day on which Cash was Transferred to such Party) to (but excluding) the Business Day on which the current Interest Amount is to be Transferred.

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

“JAMS” has the meaning set forth in Section 9.2.

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

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

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

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

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

“LSE” means load-serving entity.

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

“Mediator” has the meaning set forth in Section 9.2.

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

“Meter Data Management Agent” or “MDMA” has the meaning set forth in Rule 22 “Direct Access” of SCE’s Tariffs.

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

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

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

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

“Notification Time” means the 10:00 a.m. Pacific Prevailing Time on a Business Day.

“Non-Defaulting Party” has the meaning set forth in Section 8.2.

“Notice” means notices, requests, statements or payments provided in accordance with Article 7.

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

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

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

“Performance Assurance” means the collateral dollar amount as set forth in Section 4.1(a). Performance Assurance must be in the form of Cash or Letter of Credit. Any Cash received and held by a Party after drawing on any Letter of Credit will constitute Performance Assurance in the form of Cash.

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

“Procurement Review Group” has the meaning set forth in Article 12.

“Prudent DR Practices” means those practices, methods and acts that would be implemented and followed by prudent operators of demand response resources in the Western United States, similar to the DR Resource, during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known or that should reasonably have been known at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety. Prudent DR 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, the requirements of each applicable Governmental Body, WECC standards, the CAISO and applicable laws. Prudent DR Practices also includes taking reasonable steps to ensure that: (i) equipment, materials, resources, and supplies, including spare parts inventories, are available in order to supply the DR Resource; (ii) sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to provide the DR Resource properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions; (iii) preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe operation of the DR Resource, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools; (iv) appropriate monitoring and testing are performed to ensure equipment is functioning as designed; (v) 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 contrary to environmental laws, permits or regulations or without regard to defined limitations such as, flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive loading, frequency, rotational speed, polarity, synchronization, and control system limits; and (vi) equipment and components are designed and manufactured to meet or exceed the standard of durability that is generally used for demand response resources operating in the Western United States and will function properly over the full range of conditions reasonably expected to occur under both normal and emergency conditions.

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

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

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

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

“Recruited Account” has the meaning set forth in Section 1.5(a).

“Requested Date Range” has the meaning set forth in Section 3.4.

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

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

“Safety Report” means a report from an independent engineer (acceptable to both SCE and Seller) certifying that Seller has a written plan for the safe operation and construction (if applicable) of the DR Resource in accordance with Prudent DR Practices.

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

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

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

“Seller Dispatch” means a Full-Portfolio Dispatch or SLAP Dispatch performed by the Seller in accordance with Section 3.4.

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

“Shortfall Amount” has the meaning set forth in Section 3.3(f).

“Shortfall Energy” has the meaning set forth in Section 3.3(g).

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

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

“SLAP Recorded Reduced Energy” has the meaning set forth in Section 3.3(d).

“Sub-Load Aggregation Point” or “SLAP” means the geographic location corresponding to each customer service account within the distribution network located within SCE’s service territory as designated by SCE under Section 1.5(b) herein.

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

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

“Termination Payment” means the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement, less any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date. For clarity, the Settlement Amount is part of and included in the Termination Payment.

“Total Recorded Capacity” has the meaning set forth in Section 3.2(c).

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

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

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

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

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

# TRANSACTION

## Purchase and Sale of the DR Resource

During the Delivery Period, Seller shall deliver and sell, and SCE shall purchase and receive, the DR Resource subject to and in accordance with the terms and conditions of this Agreement.

## Term

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

## Delivery Period

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

1. “Delivery Days” means *[Seller bid, Monday through Friday only]*, excluding NERC Holidays.
2. “Delivery Hours” means *[Seller bid, Beginning Time HE ## to Ending Time HE ##]*.
3. “Operating Months” means *[Seller bid of calendar months during the Delivery Period that contain Contract Capacity as provided in Section 1.4(b) below]*.

## DR Resource

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

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

1. The “Energy Rate” shall be *[Bid]* per kilowatt hour (KWh). The Energy Rate is only applied to those Participating Accounts that are from Bundled Service Customers. The “Contract Capacity” and corresponding “Capacity Rate” are as set forth below:

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

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

1. List of Recruited Accounts: No less than fifteen (15) days before the beginning of each Operating Month, Seller shall provide to SCE, or its designated agent, a list identifying each Customer, each of which must be a [West LA Basin Customer] [Moorpark Customer], that it may use for the DR Resource (each a “Recruited Account”) for such Operating Month. Such list shall include information reasonably necessary to permit SCE to verify that:
2. The Recruited Account has properly executed the disclosure form identified in Section 5.4 below;
3. The Recruited Account is a [West LA Basin Customer] [Moorpark Customer];
4. the Recruited Account is not served under any other demand response program, except for those identified under Section 1.5(d) and, if a Recruited Account is participating in one of the programs identified in Section 1.5(d), the name(s) of the program(s) in which such Recruited Account is participating; and
5. the Recruited Account has an installed and operating Qualifying Meter.

In addition, for each Recruited Account, Seller shall identify the Recruited Account’s name, service address, energy service provider (if applicable), community choice aggregator (if applicable), and SCE service account number. Seller may remove a Customer from the Recruited Account list upon written Notice; provided, the Customer is not a Participating Account for the Operating Month in which the removal is requested. Any removal of a Recruited Account will go into effect the first day of the calendar month following Seller’s request for its removal.

1. SCE Verification: No less than ten (10) days before the beginning of each Operating Month, SCE, or its designated agent, shall verify in writing that the Recruited Accounts for such Operating Month meet the requirements set forth in Section 1.5(a)(i)-(iv), and identify the SLAP to which each Recruited Account belongs. All unverified Recruited Accounts are ineligible to be included as Participating Account for such Operating Month. SCE may adjust or modify the SLAP boundaries in accordance with direction SCE receives from the CAISO or Commission.
2. List of Participating Accounts: No less than five (5) days before the beginning of each Operating Month, Seller shall provide to SCE, or its designated agent, a list identifying the Recruited Accounts that were verified under Section 1.5(b) that will constitute the DR Resource for such Operating Month (each a “Participating Account”), along with the following information:
3. an estimate (in kilowatts) of the total load drop capacity of the Bundled Service Customer(s) that are Participating Accounts by SLAP (“Bundled Service Account Load Drop Estimates”), provided, the total estimate does not exceed the applicable Contract Capacity; and
4. for each Participating Account, whether the Day-of Adjustment will apply.

Notwithstanding any other provision in this Agreement, SCE is not obligated to make payment for any Contract Capacity or energy associated with a Customer, Recruited Account, or Participating Account that does not meet the requirements of this Agreement. Seller may not adjust or alter the list of Participating Accounts once the Operating Month commences.

1. Dual Participation. Seller may not identify Customers that participate in other demand response program as a Recruited Account or Participating Account, unless such Customer is in a Dual Participation Program. Additionally, Customers that are enrolled in the Capacity Bidding Program may also be a Recruited Account or Participating Account; provided, during any Operating Month under this Agreement the Customer is a Participating Account they do not place a bid into the Capacity Bidding Program for that month.

## Dispatch and Access to Telemetry

Subject to the limitations set forth in Sections 1.3 and 1.4, SCE may Dispatch the DR Resource by SLAP or as a Full-Portfolio Dispatch through a Dispatch Instruction. The Dispatch Instruction shall be made via an automated dispatch protocol to be determined by SCE in its sole discretion. In order to be effective, the Dispatch Instruction must be given at least twenty (20) minutes in advance of the start of the Dispatch. Each Dispatch Instruction will be effective unless and until SCE modifies such Dispatch Instruction by providing Seller with an updated Dispatch Instruction at least twenty (20) minutes in advance of the start of the Dispatch. Once Seller has received a proper Dispatch Instruction, Seller shall Dispatch the DR Resource as instructed.

Seller and SCE shall work in good faith to implement the automated dispatch protocol. Any necessary equipment will be at Seller's cost. If SCE is unable to Dispatch the DR Resource due to Seller's failure to make the automated dispatch protocol available, for every day that the automated dispatch protocol is unavailable, for purposes of calculating the Delivered Capacity Payment, a Full Portfolio Dispatch will have assumed to have occurred and the Best-Performing SLAP Hour for all SLAPs shall be zero.

Seller shall take all actions and execute all documents necessary to grant SCE access to telemetry systems associated with the DR Resource.

## Exclusive Rights

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

1. the Contract Capacity from, and the energy benefit derived from, the Recruited Accounts and DR Resource; and
2. all benefits, attributes, credits, emissions reductions, offsets, and allowances, howsoever entitled, derived or attributable from or to the DR Resource, including the exclusive right to use, market or sell the DR Resource, and the benefits provided under Section 5.1, and all revenues created from the use, sale or marketing of the DR Resource and the benefits provided under Section 5.1.

## Metering and Communication Equipment

Upon SCE’s written request, Seller shall notify the Recruited Accounts to provide and install an upgraded Qualifying Meter if upgraded metering and communication equipment are required in order for SCE to utilize the DR Resource. SCE shall determine the type of metering and communication equipment to be installed and shall be the MDMA (if applicable) for all Participating Accounts.

# CPUC APPROVAL

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

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

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

Failure to obtain CPUC Approval in accordance with this Article 2 will not be deemed to be a failure of Seller to sell or deliver the DR Resource or a failure of SCE to purchase or receive the DR Resource, and will not be or cause an Event of Default by either Party. No Settlement Amount with respect to this Agreement will be due or owing by either Party upon termination of this Agreement due solely to failure to obtain CPUC Approval.

# PAYMENT AND BILLING

## Invoice

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

1. If SCE does not provide a Dispatch Instruction for an Operating Month, Seller shall submit an invoice to SCE no later than ninety (90) days after the end of such Operating Month setting forth Seller’s calculation of the Delivered Capacity Payment in accordance with Section 3.2 below.
2. If SCE does provide one or more Dispatch Instructions for an Operating Month, Seller shall submit an invoice to SCE no later than one hundred and twenty days (120) days after the end of such Operating Month setting forth Seller’s calculation of the Delivered Capacity Payment and Delivered Energy Payment for such Operating Month in accordance with Sections 3.2 and 3.3 below. Such invoice shall include recorded meter data and other performance data and calculations supporting the Delivered Capacity Payment and Delivered Energy Payment Seller claims for such Operating Month.
3. SCE will pay Seller all undisputed invoices within ninety (90) days after receipt of Seller’s invoice.
4. Unless otherwise agreed to in writing by the Parties, payment to Seller will be in the form of a wire transfer.
5. SCE may offset against any future payments by any amount(s) that were previously overpaid.
6. Either Party may, in good faith, dispute the correctness of any invoice, bill, charge, or any adjustment to an invoice, rendered under this Agreement, or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, bill, charge, or adjustment to an invoice, was rendered. Disputes are subject to the provisions of Article 9 below. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with Notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within thirty (30) Business Days of such resolution. Notwithstanding the timelines in this section, overpayments shall be returned upon request or offset, as appropriate, from future payments.
7. SCE may deduct any amounts that would otherwise be due to Seller under this Agreement from any amounts owing and unpaid by Seller to SCE: (i) under this Agreement; or (ii) arising out of or related to any other agreement, tariff, obligation or liability.

## Delivered Capacity Payment

1. Before the first Full-Portfolio Dispatch is performed during the Delivery Period, the Delivered Capacity Payment shall equal the applicable Contract Capacity times the applicable Capacity Rate.
2. After the DR Resource has been subjected to a Full-Portfolio Dispatch, Delivered Capacity Payment shall be calculated for each Operating Month as follows:
3. If the Total Recorded Capacity is one hundred percent (100%) of the applicable Contract Capacity or greater, then the Delivered Capacity Payment shall equal the applicable Contract Capacity times the applicable Capacity Rate.
4. If the Total Recorded Capacity is equal to or greater than ninety percent (90%), but less than one hundred percent (100%) of the applicable Contract Capacity, then the Delivered Capacity Payment shall equal the Total Recorded Capacity times the applicable Capacity Rate.
5. If the Total Recorded Capacity is equal to or greater than seventy-five percent (75%), but less than ninety percent (90%) of the applicable Contract Capacity, then the Delivered Capacity Payment shall equal the Total Recorded Capacity times fifty percent (50%) of the applicable Capacity Rate.
6. If the Total Recorded Capacity is less than seventy-five percent (75%) of the applicable Contract Capacity, then the Delivered Capacity Payment shall equal zero dollars ($0.00).
7. The “Total Recorded Capacity” for any particular Operating Month shall equal (i) if a Full-Portfolio Dispatch has occurred in such Operating Month, the sum of each SLAP’s Average Best-Performing SLAP Hour for such Operating Month, and (ii) if a Full-Portfolio Dispatch does not occur in such Operating Month, subject to Section 3.2(a), the “Total Recorded Capacity” for such Operating Month shall equal the “Total Recorded Capacity” which was calculated with respect to the most recent Operating Month during which a Full-Portfolio Dispatch occurred.
8. The “Best-Performing SLAP Hour” means, with respect to each particular SLAP, the hour (expressed in kW) yielding the highest Hourly SLAP Recorded Reduction from a particular Full-Portfolio Dispatch or SLAP Dispatch during an Operating Month.
9. The “Average Best-Performing SLAP Hour” equals, with respect to each SLAP, (i) the sum of the Best-Performing SLAP Hours (expressed in kW) for all Full-Portfolio Dispatches and SLAP Dispatches for such SLAP during the applicable Operating Month divided by (ii) the number of Full-Portfolio Dispatches and SLAP Dispatches for such SLAP, in each case which occurred during such Operating Month.
10. The “Hourly SLAP Recorded Reduction” means:
11. For a Full-Portfolio Dispatch:
	* 1. An Hourly SLAP Recorded Reduction will be calculated for each hour of the Full-Portfolio Dispatch and by SLAP.
		2. The Hourly SLAP Recorded Reduction for each hour and SLAP shall be the summation of each Participating Account’s EB in such SLAP for the corresponding hour less its recorded energy, as measured by the Qualifying Meter, for that hour.
12. For a SLAP Dispatch:
13. An Hourly SLAP Recorded Reduction will be calculated for each hour of the SLAP Dispatch, and will be applicable only to such SLAP.
14. The Hourly SLAP Recorded Reduction for each hour shall be the summation of each Participating Account’s EB in such SLAP for the corresponding hour less its recorded energy, as measured by the Qualifying Meter, for that hour.
15. For purposes of determining the Hourly SLAP Recorded Reduction and with respect to a Participating Account, should coincident event hours for a Full-Portfolio Dispatch or SLAP Dispatch and a Dual Participation Program occur, then any load reductions calculated during such coincident hours for such Participating Account will be included in the Hourly SLAP Recorded Reduction calculation.

## Delivered Energy Payment

1. Notwithstanding any other provisions in this Agreement, Delivered Energy Payments will be made solely for load reductions to Participating Accounts from Bundled Service Customers. Delivered Energy Payment will not be made for load reductions from Direct Access or Community Choice Aggregator customer accounts, or any other account which is not a Bundled Service Customer account.
2. If SCE does not provide a Dispatch Instruction during an Operating Month, then the Delivered Energy Payment shall be zero dollars ($0.00) for that Operating Month. Seller shall not receive a Delivered Energy Payment for any Seller Dispatch or reduction in load not based on a Dispatch Instruction.
3. Delivered Energy Payment shall be calculated as follows:
4. With respect to each Dispatch Instruction given in the Operating Month, a SLAP Recorded Reduced Energy shall be calculated for each SLAP that is the subject of the Dispatch Instruction and where at least one (1) Participating Account that is a Bundled Service Customer is within such SLAP.
5. For each Operating Month, the Delivered Energy Payment shall equal (a) the sum of all SLAP Recorded Reduced Energy in that Operating Month times the Energy Rate less (B) the sum of all Shortfall Amounts in that Operating Month.
6. The “SLAP Recorded Reduced Energy” equals (in kWh), with respect to a particular SLAP, the summation of each Participating Account’s EB that is a Bundled Service Account in that SLAP less its recorded energy, as measured by the Qualifying Meter, for each hour of the Dispatch; provided, that if the SLAP Recorded Reduced Energy for any hour (for purposes of this proviso expressed in kW) is greater than one hundred fifty percent (150%) of the applicable Bundled Service Account Load Drop Estimate for that SLAP and Operating Month, then the SLAP Recorded Reduced Energy for such hour shall be the applicable Bundled Service Account Load Drop Estimate times one hundred fifty percent (150%); provided, further, if a SLAP Recorded Reduced Energy for any hour (for purposes of this proviso expressed in kW) is less than one hundred percent (100%) of the applicable Bundled Service Account Load Drop Estimate for that SLAP and Operating Month, then a Shortfall Amount for that hour, and for all other hours in which the SLAP Recorded Reduced Energy is less than a one hundred percent (100%) of the applicable Bundled Service Account Load Drop Estimate, shall be calculated and subtracted from the Delivered Energy Payment.
7. For purposes of determining the SLAP Recorded Reduced Energy and with respect to a Participating Account, should coincident event hours for a Dispatch and Dual Participation Program occur, then any load reductions calculated during such coincident hours for such Participating Account will be included in the SLAP Recorded Reduced Energy calculation.
8. “Shortfall Amount” means Shortfall Energy during the applicable hour times the average of each Interval Locational Marginal Price for the SCE DLAP (Node DLAP\_SCE-APND) for the corresponding day and hour during which the Shortfall Energy occurred.
9. “Shortfall Energy” means (in kWh) the applicable Bundled Service Load Drop Estimate less the SLAP Recorded Reduced Energy for that hour. For purposes of this Section 3.3(g), the Bundled Service Load Drop Estimates shall be expressed in kWh.

## Seller Dispatch

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

1. Seller must provide advance Notice to SCE of a range of dates during which it requests that the Full-Portfolio Dispatch or SLAP Dispatch occur (the “Requested Date Range”). Each Requested Date Range must be comprised of no less than three (3) consecutive Business Days, and the earliest date must be at least three (3) Business Days after the date such Notice becomes effective.
2. Following its receipt of such Notice, SCE will, in its’ sole discretion select the specific timing for such Full-Portfolio Dispatch or SLAP Dispatch within such Requested Range, by providing a dispatch instruction to Seller either telephonically or pursuant to a method determined by SCE in its sole discretion, to the Seller personnel designated to receive such communications as listed in Article 7. In order to be effective, such dispatch instruction must be given at least one (1) hour in advance of the start of such Seller Dispatch. Each such dispatch instruction given in accordance with this Section 3.4 will be effective and Seller shall then dispatch the DR Resource as instructed.

Notwithstanding anything to the contrary in this Agreement, (a) SCE’s provision of a dispatch instruction pursuant to this Section 3.4 shall not be considered a “Dispatch” or “Dispatch Instruction” for any purposes under this Agreement, (b) such dispatch shall solely be considered a “Seller Dispatch”, and (c) Seller is not entitled to receive any Delivered Energy Payments for such a Seller Dispatch. The number of hours from such Seller Dispatch will not count towards the Event Parameter limitations, including the maximum available Dispatch hours for a given month or year, as set forth in Section 1.4(a) above.

# CREDIT AND COLLATERAL

## Seller’s Credit and Collateral Requirements

1. Seller shall provide and maintain Performance Assurance in an amount equal to ten percent (10%) of the sum of the estimated Delivered Capacity Payments for all of the remaining months of the Delivery Period including the current month, with such estimated Delivered Capacity Payments being based on the applicable Contract Capacity values times the applicable Capacity Rates and not being subject to reduction, change or adjustment based on the results of any dispatch of the DR Resource made in accordance with this Agreement.
2. Seller shall post one-half of the Performance Assurance within thirty (30) days following the Execution Date, with the remainder to be posted within thirty (30) days after CPUC Approval is obtained or waived by SCE in its sole discretion.

## Grant of Security Interest/Remedies

1. To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to SCE a present and continuing security interest in, and lien on (and right of setoff against), and collateral assignment of, the Performance Assurance and all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such SCE, and each Party agrees to take such action as the other Party reasonably requires in order to perfect SCE’s first-priority security interest in, and lien on (and right of setoff against), such Performance Assurance and collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, SCE, if it is the Non-Defaulting Party, may do any one or more of the following: (i) exercise any of the rights and remedies of a SCE with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of SCE free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. In such an event SCE shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Seller’s obligations under the Agreement (the Seller remaining liable for any amounts owing to SCE after such application), subject to SCE’s obligation to return any surplus proceeds remaining after such obligations are satisfied in full.
2. The Seller shall pay on request and indemnify SCE against any taxes (including without limitation, any applicable transfer taxes and stamp, registration or other documentary taxes), assessments, or charges that may become payable by reason of the security interests, general first lien and right of offset granted under this Agreement or the execution, delivery, performance or enforcement of this Agreement, as well as any penalties with respect thereto.

## Reduction and Substitution of Performance Assurance

1. Subject to Section 4.1, on any Business Day, Seller may request a reduction in the amount of Performance Assurance previously provided by the Seller for the benefit of SCE, provided that, after giving effect to the requested reduction in Performance Assurance, no Event of Default or Potential Event of Default with respect to the Seller shall have occurred and be continuing, and no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Seller for which there exist any unsatisfied payment obligations. A permitted reduction in Performance Assurance may be effected by the Transfer of Cash to the Seller or the reduction of the amount of an outstanding Letter of Credit previously issued for the benefit of SCE. The Seller shall have the right to specify the means of effecting the reduction in Performance Assurance. In all cases, the cost and expense of reducing Performance Assurance (including, but not limited to, the reasonable costs, expenses, and attorneys’ fees of SCE) shall be borne by the Seller. Unless otherwise agreed in writing by the Parties, (i) if the Seller’s reduction demand is made on or before the Notification Time on a Business Day, then SCE shall have one (1) Business Day to effect a permitted reduction in Performance Assurance and (ii) if the Seller’s reduction demand is made after the Notification Time on a Business Day, then SCE shall have two (2) Business Days to effect a permitted reduction in Performance Assurance, in each case, if such reduction is to be effected by the return of Cash to the Seller. If a permitted reduction in Performance Assurance is to be effected by a reduction in the amount of an outstanding Letter of Credit previously issued for the benefit of SCE, SCE shall promptly take such action as is reasonably necessary to effectuate such reduction.
2. Except when an Event of Default or Potential Event of Default with respect to the Seller shall have occurred and be continuing or an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Seller for which there exist any unsatisfied payment obligations, the Seller may substitute Performance Assurance for other existing Performance Assurance of equal value upon one (1) Business Day’s written Notice (provided such Notice is made on or before the Notification Time, otherwise the notification period shall be two (2) Business Days) to SCE. Upon the Transfer to SCE of the substitute Performance Assurance, SCE shall Transfer the relevant replaced Performance Assurance to the Seller within two (2) Business Days. Notwithstanding anything herein to the contrary, no such substitution shall be permitted unless (i) the substitute Performance Assurance is Transferred simultaneously or has been Transferred to SCE prior to the release of the Performance Assurance to be returned to the Seller and the security interest in, and general first lien upon, such substituted Performance Assurance granted pursuant hereto in favor of SCE shall have been perfected as required by applicable law and shall constitute a first priority perfected security interest therein and general first lien thereon, and (ii) after giving effect to such substitution, the substitute Performance Assurance shall equal the amount of Performance Assurance being replaced. Each substitution of Performance Assurance shall constitute a representation and warranty by the Seller that the substituted Performance Assurance shall be subject to and governed by the terms and conditions of this Article 4, including without limitation the security interest in, general first lien on and right of offset against, such substituted Performance Assurance granted pursuant hereto in favor of SCE pursuant to this Article 4.
3. The Transfer of any Performance Assurance by SCE in accordance with this Section 4.3 shall be deemed a release by SCE of its security interest, general first lien and right of offset granted pursuant to this Article 4 hereof only with respect to such returned Performance Assurance. In connection with each Transfer of any Performance Assurance pursuant to this Article 4, the Seller will, upon request of SCE, execute a receipt showing the Performance Assurance Transferred to it.

## Administration of Performance Assurance

1. Cash. Performance Assurance provided in the form of Cash to SCE shall be subject to the following provisions.
2. Notwithstanding the provisions of applicable law, if no Event of Default has occurred and is continuing with respect to SCE and no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to SCE for which there exist any unsatisfied payment obligations, then 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 Performance Assurance hereunder, free from any claim or right of any nature whatsoever of the Seller, including any equity or right of redemption by the Seller.
3. So long as no Event of Default or Potential Event of Default with respect to the Seller has occurred and is continuing, and no Early Termination Date for which any unsatisfied payment obligations of the Seller exist has occurred or been designated as the result of an Event of Default with respect to the Seller, and to the extent that an obligation to Transfer Performance Assurance would not be created or increased by the Transfer, in the event that SCE is holding Cash, SCE will Transfer (or caused to be Transferred) to the Seller, in lieu of any interest or other amounts paid or deemed to have been paid with respect to such Cash (all of which may be retained by SCE), the Interest Amount. The Seller shall invoice SCE monthly setting forth the calculation of the Interest Amount due, and SCE shall make payment thereof by the later of (A) the third (3rd) Business Day of the first month after the last month to which such invoice relates or (B) the third (3rd) Business Day after the day on which such invoice is received. On or after the occurrence of a Potential Event of Default or an Event of Default with respect to the Seller or an Early Termination Date as a result of an Event of Default with respect to the Seller, SCE shall retain any such Interest Amount as additional Performance Assurance hereunder until the obligations of the Seller under the Agreement have been satisfied in the case of an Early Termination Date or for so long as such Event of Default is continuing in the case of an Event of Default.
4. Letters of Credit. Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions.
5. Each Letter of Credit shall be maintained for the benefit of SCE. The Seller shall (A) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (B) if the bank or financial institution that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide either a substitute Letter of Credit or Cash, in each case at least twenty (20) Business Days prior to the expiration of the outstanding Letter of Credit, and (C) if a bank or financial institution issuing a Letter of Credit shall fail to honor SCE’s properly documented request to draw on an outstanding Letter of Credit, provide for the benefit of SCE either a substitute Letter of Credit that is issued by a bank or financial institution acceptable to SCE or Cash, in each case within one (1) Business Day after such refusal, provided that, as a result of the Seller’s failure to perform in accordance with (A), (B), or (C) above, the Performance Assurance required of the Seller would be greater than zero (0).
6. As one method of providing Performance Assurance, the Seller may increase the amount of an outstanding Letter of Credit or establish one or more additional Letters of Credit.
7. Upon the occurrence of a Letter of Credit Default, the Seller agrees to Transfer to SCE either a substitute Letter of Credit or Cash, in each case on or before the first (1st) Business Day after the occurrence thereof (or the fifth (5th) Business Day after the occurrence thereof if only clause (i) under the definition of Letter of Credit Default applies).
8. Upon or at any time after the occurrence and continuation of an Event of Default or Letter of Credit Default with respect to the Seller, or if an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Seller for which there exist any unsatisfied payment obligations, then SCE may draw on the entire, undrawn portion of any outstanding Letter of Credit upon submission to the bank or financial institution issuing such Letter of Credit of one or more certificates specifying that such Event of Default, Letter of Credit Default or Early Termination Date has occurred and is continuing. Cash proceeds received from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for the Seller’s obligations to SCE and SCE shall have the rights and remedies set forth in Section 4.5 with respect to such Cash proceeds. Notwithstanding SCE’s receipt of Cash proceeds of a drawing under the Letter of Credit, the Seller shall remain liable (A) for any failure to Transfer sufficient Performance Assurance and (B) for any amounts owing to SCE and remaining unpaid after the application of the amounts so drawn by SCE.
9. In all cases, the costs and expenses of establishing, renewing, substituting, canceling, and increasing the amount of a Letter of Credit shall be borne by the Seller.
10. Care of Performance Assurance. Except as otherwise provided in Section 4.4(a)(i) and beyond the exercise of reasonable care in the custody thereof, SCE shall have no duty as to any Performance Assurance in its possession or control or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto. SCE shall be deemed to have exercised reasonable care in the custody and preservation of the Performance Assurance in its possession if the Performance Assurance is accorded treatment substantially equal to that which it accords its own property, and shall not be liable or responsible for any loss or damage to any of the Performance Assurance, or for any diminution in the value thereof, except to the extent such loss or damage is the result of SCE’s willful misconduct or gross negligence. SCE shall at all times retain possession or control of any Performance Assurance Transferred to it.

## Exercise of Rights against Performance Assurance

1. In the event that an Event of Default with respect to the Seller has occurred and is continuing or an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Seller, SCE may exercise any one or more of the rights and remedies provided under this Agreement, or as otherwise available under applicable law. Without limiting the foregoing, if at any time an Event of Default with respect to the Seller has occurred and is continuing, or an Early Termination Date occurs or is deemed to occur as a result of an Event of Default with respect to the Seller, then SCE may, in its sole discretion, exercise any one or more of the following rights and remedies:
2. all rights and remedies available to a SCE under the Uniform Commercial Code and any other applicable jurisdiction and other applicable laws with respect to the Performance Assurance held by or for the benefit of SCE;
3. the right to set off any Performance Assurance held by or for the benefit of SCE against and in satisfaction of any amount payable by the Seller in respect of any of its obligations; and
4. the right to draw on any outstanding Letter of Credit issued for its benefit.
5. 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. The Seller shall in all events remain liable to SCE for any amount payable by the Seller in respect of any of its obligations remaining unpaid after any such liquidation, application and set off.

## Financial Information

 If requested by a Party, the other Party shall deliver (a) within one hundred and twenty (120) days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements (income statement, balance sheet, statement of cash flows 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, as the case may be, and (b) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of a quarterly report containing unaudited consolidated financial statements for such fiscal quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year, and if the Party files reports with the Securities and Exchange Commission, certified in accordance with all applicable laws and regulations, including without limitation all applicable Securities and Exchange Commission rules and regulations. If the Party does not file reports with the Securities and Exchange Commission, the reports must be certified by a Chief Financial Officer, Treasurer or any Assistant Treasurer as being fairly stated in all material respects (subject to normal year end audit adjustments); provided however, for the purposes of this subsection (a) and (b), if a Party’s financial statements are publicly available electronically on the Securities and Exchange Commission’s website, then this requirement shall be deemed satisfied. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

## Uniform Commercial Code Waiver

This Agreement sets forth the entirety of the agreement of the Parties regarding credit, collateral, financial assurances and adequate assurances. Except as expressly set forth in this Agreement, including, but not limited to, those provisions set forth in Article 4 and Article 8, neither Party:

1. has or will have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, or
2. will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of Article 4 and Article 8 of this Agreement; and all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived.

# SPECIAL TERMS AND CONDITIONS

## Resource Adequacy Benefits

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

## Measurement and Evaluation of the DR Resource

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

## Limitation of Liability for Seller Service

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

## Release of Customer-Specific Usage or Meter Data

SCE shall, to the extent available and permitted by applicable law or regulations, provide specific information, usage, and/or meter data of a Customer to Seller, if Seller provides to SCE written authorization from such Customer to release such information. Such written authorization must be provided in a form acceptable to SCE in its sole discretion. In the event SCE is unable to provide the information contemplated under this section for any reason, Seller shall be responsible for obtaining such information at its sole cost and expense. SCE has no obligation to verify the accuracy of any information provided to Seller hereunder.

## Customer Inquiries

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

## Regulatory Changes

In Rulemaking 07-01-041, the Commission is considering issues regarding “direct participation” through the bidding of demand response resources directly into the CAISO markets. To the extent such direct participation rules become final during the Term of this Agreement, the Parties agree to negotiate in good faith to consider amendments to this Agreement consistent with any final Commission rules regarding direct participation.

## WMDVBE Reporting

No later than twenty (20) days after each semi-annual period ending on June 30th or December 31st, a report listing all WMDVBEs that supplied goods or services to Seller during such period, including any certifications or other documentation of such WMDVBEs’ status as such and the aggregate amount paid to WMDVBEs during such period.

SCE has the right to disclose to the Commission all such information provided by Seller pursuant to this Section 5.7.

Seller shall make reasonable efforts to accommodate requests by the Commission (or by SCE in response to a request by the Commission) to audit Seller in order to verify data provided by Seller pursuant to this Section 5.7.

# REPRESENTATIONS, WARRANTIES AND cOVENANTS

## Representations and Warranties of Both Parties

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

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

## Additional Seller Representations, Warranties and Covenants

1. On the Execution Date, Seller represents and warrants to SCE that Seller has not used, granted, pledged, assigned, or otherwise committed any Contract Capacity of the DR Resource to meet the RAR, Flexible RAR or Local RAR of, or confer Resource Adequacy Benefits upon, any entity other than SCE during the Delivery Period.
2. Seller hereby covenants to SCE that throughout the Delivery Period:
3. Seller will deliver the DR Resource to SCE free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person;
4. Seller will not sell, assign or otherwise transfer the DR Resource, or any portion thereof, to any third party other than to SCE pursuant to this Agreement;
5. Seller has been appointed by each Customer, to act as an aggregator on behalf of said Customer with respect to all aspects of the DR Resource, including but not limited to: (A) the receipt of Notices from SCE; (B) the receipt of capacity and energy payments from SCE; and (C) the payment of penalties to SCE; and
6. Seller will not use, grant, pledge, assign, or otherwise commit any Contract Capacity of the DR Resource to meet the RAR, Flexible RAR or Local RAR of, or confer Resource Adequacy Benefits upon, any entity other than SCE during the Delivery Period;
7. Seller will use and follow Prudent DR Practices; and
8. Each Recruited Account is a [West LA Basin Customer] [Moorpark Customer].
9. Seller hereby covenants and agrees that it will deliver the Safety Report to SCE no later than 30 days prior to the start of the Delivery Period.
10. On each day on which Performance Assurance is held by SCE under this Agreement, the Seller hereby represents and warrants that:
11. the Seller has good title to and is the sole owner of such Performance Assurance, and the execution, delivery and performance of the covenants and agreements of this Agreement, do not result in the creation or imposition of any lien or security interest upon any of its assets or properties, including, without limitation, the Performance Assurance, other than the security interests and liens created under this Agreement;
12. upon the Transfer of Performance Assurance by the Seller to SCE, SCE shall have a valid and perfected first priority continuing security interest therein, free of any liens, claims or encumbrances, except those liens, security interests, claims or encumbrances arising by operation of law that are given priority over a perfected security interest; and
13. it is not and will not become a party to or otherwise be bound by any agreement, other than this Agreement, which restricts in any manner the rights of any present or future holder of any of the Performance Assurance with respect hereto.

# NOTICES

## Notices

Notices, requests, statements or payments from one Party to the other Party shall be made to the addresses and persons specified in Section 7.2. All Notices, requests, statements or payments from one Party to the other Party shall be made in writing except (a) Dispatch Instructions, which can be provided in the manner described in Section 1.6 and (b) where this Agreement expressly provides that Notice may be made by telephone. Notices required to be in writing shall be delivered by hand delivery, overnight delivery, or facsimile. Notice from one Party to the other Party by facsimile (where confirmation of successful transmission is received) shall be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it shall be deemed received on the next Business Day). Notice from one Party to the other Party by hand delivery or overnight delivery shall be deemed to have been received when delivered. Notice from one Party to the other Party by telephone shall be deemed to have been received at the time the call is received. All Notices by telephone required to be provided by one Party to the other pursuant to this Agreement, may be given by recorded telephone conversation between an authorized representative of the Party delivering the Notice and an authorized representative of the other Party. Each Party hereby consents to the recording of its authorized representatives’ telephone conversations in connection with the giving of any Notices by telephone pursuant to and in accordance with this Agreement. All recordings may be introduced into evidence and used to prove the content and sufficiency of the Notice. A Party may change its contact information by providing Notice of the same in accordance herewith.

## Contact Information

For SCE:

Billing Representative Contract Representative

Power Procurement – Finance Mgr of Power Contracts

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

Preschedule Contact Real Time Trading

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

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

Day Ahead Trading Day Ahead Scheduling

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

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

Real Time Scheduling Settlements

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

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

Other SCE Contact Information

Real-time Phone: 626-302-3380

Wire Transfer Credit and Collections

BNK: JPMorganChase Bank Attn: Manager of Credit

ABA: 021000021 Phone: (626) 302-1129

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

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

Section Director SCE Law Department

Power Procurement Section

Phone:

Facsimile:

For Seller:

Billing Representative Contract Representative

*Name] [Name]*

Phone: Phone:

Facsimile: Facsimile:

Preschedule Contact Real Time Trading

*[Name]* *[Name]*

Phone: Phone:

Facsimile: Facsimile:

Day Ahead Trading Day Ahead Scheduling

*[Name] [Name]*

Phone: Phone:

Facsimile: Facsimile:

Real Time Scheduling Settlements

*[Name] [Name]*

Phone: Phone:

Facsimile: Facsimile:

Other Seller Contact Information

Wire Transfer Credit and Collections

BNK: Attn:

ABA: Phone:

ACCT: Facsimile:

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

*[Name]*

Phone:

Facsimile:

The Parties acknowledge and agree that those persons set forth in this Section 7.2 are designated by each Party as their respective authorized representatives to act on their behalf for the purposes described therein.

# EVENTS OF DEFAULT; TERMINATION

## Events of Default

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

1. With respect to either Party:
2. The failure to make, when due, any payment required to be made to the other Party pursuant to this Agreement, if such failure is not remedied within three (3) Business Days after written Notice of such failure is given by the Non-Defaulting Party;
3. 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;
4. The failure to perform any material covenant, obligation, term or condition of this Agreement (except to the extent constituting a separate Event of Default), where such breach is not remedied within five (5) Business Days of Notice of such breach by the Non-Defaulting Party;
5. such Party becomes Bankrupt;
6. a Merger Event occurs with respect to such Party; or
7. such Party disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of this Agreement.
8. With respect to Seller:
9. the failure of Seller to satisfy the collateral requirements set forth in Article 4;
10. during the Delivery Period, the measured Total Recorded Capacity is less than or equal to fifty percent (50%) of the Contract Capacity for three consecutive months during which Full-Portfolio Dispatches have occurred;
11. during the Term, Seller makes any material misrepresentation or omission in any report required to be made or furnished by Seller pursuant to this Agreement;
12. during the Delivery Period, Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the DR Resource, or any portion thereof, to any party other than SCE without SCE’s written consent; or
13. during the Term, the occurrence and continuation of a default, event of default or other similar condition or event (however described) in respect of Seller under one or more agreements or instruments relating to indebtedness for borrowed money (whether present or future, contingent or otherwise), which results in such indebtedness for borrowed money (whether present or future, contingent or otherwise) becoming, or becoming capable at such time of being declared, immediately due and payable under such agreements or instruments, before it would otherwise have been due and payable, or a default by Seller in making one or more payments on the due date thereof in an aggregate amount of not less than *[To be determined]* under such agreements or instruments (after giving effect to any applicable notice requirement or grace period).

## Early Termination

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

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

## Termination Payment

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

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

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

The Parties shall negotiate in good faith to resolve any disputes regarding the calculation of the Termination Payment. Any disputes which the Parties are unable to resolve through negotiation may be submitted for resolution through mediation and arbitration as provided in Article 9.

## Right of Set-Off

After calculation of a Termination Payment in accordance with Section 8.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party. The remedy provided for in this section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

## Suspension of Performance

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

# DISPUTE RESOLUTION

## Dispute Resolution

Other than requests for provisional relief under Section 9.4, any and all Disputes which the Parties have been unable to resolve by informal methods after undertaking a good faith effort to do so, must first be submitted to mediation under the procedures described in Section 9.2 below, and if the matter is not resolved through mediation, then for final and binding arbitration under the procedures described in Section 9.3 below.

The Parties waive any right to a jury and agree that there will be no interlocutory appellate relief (such as writs) available. Any Dispute resolution process pursuant to this Article 9 shall be commenced within one (1) year of the date of the occurrence of the facts giving rise to the Dispute, without regard to the date such facts are discovered; provided, if the facts giving rise to the Dispute were not reasonably capable of being discovered at the time of their occurrence, then such one (1) year period shall commence on the earliest date that such facts were reasonably capable of being discovered. If the Dispute resolution process pursuant to Article 9 with respect to a Dispute is not commenced within such one (1) year time period, such Dispute shall be barred, without regard to any other limitations period set forth by law or statute.

## Mediation

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

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

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

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

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

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

## Arbitration

Either Party may initiate binding arbitration with respect to the matters first submitted to mediation by providing Notice in accordance with Article Seven 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 9.2, above. If Notice of arbitration is not provided by either Party within sixty (60) days following the unsuccessful conclusion of the mediation provided for in Section 9.2 above, the Dispute resolution process shall be deemed complete and further resolution of such Dispute shall be barred, without regard to any other limitations period set forth by law or statute.

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

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

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

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

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

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

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

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

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

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

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

(c) Discovery may commence at any time after the Parties’ initial disclosure;

(d) The Parties will not be permitted to propound any interrogatories or requests for admissions;

(e) Discovery will be limited to 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);

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

(g) 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;

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

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

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

Subject to Article 11, the Arbitrator will have the authority to grant any form of equitable or legal relief a Party might recover in a court action. The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms of the Agreement, that money damages would not be a sufficient remedy for any breach of these provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to specific performance and injunctive or other equitable relief as a remedy for a breach of Sections 1.1, 5.1, 6.2(b)(ii), or 6.2(b)(iv) or Article 12 of this Agreement.

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

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

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

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

**9.4 Provisional Relief.**

The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms of this Agreement, that money damages would not be a sufficient remedy for any breach of these provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to seek a preliminary injunction, temporary restraining order, or other provisional relief as a remedy for a breach of Sections 1.1, 5.1, 6.2(b)(ii), or 6.2(b)(iv) or Article 12 of this Agreement in any court of competent jurisdiction, notwithstanding the obligation to submit all other Disputes (including all claims for monetary damages under this Agreement) to arbitration pursuant to this Article 9. The Parties further acknowledge and agree that the results of the arbitration may be rendered ineffectual without the provisional relief.

Such a request for provisional relief does not waive a Party’s right to seek other remedies for the breach of the provisions specified above in accordance with Article 9, notwithstanding any prohibition against claim-splitting or other similar doctrine. The other remedies that may be sought include specific performance and injunctive or other equitable relief, plus any other remedy specified in this Agreement for the breach of the provision, or if the Agreement does not specify a remedy for the breach, all other remedies available at law or equity to the Parties for the breach.

# INDEMNIFICATION

## Seller’s Indemnification Obligations

1. In addition to any other indemnification obligations Seller may have elsewhere in this Agreement, which are hereby incorporated in this Section 10.1, 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:
2. any breach made by Seller of its representations, warranties and covenants in Article 6;
3. Seller’s failure to fulfill its obligations regarding Resource Adequacy Benefits as set forth in Section 5.1;
4. any violation of a local, state, or federal law, statute or regulation, arising out of or in connection with Seller’s performance of, or failure to perform this Agreement;
5. 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 obligations or performance under this Agreement; and
6. any penalties or fines assessed against SCE by the Commission or by the CAISO resulting from and to the extent caused by any failure by Seller to perform its obligations under this Agreement, including, but not limited to Seller’s failure to provide SCE with any portion of the Contract Capacity, meet the time requirements for dispatching the DR Resource, and provide Notice of the non-availability of any portion of the Contract Capacity as required under Section 5.1(b) hereof.

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

1. With respect to Section 10.1(a)(v), the Parties shall use commercially reasonable efforts to minimize such penalties and fines, provided that in no event shall SCE be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay such penalties or fines, or fails to reimburse SCE for such penalties and fines, then SCE may offset the cost of those penalties and fines against any future amounts it may owe to Seller under this Agreement.

## Indemnification Claims

All claims for indemnification by SCE will be asserted and resolved as follows:

1. If a claim or demand for which SCE may claim indemnity is asserted against or sought to be collected from Seller by a third party, SCE shall as promptly as practicable give Notice to the Seller; provided, failure to provide this Notice will relieve Seller only to the extent that the failure actually prejudices Seller.
2. Seller will have the right to control the defense and settlement of any claims in a manner not adverse to SCE but cannot admit any liability or enter into any settlement without SCE’s approval.
3. SCE may employ counsel at its own expense with respect to any claims or demands asserted or sought to be collected against it; provided, if counsel is employed due to a conflict of interest or because Seller does not assume control of the defense, Seller will bear the expense of this counsel.

## Survival

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

# LIMITATION OF REMEDIES, LIABILITY, AND DAMAGES

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

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

SUBJECT TO SECTION 9.4, IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR’S LIABILITY WILL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

UNLESS EXPRESSLY PROVIDED IN THIS AGREEMENT, INCLUDING WITHOUT LIMITATION THE PROVISIONS OF Article 10 (INDEMNITY), NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

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

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

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

# CONFIDENTIALITY

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

# FORCE MAJEURE

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

If, because of a Force Majeure, either Party is unable to perform its obligations under this Agreement, such Party (the “Claiming Party”) shall be excused from whatever performance (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure) is affected or would have been required by or but for the Force Majeure only to the extent so affected, provided:

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

# MISCELLANEOUS

## General

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

## Governing Law and Venue

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

## Amendment

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

## Assignment

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

## Successors and Assigns

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

## Waiver

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

## Obligations Surviving Termination

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

## No Agency

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

## No Third Party Beneficiaries

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

## Entire Agreement

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

## Severability

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

## Multiple Originals

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

## Audit Rights

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

##  Moblie Sierra

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

## Performance Under this Agreement

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

[Remainder of Page Intentionally Left Blank]

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

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

**EXHIBIT A**

Form of Letter of Credit

IRREVOCABLE NONTRANSFERABLE STANDBY

LETTER OF CREDIT

Reference Number:

Transaction Date:

BENEFICIARY:

Southern California Edison Company

2244 Walnut Grove Avenue

Risk Control GO#1, Quad 1D

Rosemead, CA 91770

Ladies and Gentlemen:

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

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

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

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

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

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

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

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

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

Banking charges shall be the sole responsibility of the Applicant.

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

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

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

AUTHORIZED SIGNATURE for Issuer

(Name)

Title:

**ATTACHMENT A**

TO ***[ISSUING BANK NAME]***

IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT

No.

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Non-transferable Standby Letter of Credit

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

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

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

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

[ ]B. A Letter of Credit Default (as defined in the Agreement) has occurred and is continuing

[ ]C. An Early Termination Date (as defined in the Agreement) has occurred or been designated as a result of an Event of Default (as defined in the Agreement) with respect to the Applicant for which there exist any unsatisfied payment obligations.

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

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

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

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

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

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

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

Beneficiary: SOUTHERN CALIFORNIA EDISON COMPANY

 By:

 Name:

 Title: