

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Order Instituting Rulemaking to Create a
Consistent Regulatory Framework for the
Guidance, Planning and Evaluation of
Integrated Distributed Energy Resources.

Rulemaking 14-10-003
(Filed October 2, 2014)

**COMMENTS OF COMVERGE, INC., CPOWER, ENERNOC, INC.,
AND ENERGYHUB ("JOINT DR PARTIES") ON AUGUST 1
COMPETITIVE SOLICITATION FRAMEWORK WORKING GROUP REPORT**

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August 22, 2016

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COMPETITIVE SOLICITATION FRAMEWORK WORKING GROUP REPORT**

Comverge, Inc., CPower, EnerNOC, Inc., and EnergyHub (“Joint DR Parties”)¹ respectfully submit these Comments on the August 1, 2016 Competitive Solicitation Framework Working Group (CSFWG) Report (August 1 CSFWG Report). These Comments are filed and served pursuant to the Commission’s Rules of Practice and Procedure and the Administrative Law Judge’s (ALJ’s) Ruling of March 24, 2016 (March 24 ALJ’s Ruling) and the ALJ’s Email Ruling of August 17, 2016 (August 17 ALJ’s Ruling).

**I.
INTRODUCTION**

The March 24 ALJ’s Ruling, as confirmed by the recent August 17 ALJ’s Ruling, permits parties to review and file comments on the final report submitted by the Working Group established by that ruling to develop a competitive solicitation framework. Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (SCE), and Southern California Gas Company (SoCalGas) (jointly, the investor-owned utilities (IOUs)) were tasked with filing the August 1 CSFWG Report. As

¹ In previous filings in this proceeding, the Joint DR Parties also included Johnson Controls, Inc. (JCI). However, on May 2, 2016, EnergyConnect, the division of JCI offering demand response services, was acquired by CPower and is now a wholly owned subsidiary of CPower.

reflected in that report, all of the Joint DR Parties participated in one or more of the CSFWG meetings.²

II. THE PROPOSAL TO REQUIRE PERIODIC DER TESTING REQUIRES ADDITIONAL DETAILS BEFORE IMPLEMENTATION

The Joint DR Parties request additional details around the language in the CSFWG Report on System Availability. The Joint DR Parties' concerns center on the following language:

“Periodic DER testing may be scheduled throughout the term of the DER distribution service agreement, which would include testing prior to approving the DERs for commercial service, as well as prior to the months leading up to when the distribution services from the DERs would be required.”³

It is not clear why or how DERs would be tested before they have delivery obligations. This point requires additional clarification.

III. IT IS NOT APPROPRIATE TO USE THE “SCE SECOND PREFERRED RESOURCES PILOT RFO PRO FORMA DEMAND RESPONSE RESOURCE PURCHASE AGREEMENT” AS THE PRO FORMA CONTRACT FOR DEMAND RESPONSE PARTICIPATING AS PART OF A DER RESOURCE WITHOUT SIGNIFICANT MODIFICATIONS TO THE CURRENT PRO FORMA.

The Pro Forma Working Group started from a premise that all three IOUs would use the SCE Second Preferred Resources Pilot (PRP 2) Request for Offers (RFO) as the reference point for the Working Group's discussions.⁴ The Joint DR Parties participated in these discussions and have objected and continue to object to using the PRP 2 RFO as the basis for additional solicitations.

² August 1 CSFWG Report, at p. 7.

³ August 1 CSFWG Report, at p. 14.

⁴ August 1 CSFWG Report, at p. 46.

While the August 1 CSFWG Report states that the recommendations “are not necessarily specific”⁵ to this pro forma contract, all of the changes identified in Table 8 and Appendix 4 of the August 1 CSFWG Report are based on SCE’s PRP 2 RFO. During the Working Group meetings, parties were asked to identify improvements to the existing pro forma, and the Joint DR Parties discussed the challenges of SCE’s PRP 2 RFO that resulted in DR not being procured by SCE as part of the PRP solicitation. The Joint DR Parties’ objections are included on pages 48 through 49 of the CSFWG Report.

It is the Joint DR Parties’ hope that DR will be allowed and encouraged to participate as a DER in the future. To that end, the pro forma contract needs to allow for transparent, collaborative negotiation with buyers and sellers at the table, rather than another “take it or leave it” contract for new product pro forma contracts. On July 28, 2016, EnerNOC participated in the meeting led by Commissioner Florio and his staff to review the progress made by the Working Group. At that meeting, EnerNOC was asked to provide a redline version of the PRP 2 RFO that addresses its concerns. The redlined pro forma is included and incorporated by reference hereto as Appendix A and is supported by the Joint DR Parties as a whole

The PRP contract was developed as a local capacity resource adequacy (RA) contract, and there is no product definition or performance obligation in the PRP that would be relevant as a Distribution Resource Plan DER. That is a fundamental starting point for the contract to be relevant to this process.

In addition, the PRP contract has unspecified metering and automatic dispatch protocol requirements that could be quite costly and onerous, impacting third parties’ decisions to participate. Also, there is a 20-minute notification requirement that has not been adopted by the Commission, and performance penalties that are a carryover of DR programs, both of which

⁵ August 1 CSFWG Report, at p. 46.

should not be adopted for this purpose. These are a few of the Joint DR Parties' concerns associated with using the SCE PRP 2 RFO Pro Forma contract as a template for DR as a DER.

There are several additional issues included in Table 8 of the Pro Forma section of the CSFWG Report that require additional clarification. For example, one proposed change is an increase in the number of pre-operational milestones, as well as consequences for not meeting those milestones.⁶ While this seems to make sense for projects that require development, it does not necessarily follow that this would be relevant to all DERs.

In addition, the CSFWG Report includes additional discussion after the CSFWG meeting regarding the need to increase performance assurances.⁷ This point requires additional discussion. It is not clear why this significant change from the PRP 2 RFO is needed.

IV. CONCLUSION

The Joint DR Parties appreciate the opportunity to provide these comments on the August 1 CSFWG Report and the need for the changes and clarifications identified above to be made. Further, to the extent that SCE's PRP 2 RFO pro forma is to be used, the Joint DR Parties ask that the redlined version, included herein as Appendix A, be used for DR as a DER.

Respectfully submitted,

August 22, 2016

/s/ SARA STECK MYERS

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On Behalf of Joint DR Parties

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⁶ August 1 CSFWG Report, at p. 47.

⁷ August 1 CSFWG Report, at p. 50.

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APPENDIX A

REDLINED REVISIONS TO THE SCE PRP 2 RFO PRO FORMA CONTRACT



SOUTHERN CALIFORNIA
EDISON

An *EDISON INTERNATIONAL* Company

**SECOND PREFERRED RESOURCES PILOT RFO
PRO FORMA**

DEMAND RESPONSE RESOURCE PURCHASE AGREEMENT

between

SOUTHERN CALIFORNIA EDISON COMPANY

and

[SELLER'S NAME]

(ID #*[Number]*)

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DEMAND RESPONSE RESOURCE PURCHASE AGREEMENT

BY AND BETWEEN

[Name of Aggregator]

SOUTHERN CALIFORNIA EDISON COMPANY

(ID# [Number])

PREAMBLE

This Demand Response Resource Purchase Agreement, together with its appendices (collectively, the "Agreement") is made and effective as of the following date: [Date of Execution] ("Effective Date").

This Agreement is entered into between:

- (i) **Southern California Edison Company** ("SCE"), a California corporation whose principal place of business is at 2244 Walnut Grove Avenue, Rosemead, California, 91770, and
- (ii) [Seller's Name] ("Seller"), a [Seller's business registration], whose principal place of business is at [Seller's place of business].

SCE and Seller are sometimes referred to herein individually as a "Party" and jointly as the "Parties." Unless the context otherwise specifies or requires, capitalized terms in this Agreement have the meanings set forth in Exhibit A.

RECITALS

- A. Seller is proposing, pursuant to the terms of this Agreement, to reduce electrical consumption of certain Johanna-Santiago Customers.
- B. Seller is willing to sell and SCE is willing to purchase the DR Resource from Seller pursuant to the terms and conditions set forth in this Agreement.

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

ARTICLE 1. TRANSACTION

1.1. 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.

The DR Resource:

- a. ☐ Is interconnected to circuits or loads that are electrically interconnected to either the Santiago or Johanna High Voltage Substation (but is not associated with load facilities directly interconnecting only to a particular identified circuit); or
- b. ☐ Is associated with load facilities directly interconnecting to one of the following 12 kV circuits (check one):
 - i. ☐ Euro
 - ii. ☐ Guilder
 - iii. ☐ London
 - iv. ☐ Myford
 - v. ☐ Muirlands
 - vi. ☐ Elden
 - vii. ☐ Hines
 - viii. ☐ Magazine

1.2. Term

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

1.3. 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 Commencement 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 Commencement 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.

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ID# [Number], [Seller's Name]

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

1.4. DR Resource

- (a) The "Event Parameters" 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]

- (b) The "Energy Rate" shall be [Bid] per kilowatt hour (kWh). The "Contract Capacity" and corresponding "Capacity Rate" are as set forth below:

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

1.5. Seller's Submittal of Recruited Accounts and Participating Accounts

Comment [MG1]: Not included in DRAM

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ID# [Number], [Seller's Name]

- (a) 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 that SCE may instruct Seller to Dispatch as a part of Seller's DR Resource (each a "Recruited Account") for such Operating Month. Each Recruited Account must satisfy the following criteria and, upon request, Seller shall include with the list information reasonably necessary to permit SCE to verify that:
- (i) The Recruited Account has properly executed the Aggregator Add Account Form, and has delivered such form to SCE;
 - (ii) The Recruited Account is a DR Resource as described in Section 1.1;
 - (iii) The Recruited Account is not served under any other demand response agreement with SCE or demand response program, except for up to one Dual Participation Program and, if a Recruited Account is participating in a Dual Participation Program, the name(s) of the program(s) in which such Recruited Account is participating;
 - (iv) The Recruited Account is not receiving a Medical Baseline Allocation for air conditioning or receiving service under Schedules DM, DMS-1, DMS-2, DMS-3, DS, or any streetlight, area lighting, traffic control or wireless technology rate; and
 - (v) 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 and zip code, Qualifying Meter number, and SCE service account number. A Customer may remove itself from Seller's Recruited Accounts by executing and delivering to Seller and SCE an Aggregator Remove Account Form; 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.

- (b) 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)-(v). All unverified Recruited Accounts are ineligible to be included as Participating Accounts for such Operating Month. SCE may adjust or modify the SLAP boundaries in accordance with direction SCE receives from the CAISO or Commission, provided that SCE communicates such changes as soon as possible to Seller; provided, such adjustment or modification shall not affect SCE's obligation to make Delivered Energy Payments or Delivered Capacity Payments for the Dispatch of the DR Resource or Participating Accounts that have been previously verified by SCE. Notwithstanding any other provision in

Comment [mtl2]: This is a problem with incrementality. As stated in the workshop.

Comment [mtl3]: Make sure that we can use electronic and click-through processes.

Comment [mtl4]: If SCE or CAISO is unable to process the registration, Seller shall not be liable.

Comment [mtl5]: If the change in SLAP boundary changes the resource's qualification as a RA resource, SCE shall give Seller an opportunity to replace any lost (30 days) capacity without affecting Seller's performance under the agreement.

Comment [mtl6]: What about resources that have not been dispatched? s/b paid upon the verified nomination/capacity for that month not for the previous month's dispatch.

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.

- (c) 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:
- (i) an estimate (in kilowatts) of the total load drop capacity of the Participating Accounts ("Load Drop Estimates"), provided, the total estimate does not exceed the applicable Contract Capacity; and
 - (ii) for each Participating Account, whether the Day-of Adjustment will apply.
- (d) No Adjustment during Operating Month. Seller may not adjust or alter the list of Participating Accounts once the Operating Month commences.

1.6. Dispatch and Access to Telemetry

- (a) Dispatch. Subject to the limitations set forth in Sections 1.3 and 1.4, SCE may direct Seller to Dispatch by issuing a Dispatch Instruction. The Dispatch Instruction shall be made pursuant to an automated dispatch protocol to be determined by SCE in its sole discretion (the "ADP"). SCE shall provide Seller notice of the ADP it intends to use, including the cost, at least 30 days before contract execution and at least 180 days in advance of effective date. during the contract term at least xx days in advance of the effective date of the Contract. ~~SCE must provide seller at least xx days advance notification in advance of the Operating Month before making any change in the ADP.~~ 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. Once Seller has received a proper Dispatch Instruction, Seller shall Dispatch the DR Resource as instructed.

If multiple events per day are allowed under section 1.4(a), then SCE in its sole discretion may require Seller to Dispatch multiple times per day, each of which shall be a separate event and settled separately, unless the event is contiguous, which will result in contiguous multiple dispatches being settled as one event. Separate dispatches within the same day must have at least xx hours separation to allow the resource to recover from the previous dispatch. SCE in its sole discretion may require Seller to Dispatch on the same day as a Seller Dispatch (prior to and/or after a Seller Dispatch), and such events shall be separate events and settled separately from the Seller Dispatch to the extent that the SCE dispatch and the Seller Dispatches are non-contiguous events separated by at least xx

Comment [mtl7]: This section only describes energy and capacity. It doesn't address volt/VAR or any other service.

Comment [mtl8]: Not clear if this is intended for w/s market or just for distribution level and if telemetry is required.

Comment [MG9]: Seller should be able to propose alternative telemetry options (outside of just meters)

Comment [MG10]: Which should be capped

Comment [mtl11]: 20 minutes is disputed. 60 minutes? Day ahead?

Comment [MG12]: This was a change adopted by the utility with no ability to negotiate and based solely on the direction of CAISO. The 20-minute notification has not been adopted by CAISO or the CPUC so this seems premature. Need sufficient process

Comment [mtl13]: Not clear if dispatch is by account or resource.

Comment [mtl14]: We've had an issue with contiguous dispatches and how that affects the baseline. Contiguous dispatches will be considered one event.

Comment [mtl15]: Same comment as above.

hours. When multiple events occur on the same day, the Day-of Adjustment for the first occurring event shall be used for each subsequent event for settlement purposes.

Seller and SCE shall work in good faith to install and implement the ADP described above. Any reasonable equipment necessary to install and implement the ADP will be at Seller's cost. If Seller is unable to Dispatch the DR Resource due to Seller's failure to install and implement the ADP, for every day that the ADP is unavailable, (a) for purposes of calculating the Delivered Capacity Payment, the Maximum Dispatches per Day will be deemed to have occurred on each such day, with each such Dispatch equal to the Maximum Duration per Dispatch (all as set forth in Section 1.4(a), and not to exceed 24 hours per day, the Maximum Dispatch Hours per Month, or the Maximum Dispatch Hours per Term Year) and the Hourly Recorded Reduction shall be deemed to be zero for each hour thereof, and (b) notwithstanding the provisions of Section 3.3, Seller shall not be entitled to any Delivered Energy Payment for any hour thereof.

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

1.7. Exclusive Rights

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

- (a) the Contract Capacity from, and the energy benefit derived from, the Participating Accounts and the DR Resource; and
- (b) 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.

1.8. Metering and Communication Equipment

Comment [mtl16]: No description of what the ADP is.

Comment [mtl17]: Not clear how much cost this exposes the seller to.

Comment [MG18]: There is no identification of a trigger or explanation of how the utility would dispatch the resource. It's impossible to sign up customers with a blind trigger and no market experience as to how frequently or under what conditions the resources will be dispatched and yet the resource is responsible for market performance and penalties from CAISO. The utility has full discretion when the resource will be dispatched and DRP doesn't know until 20 minutes in advance

Comment [MG19]: Really heavy penalty – not appropriate

Comment [mtl20]: All of this is of unknown cost and may make the contract uneconomic.

Comment [MG21]: Problem with LCR RFO was sellers were responsible for all the telemetry and integration costs, which were unknown at the time of the RFO. Do we know them now? It's very challenging to negotiate a contract and be on the hook for things that are not understood, not defined, unknown, or subject to change during the negotiation

Comment [MG22]: Unreasonable to expect real-time access; we don't get that from the utility

Comment [MG23]: Not in DRAM 2

Comment [mtl24]: This caps the value of the resource to only capacity and energy for T purposes and doesn't allow for additional value for D. SCE should get benefit of what they are paying for, not all/benefits

Comment [MG25]: Not in DRAM 2

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ID# [Number], [Seller's Name]

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

Comment [mtl26]: Cost and lack of specificity are a concern.

Comment [MG27]: The utility should install it if it's their requirement; costs should be agreed on between Seller and IOU

ARTICLE 2. CPUC APPROVAL

Unless otherwise specified herein, notwithstanding SCE's execution and delivery of this Agreement, SCE's obligations under this Agreement shall only become effective upon CPUC Approval.

At least Within 90 days -after before the Effective Date, SCE shall file with the Commission the appropriate request for CPUC Approval. SCE shall expeditiously and in good faith 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.

Comment [mtl28]: Not sure this gives us enough time to obtain CPUC approval

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

ARTICLE 3. PAYMENT AND BILLING

3.1. Invoice

For each month of the Delivery Period, SCE shall make monthly Delivered Energy Payments and Delivered Capacity Payments, and, if applicable, Seller shall make Recapture Payments in accordance with Section 3.2(b), in each case in arrears and subject to the following:

- (a) If SCE does not provide a Dispatch Instruction for an Operating Month, Seller shall submit an invoice to SCE no later than ninety (90) days after the end of such Operating Month setting forth Seller's calculation of the Delivered Capacity

Payment and any Recapture Payments for such Operating Month in accordance with Section 3.2 below.

- (b) If SCE does provide one or more Dispatch Instructions for an Operating Month, Seller shall submit an invoice to SCE no later than one hundred and twenty days (120) days after the end of such Operating Month setting forth Seller's calculation of the Delivered Capacity Payment, Delivered Energy Payment and any Recapture Payments for such Operating Month in accordance with Sections 3.2 and 3.3 below.
- (c) All invoices submitted by Seller shall include recorded meter data and other performance data and calculations supporting the Delivered Capacity Payment, Delivered Energy Payment and Recapture Payments Seller claims or owes for such Operating Month.
- (d) SCE will pay Seller all undisputed invoices within [sixty (60) days] after receipt of Seller's invoice. Seller shall pay any applicable Recapture Payments to SCE within [sixty (60) days] after providing Seller's invoice with respect thereto.
- (e) Unless otherwise agreed to in writing by the Parties, payment to each Party will be by ACH Transfer or similar method, or by other mutually agreeable method(s), to the account designated by the other Party.
- (f) SCE may offset any future payments against any amount(s) that were previously overpaid.
- (g) Any amounts not paid by the due date will be deemed delinquent and will accrue Simple Interest, such interest to be calculated from an including the due date to but excluding the date the delinquent amount is paid in full.
- (h) 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 11 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. Neither party may unreasonably withhold payment.

Comment [mtl29]: If there are undisputed amounts on the invoice, SCE should pay the undisputed amounts and only withhold payment on the disputed portions.

Comment [mtl30]: 30 days

Comment [mtl31]: 30 days

Southern California Edison

Confidential Information

ID# [Number], [Seller's Name]

- (i) 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.

3.2. Delivered Capacity Payment

- (a) Before the first Dispatch is performed during the Delivery Period, the Delivered Capacity Payment shall equal the applicable Contract Capacity times the applicable Capacity Rate.
- (a) After the DR Resource has been subjected to a Dispatch, the Delivered Capacity Payment and Recapture Payments, if any, shall be calculated for each Operating Month as follows: Add or modify payment/payment adjustment related to performance during targeted distribution deferral period
- (b)

Percentage of Contract Capacity Reduced	Delivered Capacity Payment/Recapture Payment
>105.00%	1.05 * Contract Capacity * Capacity Rate
75.00-105.00%	Total Recorded Capacity * Capacity Rate
60.00-74.99%	0.5 * Total Recorded Capacity * Capacity Rate
<60.00%	(Total Recorded Capacity - (0.6 * Contract Capacity)) * Capacity Rate

Comment [mtl32]: We don't support this structure. Need to negotiate appropriate penalty structure. Prefer the DRAM structure. Stri

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- (c) The "Total Recorded Capacity" for any particular Operating Month shall equal the sum of the Hourly Recorded Reductions (expressed in kW) for all Dispatches during the applicable Operating Month, divided by the number of Dispatched hours during such Operating Month. If during a particular Operating Month a Dispatch has not occurred, then the "Total Recorded Capacity" for such Operating Month shall equal the Total Recorded Capacity which was calculated with respect to the most recent Operating Month during which a Dispatch occurred.
- (d) The "Hourly Recorded Reduction" equals the sum of each Participating Account's Energy Baseline for the corresponding hour less its recorded energy, as measured by the Qualifying Meter, for that hour; provided, in no event shall the Hourly Recorded Reduction for any hour be less than zero (0). An Hourly Recorded Reduction will be calculated for each hour of the Dispatch.

Comment [mtl33]: This should reset to the committed capacity for the month, rather than be de-rated by the prior month's recorded/committed capacity.

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

- (f) ~~If the Total Recorded Capacity is less than sixty percent (60.00%) of the applicable Contract Capacity, then the Delivered Capacity Payment shall equal zero dollars (\$0.00); and Seller shall owe SCE a Recapture Payment based on above formula.~~

3.3. Delivered Energy Payment

- (a) 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 SCE's Dispatch Instruction.
- (a) The Delivered Energy Payment shall be calculated for each hour in which a Dispatch occurs as follows: Add or modify payment/payment adjustment related to performance during targeted distribution deferral period
- (b) ~~Should be equal to the actual energy costs incurred by SCE.~~

Percentage of Contract Capacity Reduced	Delivered Energy Payment/Shortfall Energy Amount
>150.00%	1.50 * Contract Capacity * Energy Rate
100.00-150.00%	Hourly Recorded Reduction * Energy Rate
<100.00%*	(Hourly Recorded Reduction * Energy Rate) - (Shortfall Energy Amount)

- (c) ~~"Shortfall Energy Amount" means Shortfall Energy during the applicable hour times the CAISO's average Interval Locational Marginal Price for the SCE SLAP (Node SLAP_SCE_W) for the corresponding day and hour during which the Shortfall Energy occurred.~~
- (d) ~~"Shortfall Energy" means (in kWh) the Contract Capacity less the Hourly Recorded Reduction for that hour.~~
- (e) ~~For purposes of determining the Hourly Recorded Reduction with respect to a Participating Account, should coincident event hours for a Dispatch and Dual~~

~~Participation Program occur, then any load reductions calculated during such coincident hours for such Participating Account will be included in the Hourly Recorded Reduction calculation.~~

- ~~(f) If the Hourly Recorded Reduction is less than one hundred percent (100%) of the applicable Contract Capacity, then Seller shall owe SCE a Shortfall Energy Amount based on above formula.~~

3.4. Seller Dispatch

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

- (a) Seller must provide advance Notice to SCE of a range of dates during which it requests that the Dispatch occur (the "Requested Date Range"). Each Requested Date Range must be comprised of no less than five (5) consecutive Business Days, and the earliest date must be at least three (3) Business Days after the Notice has been received by SCE.
- (b) ~~Following its receipt of such Notice, SCE will in its sole discretion select the specific timing for such Dispatch within the Requested Date Range, by providing a Dispatch Instruction to Seller either telephonically or pursuant to the ADP at least twenty (20) minutes 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.~~

Comment [mtl34]: We select the date and time; or if we select the range and SCE selects date and time, we get energy payment. Seller tests may not be needed except to the extent that SCE requires payment to be based upon dispatches/tests, although we would prefer to be paid upon our nomination if not dispatch.

Notwithstanding anything to the contrary in this Agreement: (a) such Dispatch shall solely be considered a "Seller Dispatch," ~~(b) Seller shall not be entitled to receive any Delivered Energy Payments for a Seller Dispatch, and~~ (c) Seller shall be responsible for all costs associated with a Seller Dispatch. The number of hours from Seller Dispatches will not count towards the Event Parameter limitations, including the maximum available Dispatch hours for a given month or year, as set forth in Section 1.4(a) above.

ARTICLE 4. CREDIT AND COLLATERAL

Comment [MG35]: same as DRAM

4.1. Financial Information

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

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

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

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

If a Party's financial statements are publicly available electronically on the website of that Party or the SEC, then the Party shall be deemed to have met the requirements of this Section 4.6. Should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the producing Party diligently pursues the preparation, certification and delivery of the statements.

4.2. Seller's Credit Requirements

- (a) Seller shall provide and maintain Performance Assurance in an amount equal to \$[_____]. *{SCE Comment: Performance Assurance will be calculated based on PRP Instructions.}*
- (b) Seller shall post one-third of the Performance Assurance within five (5) Business Days following the Effective Date, with an additional one-third (two-thirds total) of the Performance Assurance to be posted within five (5) Business Days after CPUC Approval is obtained or waived by SCE in its sole discretion, and the remaining amount to be posted prior to the Delivery Commencement Date.
- (c) Seller shall post such Performance Assurance in accordance with the following terms and conditions:
- (i) Performance Assurance must be in the form of either a Cash deposit or a Letter of Credit;
 - (ii) Performance Assurance shall be posted to SCE and maintained at all times during the Term and thereafter until such time as Seller has satisfied all monetary obligations which survive any termination of this Agreement;
 - (iii) If Seller posts any Performance Assurance in Cash, Seller will receive Simple Interest payments in accordance with the procedure specified in Section 4.3(a) of this Agreement; and

Comment [mtl36]: Need clarity.

(iv) If Seller provides Performance Assurance by means of a Letter of Credit, such Letter of Credit must be provided substantially in the form of Exhibit C.

(v) Modify to include development security in the agreement

~~(iv)~~(vi)

(d) Notwithstanding any other provision of this Agreement, SCE is not required to provide Performance Assurance to Seller.

4.3. Administration of Performance Assurance

(a) Interest Payments on Cash. Performance Assurance posted in cash shall earn Simple Interest. Seller shall provide a quarterly invoice to SCE that sets forth the calculation of the interest amount due and SCE shall make payment thereof by the later of the third (3rd) Business Day (so long as no Event of Default has occurred and is continuing with respect to Seller):

(i) of the first (1st) month after the quarter to which the invoice relates; or

(ii) after the day on which such invoice is received.

On or after the occurrence of an Event of Default by Seller, SCE shall retain any such interest amount as additional Performance Assurance hereunder for so long as such Event of Default is continuing or the obligations of Seller under this Agreement have not been satisfied.

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 Seller, including any equity or right of redemption by Seller.

(b) Letters of Credit. Performance Assurance provided in the form of a Letter of Credit shall be substantially in the form set forth in Exhibit C, issued by a Qualified Institution acceptable to SCE and subject to the following provisions.

(i) Each Letter of Credit shall be maintained for the benefit of SCE.

(ii) 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 Qualified 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 alternative Performance Assurance acceptable to SCE at least twenty (20) Business Days before the expiration of the outstanding Letter of Credit, and
 - (C) if the Qualified 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 or alternative Performance Assurance acceptable to SCE, in its sole discretion, within three (3) Business Days after such refusal.
- (iii) As one method of providing Performance Assurance, Seller may adjust the amount of an outstanding Letter of Credit or establish one or more additional Letters of Credit.
- (iv) Upon the occurrence of a Letter of Credit Default, Seller shall provide to SCE either a substitute Letter of Credit or alternative Performance Assurance acceptable to SCE, in each case on or before the third (3rd) Business Day after the occurrence thereof.
- (v) Upon or at any time after the occurrence and continuation of an Event of Default by Seller, SCE may draw on the entire undrawn portion of any outstanding Letter of Credit upon submission to the Qualified Institution issuing such Letter of Credit of one or more certificates specifying that such Event of Default has occurred and is continuing.

In addition, SCE will have the right to draw on the Letter of Credit for any of the following reasons:

- (A) The Letter of Credit will expire in fewer than twenty (20) Business Days and Seller has not provided SCE alternative Performance Assurance acceptable to SCE.
- (B) The Seller or the issuer of the Letter of Credit has provided written notice to SCE of either Seller's or the issuer's intent not to renew the Letter of Credit following the present expiration date thereof ("Notice of Non-Renewal"), and Seller has failed to provide SCE with a replacement Letter of Credit satisfactory to SCE in its sole discretion within sixty (60) days following the date of the Notice of Non-Renewal.

- (C) SCE has not been paid any or all of Seller's payment obligations due and payable under the Agreement. Any payment amount that is the subject of a good faith dispute by either Party shall not be deemed to be due and payable until the relevant date under Section 3.1(h). Notwithstanding the foregoing, SCE shall have the right to draw on the Letter of Credit if any portion of a Termination Payment has not been paid when due and payable under this Agreement, regardless of any dispute with respect to such Termination Payment.
- (vi) Cash proceeds received by SCE from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for Seller's obligations to SCE and SCE shall have the rights and remedies set forth in this Agreement with respect to such Cash proceeds.
- (vii) Notwithstanding SCE's receipt of Cash proceeds of a drawing under the Letter of Credit, Seller shall remain liable (A) for any failure to provide sufficient Performance Assurance and (B) for any amounts owing to SCE and remaining unpaid after the application of the amounts so drawn by SCE.
- (viii) In all cases, all costs associated with a Letter of Credit, including without limitation the costs and expenses of establishing, renewing, substituting, canceling, amending, and increasing the amount of a Letter of Credit, shall be borne by Seller.
- (c) Care of Performance Assurance. Except as otherwise provided in Section 4.3(a) 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 it 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.

4.4. Grant of Security Interest/Remedies

- (a) To secure its performance of its obligations under this Agreement, and until released as provided herein, Seller hereby grants to SCE a present and continuing first-priority security interest (Security Interest") in, and lien on (and right of setoff against), and assignment of, the Performance Assurance and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter

held by, on behalf of, or for the benefit of SCE, and Seller agrees to take such action as SCE reasonably requires in order to perfect SCE's Security Interest in, and lien on (and right of setoff against), such Performance Assurance and collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

- (b) 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 its rights and remedies with respect to all Performance Assurance, including any such rights and remedies under law then in effect;
 - (ii) Exercise the right of setoff against any and all property of Seller in SCE's possession;
 - (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 Seller, including any equity or right of purchase or redemption by Seller.

SCE shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (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.

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

4.5. 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 6, neither Party:

- (a) 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

- (b) 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 6 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.

4.6. Consolidation of Seller's Financial Statements

- (a) SCE shall determine, through consultation with its internal accountants and review with their independent registered public accounting firm, whether SCE is required to consolidate Seller's financial statements with SCE's financial statements for financial accounting purposes under Accounting Standards Codification (ASC) 810/Accounting Standards Update 2009-17, "Consolidation of Variable Interest Entities" (ASC 810), or future guidance issued by accounting profession governance bodies or the SEC that affects SCE accounting treatment for this Agreement (the "Financial Consolidation Requirement").
- (b) If the Financial Consolidation Requirement is applicable, then:
 - (i) Within 20 days following the end of each calendar year (for each year that such treatment is required), Seller shall deliver to SCE unaudited financial statements and related footnotes of Seller as of the end of the year. It is permissible for Seller to use accruals and prior months' estimates with true-up to actual activity, in subsequent periods, when preparing the unaudited financial statements. The annual financial statements should include quarter-to-date and yearly information. SCE shall provide to Seller a checklist before the end of each year listing the items which SCE believes are material to SCE and required for this purpose, and Seller shall provide the information on the checklist, subject to the availability of data from Seller's records. It is permissible for Seller to use accruals and prior months' estimates with true-up to actual activity, in subsequent periods, when preparing the information on the checklist. If audited financial statements are prepared for Seller for the year, Seller shall provide such statements to SCE within five Business Days after those statements are issued.
 - (ii) Within 15 days following the end of each fiscal quarter (for each quarter that such treatment is required), Seller shall deliver to SCE unaudited financial statements and related footnotes of Seller as of the end of the quarterly period. The financial statements should include quarter-to-date and year-to-date information. SCE shall provide to Seller a checklist before the end of each quarter listing items which SCE believes are material to SCE and required for this purpose, and Seller shall provide the information on the checklist, subject to the availability of data from Seller's records. It is permissible for Seller to use accruals and prior

months' estimates with true-up to actual activity, in subsequent periods, when preparing the unaudited financial statements.

- (iii) If Seller regularly prepares its financial data in accordance with GAAP, IFRS, or Successor, the financial information provided to SCE shall be prepared in accordance with such principles. If Seller is not a SEC registrant and does not regularly prepare its financial data in accordance with GAAP, IFRS or Successor, the information provided to SCE shall be prepared in a format consistent with Seller's regularly applied accounting principles, e.g., the format that Seller uses to provide financial data to its auditor.
- (c) If the Financial Consolidation Requirement is applicable, then promptly upon Notice from SCE, Seller shall allow SCE's independent registered public accounting firm such access to Seller's records and personnel, as reasonably required so that SCE's independent registered public accounting firm can conduct financial statement audits in accordance with the standards of the Public Company Accounting Oversight Board (United States), as well as internal control audits in accordance with Section 404 of the Sarbanes-Oxley Act of 2002, as applicable. All expenses for the foregoing work of SCE's independent registered public accounting firm shall be borne by SCE. If SCE's independent registered public accounting firm during or as a result of the audits permitted in this Section 4.6(c) determines a material weakness or significant deficiency, as defined by GAAP, IFRS or Successor, as applicable, exists in Seller's internal controls over financial reporting, then within 90 days of Seller's receipt of Notice from SCE, Seller shall remediate any such material weakness or significant deficiency; *provided, however*, that Seller has the right to challenge the appropriateness of any determination of material weakness or significant deficiency. Seller's true up to actual activity for yearly or quarterly information as provided herein shall not be evidence of material weakness or significant deficiency.
- (d) SCE shall treat Seller's financial statements and other financial information provided under the terms of this Section 4.6 in strict confidence and, accordingly:
 - (i) Shall utilize such Seller financial information only for purposes of preparing, reviewing or certifying SCE's or any SCE parent company financial statements, for making regulatory, tax or other filings required by law in which SCE is required to demonstrate or certify its or any parent company's financial condition or to obtain credit ratings;
 - (ii) Shall make such Seller financial information available only to its officers, directors, employees or auditors who are responsible for preparing, reviewing or certifying SCE's or any SCE parent company financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of SCE's or any

SCE parent company financial statement and to those persons who are entitled to receive confidential information as identified in Article 14; and

- (iii) SCE shall ensure that its internal auditors and independent registered public accounting firm (1) treat as confidential any information disclosed to them by SCE pursuant to this Section 4.6, (2) use such information solely for purposes of conducting the audits described in this Section 4.8, and (3) disclose any information received only to personnel responsible for conducting the audits.
- (e) If the Financial Consolidation Requirement is applicable, then, within two Business Days following the occurrence of any event affecting Seller which Seller understands, during the Term, would require SCE to disclose such event in a Form 8-K filing with the SEC, Seller shall provide to SCE a Notice describing such event in sufficient detail to permit SCE to make a Form 8-K filing.
- (f) If, after consultation and review, the Parties do not agree on issues raised by Section 4.6(a), then such dispute shall be subject to review by another independent audit firm not associated with either Party's respective independent registered public accounting firm, reasonably acceptable to both Parties. This third independent audit firm will render its recommendation on whether consolidation by SCE is required. Based on this recommendation, Seller and SCE shall mutually agree on how to resolve the dispute. If Seller fails to provide the data consistent with the mutually agreed upon resolution, SCE may declare an Event of Default pursuant to Section 6.1. If the independent audit firm associated with SCE still determines, after review by the third party independent audit firm, that SCE must consolidate, then Seller shall provide the financial information necessary to permit consolidation to SCE; *provided, however*, that in addition to the protections in Section 4.6(d), such information shall be password protected and available only to those specific officers, directors, employees and auditors who are preparing and certifying the consolidated financial statements and not for any other purpose.

ARTICLE 5. SPECIAL TERMS AND CONDITIONS

5.1. Resource Adequacy Benefits

- (a) 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 Authority that address resource adequacy performance obligations and penalties), and execute all documents or instruments necessary, to effect the use of the Resource Adequacy

Comment [mtl37]: These resources may not be providing RA benefit, which is a transmission-level service.

Benefits of the DR Resource for SCE's sole benefit throughout the Delivery Period.

- (b) 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 Resource Adequacy Rulings or any Applicable Laws, SCE will inform Seller of such fact and thereafter:
 - (i) 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 Operating Month during the Delivery Period, Seller shall, no later than sixty (60) days before the first day of the relevant Operating Month, notify SCE of the amount of capacity of the DR Resource which can be included in such Compliance Showing; and
 - (ii) 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.

5.2. Milestone Schedule

In order to meet the Expected Initial Delivery Date, Seller shall use reasonable efforts during the construction period to meet the various Project related milestones set forth in Exhibit D ("Milestone Schedule") and avoid or minimize any delays in meeting such Milestone Schedule. No later than the tenth (10th) day of each month while the DR Resource has not yet met its Initial Delivery Date, or within five (5) days of SCE's request, Seller shall deliver to SCE a monthly progress report, substantially in the form set forth in Exhibit E ("Construction Report"), describing its progress in relation to the Milestone Schedule, including projected time to completion of any milestones, for each Storage Unit and the Project. Seller shall include in any Construction Report a list of all letters, notices, applications, approvals, authorizations and filings referring or relating to Required Permits, and shall provide any such documents as may be reasonably requested by SCE. In addition, Seller shall advise SCE, as soon as reasonably practicable, of any problems or issues of which Seller is aware which could materially impact its ability to meet the Milestone Schedule.

There would be an increase in the number of pre-operational milestones as well as consequences for not meeting these milestones. Proposal: is to Adjust Delivery Data Security for deviation from milestone schedule that would not impact online date. Propose to make this same adjustment to Exhibit D and Section 9.2(a)

- (i)

5.3. Measurement and Evaluation of the DR Resource

Seller agrees, and shall cause each Recruited Account 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 Accounts' facilities to conduct measurement and evaluation activities related to this Agreement; and (b) participate in and complete all evaluation surveys received from SCE, the Commission and/or the CEC related to this Agreement.

Comment [mtl38]: This is really broad.

5.4. 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.

5.5. Release of Customer-Specific Usage or Meter Data

SCE shall, to the extent available and permitted by Applicable Laws, 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 5.4 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.

Comment [MG39]: Not in DRAM 2

5.6. Customer Inquiries

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

Comment [mtl40]: This entire section is outdated. No written authorization is necessary. The type of data that will be needed may be significantly more than is noted here.

Comment [MG41]: IOU has to be responsible for the accuracy – it's their meter data.

5.7. Diverse Business Enterprises Reporting

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

SCE has the right to disclose to the Commission all such information provided by Seller pursuant to this Section 5.6.

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 5.6.

5.7 **Marketing**

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

5.8 Back-Up Generation

Seller shall ensure that Back-up Generation is not used during any Dispatch under this Agreement. Seller shall: (a) provide an attestation with each invoice stating that no Participating Account used Back-up Generation during any Dispatch in the invoiced month; and (b) require, in its agreements with its Participating Accounts, that no Back-up Generation may be used during a Dispatch of a DR Resource. Upon request, Seller shall provide SCE with information reasonably necessary to permit SCE to verify the accuracy of the attestation referenced in (a), above, and compliance of Seller's agreements with the requirements of (b), above.

Comment [MG42]: Customer attestation should be all that is required, at least for residential

5.9 Cyber Security

Seller shall implement reasonable administrative, technical, and physical safeguards to protect Customer information from unauthorized access, destruction, use, modification, or disclosure. Such safeguards shall be consistent with the standards set forth in Exhibit E. In the event of any occurrence of a Security Incident, Seller shall notify SCE in the time-frames and manner set forth in Exhibit E.

ARTICLE 6. EVENTS OF DEFAULT; TERMINATION

6.1. Events of Default

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

- (a) With respect to either Party:
 - (i) 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;
 - (ii) 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;

- (iii) 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;
 - (iv) Such Party becomes Bankrupt;
 - (v) A Merger Event occurs with respect to such Party; or
 - (vi) Such Party disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of this Agreement.
- (b) With respect to Seller:
- (i) Seller fails to comply with its obligations under Article 4, including failing to post or maintain Performance Assurance, within three (3) Business Days after receipt of Notice by SCE of the failure;
 - (ii) Seller fails to comply with any of its covenants under Section 7.2, unless such failure to comply is cured within a period specifically provided elsewhere in this Agreement applicable to such failure to comply;
 - (iii) during the Delivery Period, the measured Total Recorded Capacity is less than sixty percent (60%) of the Contract Capacity for three consecutive months during which Dispatches have occurred;
 - (iv) During the Delivery Period, Seller fails for three consecutive months to identify, pursuant to Section 1.5(c), Participating Accounts with Load Drop Estimates equal to or greater than sixty percent (60%) of the applicable Contract Capacity;
 - (v) 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;
 - (vi) Seller fails to take any actions necessary to dedicate, convey or effectuate the use of any and all Resource Adequacy Benefits for SCE's sole benefit as specified under Section 5.1;
 - (vii) 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
 - (viii) Subject to the terms of a Collateral Assignment Agreement, the occurrence and continuation of a default, event of default or other similar

Comment [mtl43]: Is this adequate time?

Comment [mtl44]: This isn't an RA contract

condition or event under one or more agreements or instruments relating to indebtedness for borrowed money of Seller, which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable.

(ix) Add new Event of Default for deviation from milestone schedule that would impact online date

(viii)(x)

Comment [mtl45]: Need to add events of default for SCE. Failure to provide access to data on a timely basis; failure to approve accounts as eligible on a timely basis to perform before the delivery month. Failure to pay for delivered services on a timely basis.

6.2. Early Termination

If an Event of Default shall have occurred and be continuing, the other Party (the “Non-Defaulting Party”) shall have the right, by delivery of Notice to the Defaulting Party, to:

- (a) Designate by Notice, which will be effective five (5) Business Days after the Notice is given, a day, no later than twenty (20) calendar days after the Notice is given, for the early termination of this Agreement (an “Early Termination Date”);
- (b) Accelerate all amounts owing between the Parties under this Agreement;
- (c) Withhold any payments due to the Defaulting Party under this Agreement;
- (d) Suspend performance of this Agreement, but excluding the obligation to post and maintain Performance Assurance in accordance with Article 4; and
- (e) Pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages and, where appropriate, specific performance or injunctive relief), except to the extent that such remedies are limited by the terms of this Agreement.

6.3. 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 Settlement Amount shall be zero dollars (\$0), and the Non-Defaulting Party shall only pay to the Defaulting Party, within thirty (30) days after the Notice is provided, any

amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date.

If a Party disputes the other Party's calculation of the Termination Payment, in whole or in part, the disputing Party shall, within two (2) Business Days of receipt of the other Party's calculation of the Termination Payment, provided to the other Party a detailed written explanation of the basis for such dispute. 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 11.

6.4. Right of Set-Off

After calculation of a Termination Payment in accordance with Section 6.3, 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).

6.5. 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.

6.6. Effect of Termination

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

ARTICLE 7. GOVERNMENTAL CHARGES

7.1. Governmental Charges

Seller shall pay or cause to be paid all taxes, charges or fees imposed by a Governmental Authority ("Governmental Charges") on or with respect to the DR Resource. If SCE is required by Applicable Laws to remit or pay Governmental Charges which are Seller's responsibility hereunder, SCE may deduct the amount of any such Governmental Charge from any amounts due to Seller under this Agreement. Nothing shall obligate or cause a

Comment [mtl46]: No idea what this entails nor that it is relevant to our actions.

Party to pay or be liable to pay any Governmental Charges for which it is exempt under Applicable Laws.

7.2. Compliance with Laws and Indemnification

Seller shall operate the DR Resource in compliance with all Applicable Laws for the Term, including any new or revised Applicable Laws that become effective during the Term. In the event that these requirements conflict, or the CAISO or CPUC do not provide a corresponding requirement to the other Governmental Bodies, Seller shall comply with the most stringent requirement of the Governmental Bodies. Seller shall be solely responsible for any fines, penalties or other charges which result from Seller's failure operate the DR Resource in accordance with Applicable Laws. No such fines, penalties or charges shall be passed through to SCE and Seller shall indemnify, defend and hold SCE harmless from and against all liabilities, damages, claims, losses, costs or expenses (including attorneys' fees) incurred by or brought against SCE in connection with compliance with Applicable Laws.

Comment [mtl47]: This language is too vague and should be specific to CPUC rules. This language was used to expose DR providers to the 20 minute requirement that CAISO wanted to impose when the CPUC had not imposed a requirement.

Comment [mtl48]: This language was too expansive for us to accept.

ARTICLE 8. REPRESENTATIONS, WARRANTIES AND COVENANTS

8.1. Representations and Warranties of Both Parties

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

- (a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) 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;
- (c) The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action (other than CPUC Approval in the case of SCE) and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Laws applicable to it;
- (d) This Agreement constitutes its legally valid and binding obligation, enforceable against it in accordance with its terms, subject to any Equitable Defenses;
- (e) 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;

- (f) 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;
- (g) 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
- (h) 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.

8.2. Seller Representations, Warranties and Covenants of Seller

- (a) Seller represents, warrants and covenants to SCE as of the Effective Date and the Approval Date that:
 - (i) 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.
 - (ii) Seller will deliver the Safety Report to SCE no later than 30 days prior to the start of the Delivery Period.
- (b) Seller represents, warrants, and covenants to SCE that throughout the Delivery Period:
 - (i) 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.
 - (ii) Seller has been appointed by each Participating Account to act as an aggregator on behalf of said Participating Account with respect to all aspects of the DR Resource, including but not limited to: (A) the receipt of Notices from SCE; (B) the receipt of capacity and energy payments from SCE; and (C) the payment of penalties to SCE.
 - (iii) 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.

Comment [mtl49]: If this is a DER contract, value would be incremental to RA contract.

Comment [mtl50]: Same as above.

Southern California Edison

Confidential Information

ID# [Number], [Seller's Name]

- (iv) Seller will use and follow Prudent DR Practices.
- (v) Each Recruited Account is a Johanna-Santiago Customer.
- (vi) Seller shall maintain and preserve its existence as a *[insert applicable corporate incorporation information]* formed under the laws of the State of *[XX]* and all material rights, privileges and franchises necessary or desirable to enable it to perform its obligations under this Agreement.
- (vii) Seller shall, from time to time as requested by SCE, execute, acknowledge, record, register, deliver and/or file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid and enforceable under all Applicable Laws the rights, liens and priorities of SCE with respect to its Security Interest furnished pursuant to this Agreement.
- (viii) Seller shall provide and execute all documents and instruments reasonably necessary (including documents amending this Agreement in ways not materially adverse to Seller and documents reflecting compliance with all applicable tariff provisions and applicable decisions of the CPUC and/or any other Governmental Authority that address resource adequacy performance obligations and penalties hereunder) to effect the use of the Resource Adequacy Benefits of the DR Resource for SCE's sole benefit through the Delivery Period.
- (ix) Seller shall ensure that the all of the Participating Accounts have not obtained, and will not obtain, any compensation or other benefits pursuant to the Self-Generation Incentive Program, as defined in CPUC Decision 01-03-073, or the California Solar Initiative, as defined in CPUC Decision 06-01-024.
- (x) ~~Seller shall ensure that all of the Participating Accounts do not, during the Term, obtain benefits under SCE's Net Energy Metering tariff, SCE's automated demand response program, or any other similar program that exists now or in the future.~~
- (c) On each day on which Performance Assurance is held by SCE under this Agreement, Seller hereby represents and warrants that:
 - (i) 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;

Comment [mtl51]: Would not be limited to these substations.

Comment [mtl52]: Not a RA contract

Comment [mtl53]: Not sure why this is a prohibition.

Comment [MG54]: This should all be customer attestation, at least for residential

Comment [mtl55]: This should not be a prohibition

- (ii) upon the Transfer of Performance Assurance by Seller to SCE, SCE shall have a valid and perfected first priority continuing security interest therein, free of any liens, claims or encumbrances, except those liens, security interests, claims or encumbrances arising by operation of law that are given priority over a perfected security interest; and
- (iii) Seller is not and will not become a party to or otherwise be bound by any agreement, other than this Agreement, which restricts in any manner the rights of any present or future holder of any of the Performance Assurance with respect hereto.

Comment [mtl56]: If resource is already an RA resource, does not provide these benefits, would this be incremental?

ARTICLE 9. RECORDS

9.1. Performance Under this Agreement

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

9.2. Other Regulatory and Governmental Requirements

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

9.3. Audit Rights

SCE and the Commission shall have the right, at its sole expense and during normal working hours, to audit the documents, records or data of Seller to the extent reasonably necessary to verify the accuracy of any statement, claim, charge or calculation made pursuant to this Agreement. Seller shall have the right, at its sole expense, to hire an independent third party reasonably acceptable to SCE to audit the documents, records or data of SCE related to this Agreement during normal working hours to the extent reasonably necessary to verify the accuracy of any statement, claim, charge or calculation made pursuant to this Agreement. Such independent third party must sign a confidentiality agreement in substance reasonably acceptable to SCE before examining SCE's documents, records or data. Each Party shall promptly comply with any reasonable request by the other Party under this Section 9.3 and provide copies of documents, records or data to the requesting Party. The rights and obligations under this Section 9.3 shall survive the termination of this Agreement for a period of two (2) years.

ARTICLE 10. NOTICES

Notices, requests, statements or payments from one Party to the other Party shall be made to the addresses and persons specified in Exhibit D. All Notices, requests, statements or payments from one Party to the other Party shall be made in writing except Dispatch Instructions, which can be provided in the manner described in Section 1.6. Notices required to be in writing shall be delivered by hand delivery, overnight delivery, facsimile, or electronic mail. Notice from one Party to the other Party by facsimile (where confirmation of successful transmission is received) or electronic mail 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. A Party may change its contact information by providing Notice of the same in accordance herewith.

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

ARTICLE 11. DISPUTE RESOLUTION

11.1. Dispute Resolution

Other than requests for provisional relief under Section 11.4, 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 11.2 below, and if the matter is not resolved through mediation, then for final and binding arbitration under the procedures described in Section 11.3 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 11 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 this Article 11 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.

11.2. Mediation

Either Party may initiate mediation by providing Notice to the other Party in accordance with Article 10 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..

11.3. Arbitration

Either Party may initiate binding arbitration with respect to the matters first submitted to mediation by providing Notice in accordance with Article 10 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 11.2, 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 11.2 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 13, 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, Article 14 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.

11.4. 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, or Article 14 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 this 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.

11.5. Waiver of Jury Trial

THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING UNDER THIS AGREEMENT.

11.6. Consolidation of Matters

The Parties shall make diligent good faith efforts to consolidate any provisional relief, mediation, arbitration or other dispute resolution proceedings arising pursuant to this Article 11 that arise from or relate to the same act, omission or issue.

ARTICLE 12. INDEMNIFICATION

12.1. SCE's Indemnification Obligations

In addition to any other indemnification obligations SCE may have elsewhere in this Agreement, which are hereby incorporated in this Section 12.1, SCE releases, and shall

indemnify, defend and hold harmless Seller, and Seller's directors, officers, employees, agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, fine, penalty or expense of any kind or nature (including any direct, damage, claim, cost, charge, demand, or expense, and attorneys' fees (including cost of in-house counsel) and other costs of litigation, arbitration and mediation, and in the case of third-party claims only, indirect and consequential loss or damage of such third-party), arising out of or in connection with any breach made by SCE of its representations and warranties in Section 8.1.

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

12.2. Seller's Indemnification Obligations

- (a) In addition to any other indemnification obligations Seller may have elsewhere in this Agreement, which are hereby incorporated in this Section 12.2, Seller releases, and shall indemnify, defend and hold harmless SCE, and SCE's directors, officers, employees, agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, penalty, fine or expense of any kind or nature (including any direct, damage, claim, cost, charge, demand, or expense, and attorneys' fees (including cost of in-house counsel) and other costs of litigation, arbitration or mediation, and in the case of third-party claims only, indirect or consequential loss or damage of such third-party), arising out of or in connection with:
- (i) any breach made by Seller of its representations, warranties and covenants in Article 8;
 - (ii) Seller's failure to fulfill its obligations regarding Resource Adequacy Benefits as set forth in Section 5.1;
 - (iii) any violation of Applicable Law arising out of or in connection with Seller's performance of, or failure to perform this Agreement;
 - (iv) 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
 - (v) 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, or provide

Comment [MG57]: We should not have to indemnify IOU even if IOU is actively or passively negligent

Notice of the non-availability of any portion of the Contract Capacity as required under Section 5.1(b) hereof.

Comment [MA58]: Is this part of the prior DRAM contract?

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.

- (b) With respect to Section 12.2(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.

12.3. Indemnification Claims

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

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

12.4. Survival

All indemnity rights shall survive the termination of this Agreement.

ARTICLE 13. 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 12 (INDEMNIFICATION), NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

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

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

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

ARTICLE 14. CONFIDENTIALITY

14.1. Confidentiality Obligation

Except as otherwise expressly agreed in writing by the other Party, and except as otherwise agreed in Sections 14.2 and 14.3, each receiving Party shall, and shall cause its Representatives to, (a) keep strictly confidential and take reasonable precautions to protect against the disclosure of all Confidential Information, and (b) use all Confidential Information solely for the purposes of performing its obligations under this Agreement and not for any other purpose; *provided*, a Party may disclose Confidential Information to those of its Representatives who need to know such information for the purposes of performing the receiving Party's obligations under this Agreement if, but only if, prior to being given access to Confidential Information, such Representatives are informed of the confidentiality thereof and the requirements of this Agreement and are obligated to comply with the requirements of this Agreement and, in the case of Representatives of Seller engaged wholly or in part in the purchase and sale of electrical power or natural gas, only if such Representatives are *directly* engaged in performing Seller's obligations under this Agreement. Each Party will be responsible for any breach of this Agreement by its Representatives.

14.2. Permitted Disclosures

- (a) SCE and Seller may disclose Confidential Information to the Independent Evaluator. SCE and the Independent Evaluator may disclose Confidential Information to duly authorized regulatory and governmental agencies or entities, including the FERC, CPUC and all divisions thereof, and the CAISO, SCE's Procurement Review Group ("PRG"), a group of non-market participants including members of the CPUC, other governmental agencies and consumer groups established by the CPUC in Decision 02-08-071, and SCE's Cost Allocation Mechanism Group ("CAM"). -Provided that they have a need to know the Confidential Information, and are informed of the proprietary and confidential nature of the Confidential Information prior to disclosure. Except in the cases of negligence, or willful misconduct, neither SCE nor the Independent Evaluator shall have any liability whatsoever to Seller in the event of any unauthorized use or disclosure by a regulatory or governmental agency or entity including without limitation the FERC, the CPUC and all divisions thereof, the PRG, CAM, or the CAISO of any Confidential Information or other information disclosed to any of them by SCE or the Independent Evaluator.
- (b) SCE and the Independent Evaluator may also disclose Confidential Information to any Governmental Authority or to any third party to the extent necessary to comply with any Applicable Laws, and any applicable regulation, decision, rule, subpoena or order of the CPUC, CEC, FERC, any administrative agency, legislative body or other tribunal (other than those entities set forth in Section 14.2(c)), any exchange, Control Area or CAISO rule, or any discovery or data request of a party to any proceeding pending before any of the foregoing.

Comment [MG59]: Added by legal

- (c) The Parties may disclose Confidential Information to the extent necessary to comply with Applicable Laws, including any subpoena or order of court or judicial entity having jurisdiction over the disclosing Party (other than those entities set forth in Section 14.2(b)), or in connection with a discovery or data request of a party to any proceeding before any of the foregoing.
- (d) SCE may disclose the DR Resource, or any applicable portion of the DR Resource, including any amounts of Effective Flexible Capacity and Inflexible Capacity, under this Agreement to any Governmental Authority, the CPUC, and the CAISO in order to support its resource adequacy compliance showings, if applicable.

14.3. Duty to Seek Protection

- (a) In connection with requests or orders to produce Confidential Information protected by this Agreement in the circumstances provided in Section 14.2(c) (by deposition, interrogatories, requests for information or documents, subpoena, order or similar legal process) each Party, to the extent permitted by law, (i) will promptly notify the other Party of the existence, terms, and circumstances of such requirement(s) so that such other Party may seek an appropriate protective order or waive compliance with the provisions of this Agreement, and (ii) will, and will cause its Representatives to, cooperate fully with such other Party in seeking to limit or prevent such disclosure of such Confidential Information.
- (b) If a Party or its Representatives are, in the written opinion of its legal counsel, and notwithstanding compliance with Section 14.3(a) compelled to make disclosure in response to a requirement described in Section 14.3(a) or stand liable for contempt or suffer other penalty, the compelled person may disclose only that portion of the Confidential Information protected by this Agreement which it is legally required to disclose and will exercise its best efforts to obtain reliable assurance that confidential treatment will be accorded to the disclosed Confidential Information protected by this Agreement.

14.4. Ownership and Return of Information

All Confidential Information shall be and remain the property of the Party providing it. Nothing in this Agreement shall be construed as granting any rights in or to Confidential Information to the Party or Representatives receiving it, except the right of use in accordance with the terms of this Agreement. Notwithstanding the foregoing, **unless requested for its return** the Parties shall have the right to retain copies of Confidential Information, subject to the confidentiality obligations in this Article 14.

ARTICLE 15. 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:

- (a) the Claiming Party, no more than one (1) Business Day after the earlier of (i) the initial occurrence of the claimed Force Majeure, or (ii) the first day Claiming Party knew or should have known that the claimed Force Majeure could or was reasonably likely to, in whole or in part, delay the Claiming Party's performance under this Agreement, cause the Claiming Party to be unable to perform its obligations, or prevent the Claiming Party from complying with or satisfying the conditions of this Agreement, gives the other Party Notice describing the particulars of the occurrence;
- (b) 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;
- (c) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- (d) the Claiming Party shall use commercially reasonable and diligent efforts to remedy its inability to perform;
- (e) this Article 15 does not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Claiming Party, are contrary to its interest;
- (f) it is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes will be at the sole discretion of the Claiming Party; and
- (g) as soon as the Claiming Party is able to resume performance of its obligations under this Agreement, it shall do so and shall promptly give the other Party Notice of this resumption.

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

ARTICLE 16. MISCELLANEOUS

16.1. General

- (a) 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.
- (b) 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.
- (c) The headings used herein are for convenience and reference purposes only.
- (d) Each Party agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.
- (e) Words having well-known technical or industry meanings have these meanings unless otherwise specifically defined in this Agreement.
- (f) Whenever this Agreement specifically refers to any Applicable 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.
- (g) Nothing in this Agreement relieves either Party from, or modifies, any obligation or requirement that exists in any law, tariff, rule, or regulation.
- (h) The word “or” when used in this Agreement includes the meaning “and/or” unless the context unambiguously dictates otherwise.
- (i) Where days are not specifically designated as Business Days, they will be considered as calendar days.
- (j) This Agreement is binding on each Party’s successors and permitted assigns.
- (k) No provision of this Agreement is intended to contradict or supersede any applicable agreement covering transmission, distribution, metering, scheduling or interconnection. In the event of an apparent contradiction between this Agreement and any such agreement, the applicable agreement controls.
- (l) Each Party shall act in good faith in its performance under this Agreement.
- (m) All dollar amounts set forth in this Agreement are in U.S. dollars.
- (n) 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.

16.2. 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.

16.3. Amendment

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

16.4. Assignment and Consent to Collateral Assignment**(a) Assignment.**

- (i) Except as provided in Section 16.4(b), and except for an assignment by Seller to any Affiliate thereof which is a Qualified Transferee, 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 shall not be unreasonably withheld.
- (ii) Any direct or indirect Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of SCE, which consent shall not be unreasonably withheld.
- (iii) Any requests for consent to assignment shall be provided at least thirty (30) days in advance of the assignment date.

(b) Consent to Collateral Assignment.

Subject to the provisions of this Section 21.4(b), Seller has the right to assign this Agreement as collateral for financing or refinancing purposes; *provided*, Seller shall provide SCE with thirty (30) days prior written Notice of any request for a Collateral Assignment Agreement. Seller shall also be responsible for SCE's reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any such assignment, including without limitation attorneys' fees.

In connection with any financing or refinancing by Seller, SCE shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("Collateral Assignment Agreement").

The Collateral Assignment Agreement must be in form and substance agreed to by SCE, Seller and Lender, including, among others, the following provisions (or

such other substantially similar provisions as agreed to in writing by and between SCE, Seller and Lender):

- (i) SCE shall give Notice of an Event of Default by Seller, to the person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default;
- (ii) Following an Event of Default by Seller under this Agreement, SCE may require Seller or Lender to provide to SCE a report concerning:
 - (A) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;
 - (B) Impediments to the cure plan or its development;
 - (C) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and
 - (D) Any other information which SCE may reasonably require related to the development, implementation and timetable of the cure plan.

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

- (iii) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to SCE before the end of any cure period indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement; *provided*, such cure period may, in SCE's sole discretion, be extended by no more than an additional one hundred eighty (180) days;
- (iv) Lender will receive prior Notice of and the right to approve material amendments to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;
- (v) If Lender, directly or indirectly, takes possession of, or title to, Seller or this Agreement, Lender must assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, SCE and Lender as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if SCE advises Lender that SCE will require that Lender cure

(or cause to be cured) any Event of Default existing as of the possession date in order to avoid the exercise by SCE (in its sole discretion) of SCE's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

- (A) Cause such Event of Default to be cured, or
 - (B) Not assume this Agreement;
- (vi) If Lender elects to sell or transfer Seller or this Agreement (after Lender directly or indirectly, takes possession of, or title to, Seller or this Agreement), or if such a sale occurs through the actions of Lender, then Lender must cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to a Qualified Transferee; and
- (vii) If this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith and if Lender or its designee, directly or indirectly, takes possession of, or title to, Seller or this Agreement, Lender must itself or must cause its designee to promptly enter into a new agreement with SCE having substantially the same terms as this Agreement.

16.5. 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.

16.6. 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.

16.7. 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.

16.8. 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.

16.9. 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).

16.10. Independent Contractors

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

16.11. 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.

16.12. 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.

16.13. 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.

16.14. Mobile Sierra

- (a) 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), and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008).
- (b) 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.

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Southern California Edison

Confidential Information

ID# [Number], [Seller's Name]

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

SOUTHERN CALIFORNIA EDISON COMPANY ***[SELLER]***

By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

EXHIBIT A DEFINITIONS

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

“ADP” has the meaning set forth in Section 1.6.

“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.

“Aggregator Add Account Form” means SCE Form 14-932, or successor, by which a Customer authorizes disclosure of customer information and adds itself to an aggregator program.

“Aggregator Remove Account Form” means SCE Form 14-933, or successor, by which a Customer removes itself from an aggregator program.

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

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

“Approval Date” means the date that CPUC Approval shall have been obtained or waived by SCE.

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

“Back-up Generation” means fossil-fueled generation owned or used by a Customer including but not limited to generation technologies using diesel, natural gas, gasoline, propane or liquefied petroleum gas, whether or not in a combined heat and power configuration. Back-up Generation does not include energy storage systems provided such energy storage systems meet the greenhouse gas emission factor thresholds in effect from time to time under the CPUC’s Self-Generation Incentive Program.

“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

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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.

“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.

“CAM” has the meaning set forth in Section 14.2.

“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 Authority 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 Authority 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 Authority having jurisdiction, that can be counted toward Flexible RAR; and (iv) other current or future defined characteristics, certificates, tags, credits, or accounting constructs, howsoever entitled, including any accounting construct counted toward any Compliance Obligations.

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

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

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

“Change of Control” means the occurrence of any one of the following events with respect to Seller: (i) any consolidation or merger of Seller in which Seller is not the continuing or surviving

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entity, or (ii) a sale or conveyance of any direct or indirect ownership interest in Seller, in the case of either (i) or (ii), following which Parent Entity (1) is no longer the direct or indirect owner of at least fifty one percent (51%) of the ownership interests of Seller, or (2) no longer has the ability to control the management and policies of Seller, provided, however, that a Change of Control shall not be deemed to have occurred as a result of a Permitted Transfer.

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

“Collateral Assignment Agreement” has the meaning set forth in Section 16.4.

“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 Resource Adequacy Rulings, to the CAISO pursuant to the CAISO Tariff, or to any Governmental Authority having jurisdiction.

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

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

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

“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions, legal expenses and other similar third party transaction costs and expenses reasonably incurred by that Party in entering into any new arrangement which replaces this Agreement.

“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; and (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 _____].

“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.

“Customer” means a person or entity that is either a: (i) customer of SCE as a utility distribution company who takes bundled services from SCE including having all of its power requirements purchased by SCE; or (ii) community choice aggregation customer or direct access customer.

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

“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.

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

“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.

“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 or Section 3.4 directing 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.

“Diverse Business Enterprises” or “DBE” means Women, Minority, Disabled Veteran (WMDV) and Lesbian, Gay, Bisexual and Transgender (LGBT) Business Enterprises as defined in CPUC General Order 156.

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

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

“Early Termination Date” has the meaning set forth in Section 6.2(a).

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

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

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

- (a) 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 Dispatch or a Seller Dispatch, as applicable.

- (b) 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:
 - (i) 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 Dispatch or Seller Dispatch, as applicable, divided by the EB for the same three hours calculated pursuant to subsection (a); provided, that the Day-Of Adjustment shall be capped in manner such that it may not exceed one hundred forty percent (140%) or be less than sixty percent (60%).
 - (ii) The Day-Of Adjustment shall be multiplied by each applicable Participating Account’s EB for each hour of the Dispatch or Seller Dispatch.
 - (iii) 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).

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

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

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

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

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

“Financial Consolidation Requirement” has the meaning set forth in Section 4.6(a).

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“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 Resource Adequacy Rulings, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority 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 Effective 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.

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

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement, determined in a commercially reasonable manner.

Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which are calculated based on realized and future Expected Annual Energy Savings and Expected Capacity Savings. For purposes of determining Gain, SCE may also take into consideration that the Agreement satisfies the requirement to procure preferred resources from under Commission Decision 13-02-015 from projects associated with Western LA Basin Customer(s).

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

“Governmental Authority” means:

- (a) Any federal, state, local, municipal or other government;

- (b) 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;
- (c) Any court or governmental tribunal; or
- (d) The CAISO or any other transmission authority, exchange or grid control operator.

“Governmental Charges” has the meaning set forth in Section 7.1.

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

“IFRS” means the International Financial Reporting Standards.

“Indemnified Party” has the meaning set forth in Section 12.3.

“Indemnitor” has the meaning set forth in Section 12.3.

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

“Inflexible Capacity” means, with respect to any particular Showing Month of the Delivery Period, the number of kW of the DR Resource which are not eligible to satisfy an LSE’s Flexible RAR.

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

“Johanna-Santiago Customer” means a Customer that either (i) directly takes or receives electricity services from Santiago or Johanna High Voltage Substation, or (ii) directly takes or receives electricity services from a lower voltage substation that electrically connects to Santiago or Johanna High Voltage Substation. See Exhibit B for the approximate geographic location of these customers.

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

“Letter of Credit” means an irrevocable, nontransferable standby letter of credit, substantially in the form of Exhibit C 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 GAAP, IFRS, or Successor) of at least \$1,000,000,000.00 (ONE BILLION AND 00/100 DOLLARS). Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

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

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

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

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement, determined in a commercially reasonable manner.

Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which are calculated based on realized and future Expected Annual Energy Savings and Expected Capacity Savings. For purposes of determining Losses, SCE may also take into consideration that the Agreement satisfies the requirement to procure preferred resources from under Commission Decision 13-02-015 from projects associated with Western LA Basin Customer(s).

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

“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 the SCE Tariff.

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

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

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

“Non-Defaulting Party” has the meaning set forth in Section 6.2.

“Notice” means notices, requests, statements or payments provided in accordance with Article 10.

“Notice of Non-Renewal” has the meaning set forth in Section 4.3.

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

“Parent Entity” means *[Insert Name of Parent Company]*.

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

“Party” has the meaning set forth in the Preamble.

“Performance Assurance” means the collateral dollar amount as set forth in Section 4.2(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.

“Permitted Transfer” means any of the following:

(i) any transfer of any equity interest in Seller pursuant to an exercise by a Lender of its rights and remedies under the financing or tax equity documents in accordance with the terms of any Collateral Assignment Agreement;

(ii) any change of economic and voting rights triggered in Seller’s organization documents arising from financing and which does not result in the transfer of ownership, economic or voting rights in any entity that had no such rights immediately prior to the change, provided that Seller satisfies the requirements of (a) and (c) of the definition of a Qualified Transferee; or

(iii) a transfer of the direct or indirect equity interests in Seller to a Qualified Transferee.

“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” or “PRG” 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 Authority, WECC standards, the CAISO and Applicable Laws.

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

- (a) Equipment, materials, resources, and supplies, including spare parts inventories, are available in order to supply the DR Resource;
- (b) 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;

- (c) 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;
- (d) Appropriate monitoring and testing are performed to ensure equipment is functioning as designed;
- (e) Equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public, or the electric system, or contrary to environmental laws, permits or regulations or without regard to defined limitations such as, flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive loading, frequency, rotational speed, polarity, synchronization, and control system limits; and
- (f) 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.

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

"Qualified Transferee" means any entity that:

- (b) Has, or has a parent that has, a tangible net worth of not less than two million dollars (\$2,000,000);
- (c) Is, or has a parent that is, an entity with a minimum rating of BBB- from S&P and Fitch and Baa3 from Moody's (the lower of the Credit Ratings for the entity shall apply). If the entity is rated by only one or two of the Ratings Agencies specified below, then that (those) Credit Rating(s) shall apply. If the entity is unrated, then

has, or has a parent that has, a tangible net worth of not less than one hundred million dollars (\$100,000,000); and

(d) Has:

- (i) at least three (3) years of experience in providing demand response resources similar to the DR Resource;
- (ii) retained a reputable third party with at least three (3) years of experience in operating demand response resources similar to the DR Resource to provide the DR Resource; or
- (iii) demonstrated to SCE's sole satisfaction that it has the ability to fully comply with all of Seller's obligations under the Agreement

"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 Resource Adequacy Rulings, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction.

"Ratings Agency" means any of S&P, Moody's, and Fitch (collectively the 'Ratings Agencies').

"Recapture Payment" has the meaning described in and is calculated pursuant to Section 3.2(b).

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

"Representatives" means the officers, directors, employees, legal counsel, accountants, lenders, advisors, or ratings agencies and other agents of a Party utilized in connection with this Agreement and, in the case of SCE, includes the Independent Evaluator.

"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 Resource Adequacy Rulings, the CAISO Tariff or as determined by another Governmental Authority 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.

"Resource Adequacy Rulings" 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, 09-12-053, 10-06-036, 11-06-022, 12-06-025, 13-06-024, and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any

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applicable Governmental Authority, as such decisions, rulings, laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Period.

“Responsible Officer” means the chief financial officer, treasurer or any assistant treasurer of a Party or any employee of a Party designated by any of the foregoing.

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

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

“SEC” means the Securities and Exchange Commission.

“Security Interest” has the meaning set forth in Section 4.5.

“Security Incident” has the meaning set forth in Exhibit E.

“Security Incident Response Plan” or “SIRP” has the meaning set forth in Exhibit E.

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

“Seller Dispatch” means a Dispatch performed by Seller in accordance with Section 3.4.

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

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

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

“Showing Month” shall be the calendar month of the Delivery Period that is the subject of the Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and Resource Adequacy

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Rulings in effect as of the Effective Date, the monthly Compliance Showing made in June is for the Showing Month of August.

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

“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. The areas served by the Johanna and Santiago High Voltage Substations are within the SCE-West SLAP.

“Successor” means, with respect to GAAP or IFRS, any successor thereto.

“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 Commencement 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. If SCE is the Non-Defaulting Party and reasonably expects to incur penalties, fines or costs from the CPUC, the CAISO, or any other Governmental Authority, then SCE may estimate the amount of those penalties and fines and include them in the Termination Payment amount.

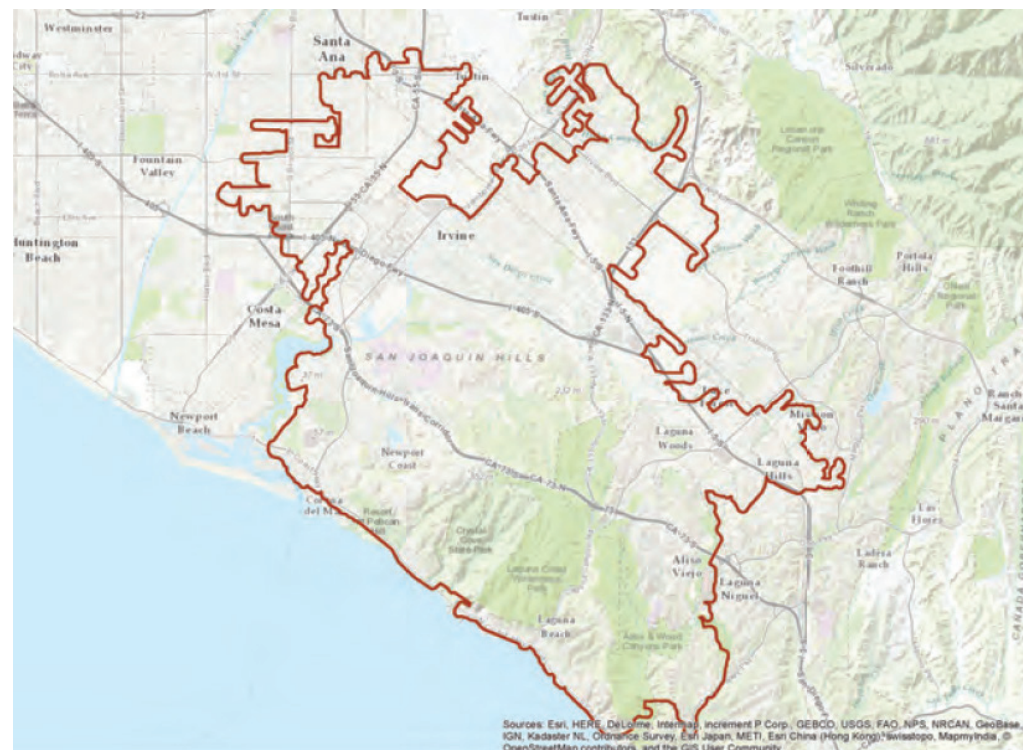
“Total Recorded Capacity” has the meaning set forth in Section 3.2(c).

“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.

End of Exhibit A

EXHIBIT B
APPROXIMATE LOCATION OF THE JOHANNA/SANTIAGO GEOGRAPHIC AREA



End of Exhibit B

**EXHIBIT C
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 2A
Rosemead, CA 91770
Attn: Manager Credit, Risk & Collateral Management

Ladies and Gentlemen:

_____ (the "Bank") hereby establishes this Irrevocable Nontransferable Standby Letter of Credit ("Letter of Credit") in favor of Southern California Edison Company, a California corporation (the "Beneficiary"), for the account of [CONTRACT PARTY], a _____ corporation (the "Applicant"), for the amount of XXX AND XX/100 Dollars (\$ _____) (the "Available Amount"), effective immediately.

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

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

Comment [MG60]: Same as DRAM 2

It is a condition of this Letter of Credit that it shall be deemed automatically extended without amendment for a one year period (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter) beginning on the present Expiration Date hereof and upon each anniversary of such date (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter), unless at least sixty (60) days prior to any such Expiration Date, Bank has sent Beneficiary written notice, at the address provided below, that Bank elects not to permit this Letter of Credit to be so extended, and will expire on its then-current

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Expiration Date. No presentation made under this Letter of Credit after such Expiration Date will be honored.

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

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

Any full or partial drawing hereunder may be requested by transmitting copies of the requisite documents as described above to the Bank by facsimile at [facsimile number for draws] 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.

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

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

Banking charges shall be the sole responsibility of the Applicant.

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

Comment [MG61]: Consistent with DRAM
2

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Confidential Information

ID# [Number], [Seller's Name]

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

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

Comment [MG62]: Consistent with DRAM
2

AUTHORIZED SIGNATURE for Issuer

By: _____

Name: _____

Title: _____

ATTACHMENT A

TO **[ISSUING BANK NAME]**

IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT

No. _____

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Nontransferable Standby Letter of Credit
Reference Number: _____

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

1. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to \$_____, for the following reason(s) [check applicable provision]:
 - ☐ A. An Event of Default, as defined in that certain Demand Response 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. An Early Termination Date (as defined in the Agreement) has been designated by the Beneficiary under the Agreement.
 - ☐ C. The Letter of Credit will expire in fewer than twenty (20) Business Days (as defined in the Agreement) from the date hereof, and Applicant has not provided Beneficiary alternative Performance Assurance (as defined in the Agreement) acceptable to Beneficiary.

Southern California Edison

Confidential Information

ID# [Number], [Seller's Name]

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

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

2. 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.
3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

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 Drawing 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:

End of Exhibit C

EXHIBIT D NOTICES

For SCE:

Contract Representative:

Demand Response Programs & Contracts

General Office Building No. 5, 2nd Floor
1515 Walnut Grove Ave.
Rosemead, California 91770
Attention: PRP Contract Manager
Phone: (626) 302-0530
Email: DSM@sce.com

Preschedule Contact

Mgr of Energy Operations
Phone: (626) 302-5730

Day Ahead Trading

Phone: (626) 307-4487
Facsimile: (626) 302-3409

Real Time Scheduling

Phone: (626) 307-4405
Facsimile: (626) 302-3409

Other SCE Contact Information

Real-time Phone: 626-302-3380

Credit Risk and Collateral Management

2244 Walnut Grove Ave. Quad 2A
Rosemead, California 91770
Attention: Credit Risk Manager
Tel: (626) 302-3672
Fax: (626) 302-6823

Wire Transfer Information

Bank: JPMorgan Chase Bank
Branch: New York, NY

Real Time Trading

Phone: (626) 307-4453
Facsimile: (626) 302-3409

Day Ahead Scheduling

Phone: (626) 307-4420
Facsimile: (626) 302-3409

Settlements

Phone: (626) 302-0999
Facsimile: (626) 302-6132

Southern California Edison

Confidential Information

ID# [Number], [Seller's Name]

ABA#: 021-000-021
Account#: 323-394434
Special Instructions: Please book to GL#2380190
Payee: Southern California Edison
2244 Walnut Grove Ave.
Rosemead, CA 91770
Facsimile: (626) 302-2517
Tax ID: 95-1240335

Accounts Payable Department

P.O. Box 700
Rosemead, California 91770
ACH Electronic Transfer to:

Bank:

ABA:

ACCT:

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

Law Department

General Office Building No. 1, 3rd Floor
2244 Walnut Grove Ave
Rosemead, California 91770
Attention: Legal Counsel for Demand Response Programs

Purchasing Department

General Office Building No. 3 3rd Floor
2131 Walnut Grove
Rosemead, CA 91770
Attention: Principal Manager Purchasing
Phone: (626) 302-5357

Demand Response Programs & Contracts

General Office Building No. 5, 2nd Floor
1515 Walnut Grove Ave.
Rosemead, California 91770
Attention: PRP Contract Manager
Phone: (626) 302-0530
Email: DSM@sce.com

Southern California Edison

Confidential Information

ID# [Number], [Seller's Name]

For Seller:

Billing Representative

[Name]

Phone:

Facsimile:

Contract Representative

[Name]

Phone:

Facsimile:

Preschedule Contact

[Name]

Phone:

Facsimile:

Real Time Trading

[Name]

Phone:

Facsimile:

Day Ahead Trading

[Name]

Phone:

Facsimile:

Day Ahead Scheduling

[Name]

Phone:

Facsimile:

Real Time Scheduling

[Name]

Phone:

Facsimile:

Settlements

[Name]

Phone:

Facsimile:

Other Seller Contact Information

Wire Transfer

BNK:

ABA:

ACCT:

Credit and Collections

Attn:

Phone:

Facsimile:

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

[Name]

Phone:

Facsimile:

End of Exhibit D

EXHIBIT E*Cyber Security Protocol*

This Exhibit E applies to and governs any and all receipt of, access to, storage of, or use of Customer information by Seller, Seller's Sellers, personnel, contractors or subcontractors ("Seller's Representatives") as applicable, in connection with this Agreement.

A. Definitions. For purposes of this Exhibit E, the following terms shall be defined as follows:

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

"Security Incident" means (i) any Unauthorized Use or other breach in the security of Seller's information system that contains EPI, or any unauthorized access to, interception of, disclosure or acquisition of such EPI, or (ii) if caused by the action or inaction of Seller, any Unauthorized Use or other breach in the security of SCE's computing systems that contain EPI, or any unauthorized access to, interception of, disclosure or acquisition of such EPI.

"Security Incident Response Plan" or "SIRP" means a written plan and process for preventing, detecting, identifying, reporting, tracking and remediating Security Incidents.

"Security Incident Report" or "SIR" means a report prepared by Seller regarding a Security Incident which includes, at a minimum, the information more fully set forth below in Section C.

"Unauthorized Use" means any use, reproduction, distribution, transfer, disposition, disclosure, possession, memory input, alteration, erasure, damage or other activity by a person or party other than SCE involving EPI that is not expressly authorized under the Agreement.

B. Security Education. Seller shall, at its sole cost and expense, train Seller's Representatives on confidentiality and non-disclosure obligations regarding EPI, as well as appropriate business conduct and protocols directed at compliance with Applicable Laws and any relevant SCE policies of which SCE has made Seller aware regarding the use of SCE's computing systems and EPI. New employees of Seller's Representatives shall also be trained as described in the preceding sentence before being provided with any access to EPI. Seller shall provide Seller's Representatives with additional training annually thereafter and update such training when Applicable Laws materially change or when SCE informs Seller of material changes in SCE's electronic security policies.

C. Security Obligations.

1. Security Incident Response Plan: Prior to accessing any EPI, Seller shall develop a SIRP and implement and maintain such SIRP throughout the Term of the Agreement.

2. SIRP General Requirements: Seller's SIRP shall include, at a minimum, Security Incident handling and response procedures, specific contacts in an event of a Security Incident, the contacts' roles and responsibilities, and their plans to notify SCE concerning the Security Incident. The SIRP must be based on and meet all of the following requirements:

- (a) Applicable Laws concerning the care, custody, control and integrity of data and information, including but not limited to, California's Information Practices Act of 1977, California Civil Code §§ 1798.80 *et seq.* which addresses the provision of notice to SCE or its affiliates (as applicable), of any breach of the security of EPI if it is reasonably believed to have been acquired by an unauthorized person and California Public Utilities Commission Decision 11-07-056, 2011 Cal. PUC LEXIS 404, which also addresses Seller obligations in the event of a security breach.
- (b) Applicable Laws and SCE policies concerning the care, custody, control and integrity of data and information.

3. SIRP Review. At SCE's or its affiliates' request (as applicable), Seller shall review the SIRP at least annually with SCE's designated representatives to identify updates, changes or potential improvements, and a process to document these changes within ninety (90) days of these changes.

4. Physical Security. Seller shall provide and maintain physical controls in accordance with Applicable Laws and relevant SCE policies to prevent any Security Incidents and the Unauthorized Use of EPI. Physical controls shall include, but not be limited to: (i) effective physical security of any Seller's facilities and Seller's information systems used in connection with the Project. At a minimum, such methods must include visitor sign-ins, restricted access key cards or locks for employees, and limited access to server rooms and archival backups; (ii) physical hazard protection; (iii) equipment configuration control methods to detect unauthorized changes in configuration and inventory; and (iv) requirements stating that all removable media such as compact discs, digital video discs, thumb drives, or laptops used to store EPI shall be protected from Unauthorized Use or a Security Incident.

5. Additional Security Obligations. Seller shall comply, and Seller shall cause Seller's Representatives to comply with the following additional obligations:

- (a) Data Storage. Seller shall maintain all EPI so as to be compartmentalized or otherwise logically separate from, and in no way commingled with, other information of Seller or its other customers and not accessible by other customers.
- (b) Security Program. The security program implemented and maintained by Seller for its information systems shall consist of safeguards to prevent any Unauthorized Use, accidental or unauthorized destruction, accidental loss, alteration of, access to and any other unauthorized collection or use of EPI, and shall include, without limitation: (i) appropriate access controls and data integrity controls, including the use of strong authentication of users, least privilege access, and use of firewalls and antivirus software; (ii) testing and auditing of all controls; and (iii) encryption of all EPI, while at rest and in transit.
- (c) Backup of EPI. Seller will use prevailing: (i) secure and redundant encrypted data backup, (ii) recovery technologies, and (iii) destruction methods, at no additional cost to SCE, with respect to Seller's access and use of EPI. Seller shall at all times ensure that it is aware of and has documented the location of all copies of EPI.

D. Notice of Security Incident. Seller covenants and agrees that if Seller or Seller's Representatives discover or are notified of a Security Incident or potential Security Incident relating to SCE's computing systems, EPI or information therein, Seller shall immediately submit a SIR to SCE by emailing the SIR to AVERT@sce.com **and** calling AVERT at (626) 543-6003. The SIR shall include, at a minimum, a brief summary of the issue, facts and status of Seller's investigation; (b) identify the potential number of individuals affected by the Security Incident; (c) provide any other information pertinent to SCE's understanding of the Security Incident and the exposure or potential exposure of EPI; (d) investigate such Unauthorized Use or such potential Unauthorized Use that caused the Security Incident or may cause a Security Incident, (e) inform SCE, in writing, of the results of such investigation, (f) assist SCE (at Seller's cost and expense) in maintaining the confidentiality of such EPI; and (g) if requested by SCE or its affiliates, discuss with SCE or its affiliates (as applicable) the cause(s) of the Security Incident, Seller's response, lessons learned and potential improvements to Seller's information system's security process and procedures. Upon receipt of Seller's SIR, SCE may immediately revoke Seller's and Seller's Representatives access to SCE's computing systems and EPI. If SCE deems it prudent to notify individuals potentially affected by the Security Incident and/or to offer them free credit monitoring service or other remedies, then Seller shall reimburse SCE or its affiliates for its costs and expenses for the notification and remedies.

E. Records and Audits.

1. SSAE 16 Report. Seller will provide SCE, at no cost, with copies of its current SSAE 16 reports. If Seller has not yet undergone an SSAE 16 review, Seller shall provide SCE with a copy of its most recent SAS 70 Type II report. Seller warrants that it will undergo a SSAE 16 review on an annual basis throughout the Term of this Agreement and will provide copies of those reports to SCE each year of the Term.

2. Prior Information Security Audits. Seller hereby represents, warrants and covenants that, to the extent Seller's facilities or Seller's information system(s) have been the subject of security audits and such audits have revealed any material vulnerabilities in the Seller's facilities or Seller's information system(s), Seller has fully remedied such vulnerabilities.

3. Compliance Audit. SCE will have the right to inspect and audit, or to engage an independent third party to inspect and audit, the Seller facilities and Seller's Information Systems, from time to time. If any such audit reveals a material vulnerability in the Seller facilities or Seller's Information Systems, SCE shall notify Seller of such vulnerability and Seller shall develop an action plan acceptable to SCE to correct the material vulnerability or vulnerabilities. Promptly after SCE approves the action plan, Seller shall correct each such vulnerability at its sole cost and expense. Seller shall certify in writing to SCE that it has corrected all such vulnerabilities. If the audit by SCE or its agent reveals a material vulnerability in the Seller facilities or Seller's Information Systems, then Seller shall bear (and if applicable, shall reimburse SCE for) all costs and expenses of such audit.

4. Vulnerability Management After a Security Incident. Upon the occurrence of a Security Incident, Seller shall immediately inform SCE of such Security Incident and provide access to SCE so that SCE or an independent third party may conduct an onsite audit and inspection of the facility or facilities and Seller's Information systems involved in the Security Incident. Seller shall develop an action plan acceptable to SCE to correct the causes of the Security Incident and all material vulnerability or vulnerabilities discovered during the audit or inspection. Promptly after SCE approves the action plan, Seller shall correct each such Security Incident cause or vulnerability at its sole cost and expense. Seller shall certify in writing to SCE that it has corrected all such Security Incident causes and vulnerabilities. Seller shall bear (and if applicable, shall reimburse SCE for) all costs and expenses of an audit or inspection following a Security Incident. Additionally, upon SCE's written request, Seller shall promptly perform (or shall permit SCE or an independent third party to perform) a vulnerability threat assessment ("VTA") test or such additional testing as may be reasonably required by SCE. The VTA may be performed, in SCE's sole discretion, by either appointed members of SCE's information integrity team or a security Seller selected and approved in writing by SCE.

5. Nothing set forth in Section E shall be construed as a waiver of any legal or equitable rights and remedies available to SCE in connection with an audit, inspection, or Security Incident. In addition, SCE's onsite audit or inspection of Seller's facilities under these sections shall not be interpreted as SCE's assumption of any liability or

responsibility to remedy the Security Incident or vulnerability or otherwise to assist Seller in the repair or replacement of Seller's Information Systems or facilities.

6. Document Retention. Seller shall maintain all documentation relating to Security Incidents, remediation activities and follow-on assessments, whether in written or electronic form, including their identification, processing and resolution, for three (3) years after final resolution of the Security Incident, including the final resolution of all claims arising out of the Security Incident.

F. Limited Use of EPI.

1. Seller shall, and shall require Seller's Representatives to access and use EPI solely for the purpose of performing the obligations of Seller as set forth under the Agreement. In addition, Seller shall comply, and ensure that Seller's Representatives to comply, with all Applicable Laws and SCE Policies relating to the protection of EPI, including without limitation, California Public Utilities Code §8380, *et seq.*, and the "Rules Regarding Privacy and Security Protections for Energy Usage Data" adopted by the CPUC.

2. Seller shall not, and shall ensure Seller's Representatives do not: (i) use EPI for Seller's or Seller's Representatives own benefit or for any purpose other than as expressly set forth in this Exhibit E; or (ii) disclose EPI to any third party; except as permitted under this Exhibit E.

3. Seller shall: (i) keep EPI confidential and protect it from unauthorized disclosure, in addition to any other obligation of Seller under the Agreement to maintain confidentiality of any information provided by SCE; (ii) collect, store, and use EPI in accordance with all Applicable Laws and SCE Policies; (iii) collect and process EPI fairly and lawfully, ensuring that EPI is adequate, relevant, and not excessive in relation to the purposes for which it is processed; (iv) ensure that EPI is accurate and, when necessary, kept up to date; and (v) keep EPI no longer than is necessary for the purposes for which it is being processed. The restrictions on collection, processing, disclosure, transfer, storage, and other use of EPI by Seller will apply to all materials derived by Seller or others from EPI.

G. Subpoena Notification. Unless prohibited by law or court order, Seller shall, within two (2) business days of receipt of a subpoena for disclosure of any SCE Personal Information, provide notice to SCE's Contract Representative, as identified in Exhibit D, so that SCE and Seller may engage in good faith discussions about the appropriate response to the subpoena; provided however, if SCE informs Seller that it will seek to quash or modify the subpoena, then Seller shall delay responding to the subpoena to permit SCE time to quash or modify the subpoena. Nothing herein is intended to preclude Seller from complying with the subpoena when and as required to do so by law or court order. Additionally, Seller will provide SCE with an annual report identifying whether it has received any subpoenas for disclosure of SCE Personal Information, and,

if so, the dates of same. The annual report will be furnished to SCE no later than January 15 of the next calendar year.

H. Return of EPI.

Upon SCE's request at any time during the Term, Seller shall return to SCE or its designee, all EPI, all documents and materials derived therefrom, and all backup tapes and other media related thereto. Without limiting the generality of the preceding sentence, Seller shall remove all EPI from Seller's information systems and other computing resources. Seller shall not, without the prior written authorization of SCE, sell or otherwise dispose of any parts, equipment, or other materials containing, conveying, embodying, or made in accordance with or by reference to any EPI. Before disposing of such parts, equipment, or materials, Seller shall render them unusable. SCE will have the right to audit Seller's compliance with this Exhibit E.

I. Additional Representations and Warranties. In addition to Seller's other representations and warranties in the Agreement, Seller hereby represents and warrants to SCE:

1. Seller shall comply with all of the terms in this Exhibit E throughout the Term;

2. Virus Precautions. Seller represents and warrants that: (a) Seller's information systems were checked with Internet industry standard up-to-date antivirus software, and were determined to be virus-free, before their first use in performance of the Agreement; (b) Seller will update its virus definitions no less than monthly to ensure that they use the most up-to-date definitions available, and will conduct at least biweekly virus sweeps of all networks, databases, computers, and software (including archival copies of the foregoing); (c) Seller will promptly use such virus detection software to attempt to purge all viruses discovered during such sweeps; (d) prior to delivering any digital files to SCE, Seller will scan all files with Internet industry standard up-to-date antivirus software and will determine that they are virus-free; and (e) if Seller discovers that a virus may have been transmitted to SCE or to an SCE customer by Seller, Seller will promptly notify SCE of such possibility in a writing that states the nature of the virus, the date on which transmission may have occurred, and the means Seller has used to attempt to purge the virus; and

3. Seller will not (and will ensure Seller's Representatives do not) access or use any EPI for any purpose other than that of performing Seller's obligations under the Agreement.

J. Indemnification. In addition to its other indemnification obligations under the Agreement, Seller covenants and agrees that it will indemnify, defend and hold harmless the SCE Indemnitees from and against any and all claims, damages, costs, expenses, (including attorneys' fees and court costs) and liabilities (including settlements) brought or asserted by any third party against the SCE Indemnitees resulting from, arising out of

or related to any claim or any failure by Seller, Seller's Representatives failure to comply with any obligation enumerated in this Exhibit E or otherwise enumerated in the Agreement with respect to EPI. SCE may participate in the defense and settlement of any claim for which it is entitled to indemnification hereunder, using attorneys selected by SCE, at Seller's sole cost and expense.

K. Insurance. In addition to its other insurance obligations under Article 13 of the Agreement, Seller covenants and agrees that Seller will, throughout the Term, obtain and maintain, at its own expense, for itself and its Subcontractors the following additional insurance as set forth below:

- (a) Employee Dishonesty. This policy shall cover any and all actual or alleged acts, errors or omissions committed by the Seller and Seller's Representatives. The policy shall also extend to include the intentional, fraudulent or criminal acts of the Seller and Seller's Representatives. This insurance shall have limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. If any deductible is applicable, such deductible shall not exceed \$5,000 naming SCE as a "Loss Payee", unless such increased deductible or retention is approved in advance by SCE in writing. This insurance policy shall be maintained during the Term and for at least two (2) years thereafter; and
- (b) Commerce or Internet Security Insurance, covering (a) liability arising from theft, dissemination and/or use of confidential information stored or transmitted in electronic form and (b) liability arising from the introduction of a computer virus into, or otherwise causing damage to, a customer's or third person's computer, computer system, network or similar computer related property and the data, software and programs stored thereon. Such insurance will be maintained with limits of no less than \$5,000,000 per claim and in the annual aggregate, and may be maintained on a stand-alone basis, or as part of the required Errors and Omissions coverage. This insurance shall have a retroactive date that equals or precedes the Effective Date of the Agreement. Seller shall maintain such coverage for a minimum period of three years following termination of the Agreement.

L. Remedies. In addition to SCE's rights and remedies under the Agreement, and at law or equity, Seller and SCE agree to the following additional remedies of which SCE may elect to avail itself:

1. Dispute Resolution. Notwithstanding anything to the contrary in the Agreement, the terms and conditions of this Exhibit E are not subject to the dispute resolution provision in Article 11 of the Agreement.

2. Injunctive Relief. Seller acknowledges that the EPI is of a special, unique and extraordinary character that gives such information a peculiar value, the loss of which

cannot be reasonably or adequately compensated in damages in an action at law. Seller's failure to comply with its obligations under this Exhibit E will cause SCE to suffer irreparable injury for which SCE will not have an adequate remedy available at law. Accordingly, Seller shall not object to SCE obtaining injunctive or other equitable relief to prevent or curtail any such breach, threatened or actual, without posting a bond or security and without prejudice to such other rights as may be available under the Agreement or Applicable Law.

K. Acknowledgement. Seller acknowledges that SCE, as between the Parties, retains sole and exclusive ownership of all right, title and interest to and to all EPI. SCE expressly reserves all rights, title and interest in and to the EPI not expressly granted to Seller. The Agreement does not grant Seller, Seller's Representatives any implied licenses with respect to EPI. At no time will Seller dispute or contest SCE's exclusive ownership rights in any EPI.

L. Survival. The terms in this Exhibit E will survive the expiration or any termination of the Agreement.

End of Exhibit E