

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE



September 25, 2019

**Advice Letter 5615-E &
Supplemental 5615-E-A**

Erik Jacobson
Director, Regulatory Relations
Pacific Gas and Electric Company
77 Beale Street, Mail Code B10C
P.O. Box 770000
San Francisco, CA 94177

**SUBJECT: Southern California Edison Company, Pacific Gas and Electric Company,
and San Diego Gas & Electric Company's Demand Response Auction
Mechanism Pilot for 2020**

Dear Mr. Jacobson:

Advice Letter 5615-E and Supplemental 5615-E-A are effective as of September 11, 2019.

Sincerely,

A handwritten signature in cursive script that reads "Edward Randolph".

Edward Randolph
Deputy Executive Director for Energy and Climate Policy/
Director, Energy Division

August 12, 2019

Advice 4054-E

(Southern California Edison Company ID U 338 E)

Advice 5615-E

(Pacific Gas and Electric Company ID U 39 E)

Advice 3418-E

(San Diego Gas & Electric Company ID U 902 E)

Public Utilities Commission of the State of California

Subject: Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company's Demand Response Auction Mechanism Pilot for 2020

Purpose

In compliance with Ordering Paragraph (OP) 4 of Decision (D.) 19-07-009, Southern California Edison Company (SCE) hereby submits this advice letter on behalf of Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and itself, jointly the Investor Owned Utilities (IOUs). The IOUs are seeking approval of the 2020 Demand Response Auction Mechanism (DRAM) Pilot with an auction in 2019.

Contents

- I. Background
- II. Modification to Product Design
- III. Solicitation Protocols and Valuation Criteria
- IV. Qualifying Capacity Guidelines
- V. Testing Requirements, Demonstrated Capacity, Invoicing, and Penalties
- VI. Miscellaneous Issues
- VII. Contract Variations Between IOUs
- VIII. Budget Authorization
- IX. Timeline

I. Background

On September 25, 2013, the Commission issued Order Instituting Rulemaking (OIR) 13-09-011 "To Enhance the Role of Demand Response (DR) in Meeting the State's Resource Planning Needs and Operational Requirements." The Commission reviewed a

Resource Adequacy (RA) Capacity Payment Mechanism for DR and Participation of Retail DR in the California Independent System Operator (CAISO) wholesale market. On December 4, 2014, the Commission issued D.14-12-024, “Resolving Several Phase Two Issues and Addressing the Motion for Adoption of Settlement Agreement on Phase Three Issues” (later revised to be the Joint Proposal of the Joint Sponsoring Parties). In this Decision, SCE, PG&E, and SDG&E (together, the IOUs) were ordered to file an advice letter for the DRAM pilot, together with a standard contract. The DRAM pilot was intended to test: a) the feasibility of procuring DR Supply Resources for RA with third party direct participation in the CAISO markets through an auction mechanism; and b) the ability of winning bidders to integrate their DR Resources directly into the CAISO market.

D.14-12-024 required the IOUs to design and implement DRAM for 2016 (2016 DRAM) and 2017 (“2017 DRAM”). An “open to the public” working group collaborated on the DRAM pilot design and standard contract language under the active and on-going supervision of the Commission staff.

Concurrently with the IOUs’ implementation of its 2017 DRAM, the Commission addressed the need for an additional, post-2017 DRAM solicitation via the process used to review and approve the IOUs’ 2017 demand response programs and budgets. D.16-06-029 approved the IOUs proposed 2017 programs and budgets, with modifications, and directed the IOUs to continue DRAM with an auction in 2017 for deliveries in 2018 (2018-2019 DRAM). The DRAM working group met and discussed modifications to the third DRAM pilot that expand on the experience of the first two DRAM pilots and met Commission requirements as ordered in D.16-06-029.¹ SCE submitted an advice letter on behalf of the IOUs on September 1, 2016,² with the proposal resulting from the working group, including the associated auction design and pro forma contract. The Commission approved this advice letter, with modifications, in Resolution E-4817.³ The IOUs launched the 2018-2019 DRAM RFO on or about March 10, 2017, and submitted the executed standard form Purchase Agreements on June 30, 2017. The Commission approved the advice letters by disposition letter on August 14, 2017.

On April 27, 2017, in response to Petitions for Modifications (PFM) filed by Comverge, Inc., CPower, EnerNOC, Inc., and EnergyHub (collectively, the “Joint DR Parties”) and

¹ The DRAM working group’s activities were conducted at the express direction and under continuing supervision of the Commission. The DRAM working group included the IOUs, Ratepayer Advocates (Public Advocates Office (PAO, formerly ORA for the Office of Ratepayer Advocates) and The Utility Reform Network (TURN)), DR providers, Energy Division (ED) Staff, and other interested stakeholders.

² PG&E Advice 4900-E, SCE Advice 3466-E, and SDG&E Advice 2949-E (collectively, “PG&E Advice 4900-E, et al”).

³ Resolution E-4817 also ordered a supplemental advice letter to be submitted demonstrated compliance with the Resolution, which was submitted on February 2, 2017. Two other supplementals were submitted on PG&E Advice 4900-E, et al. See PG&E Advice 5109-E for additional details.

OhmConnect, the Commission determined that business opportunities for DRPs could be limited under the corresponding \$27 million budget approved for the 2018-2019 DRAM RFO.⁴ On October 26, 2017, the Commission issued D.17-10-017, and determined that it is reasonable to require PG&E, SCE, and SDG&E to conduct an additional 2018 auction for contract deliveries in 2019. D.17-10-017 directed the IOUs to conduct an additional DRAM pilot solicitation in 2018 for 2019 capacity ("2019 DRAM"), and ordered the IOUs to use the final approved 2018-2019 DRAM guidelines for the additional 2019 DRAM, except that the contract term shall be limited to one year and additional guidelines were required.⁵ The IOUs launched the 2019 DRAM RFO on or about January 25, 2018, and submitted the advice letter with the executed standard form Purchase Agreements for executed Purchase Agreements on May 1, 2018. The Commission approved the advice letters on September 12, 2018, by disposition letter.

Concurrently with the DRAM pilots, the IOUs filed their applications for demand response programs, pilots and budgets for program years 2018-2022 on or about January 17, 2017. Decision (D.) 17-12-003 adopted demand response budgets for each of the three utilities to conduct demand response programs, pilots and associated activities for program years 2018 through 2022. D.17-12-003 also determined the proceeding should remain open to consider a number of specific issues. DRAM was not among the issues identified in D.17-12-003.

On May 22, 2018, the assigned Commissioner issued an Assigned Commissioner's Amended Scoping Memo and Ruling, (Amended Scoping Memo) amending the scope to include the consideration of the Demand Response Auction Mechanism pilot (Auction Pilot) evaluation and extending the statutory deadline for the proceeding to July 17, 2019. The Administrative Law Judge held a status conference on June 18, 2018 to further describe the matter and allow for questions. This was followed by a workshop on July 26, 2018 to present the preliminary results of the Auction Pilot evaluation and discuss next steps, given the evaluation delay. On August 6, 2018, the Administrative Law Judge issued a ruling requesting parties to respond to questions regarding next steps for the Auction Pilot. Responses were filed on August 17, 2018 and reply comments were filed on August 24, 2018.

On November 29, 2018, the Commission approved D.18-11-029, which addressed the question of continuing the DRAM pilot beyond 2019, among other issues. D.18-11-029 described the history of the DRAM pilot auctions for 2016, 2017, 2018 and 2019, and emphasized the importance of the Energy Division's evaluation and recommendations for those pilots.⁶ D.18-11-029 mentions that with the results of the Energy Division evaluation

⁴ Petition of the Joint DR Parties for Modification of D.16-06-029 was filed February 3, 2017, in R.13-09-011. Petition for Modification of OhmConnect of D.16-09-056 was filed December 30, 2016, in R.13-09-011.

⁵ See PG&E Advice 5284-E for additional details.

⁶ "We conclude that continuing the Auction Pilot or adopting a permanent auction mechanism should only be considered with complete results of the pilot valuation and recommendations

expected in a few weeks, “[t]he Commission should wait for the results and recommendations, then hold workshops based on the recommendations, develop a record, and issue a proposed decision that is based on the results, recommendations, and record.”⁷

The Energy Division’s evaluation of the DRAM pilots was issued January 4, 2019, with subsequent revisions issued on January 7, 2019. On January 4, 2019, the ALJ issued a ruling allowing parties to file proposed improvements to the DRAM auction mechanism and setting workshops to discuss the proposed improvements and the Energy Division’s evaluation. Comments were submitted in response to the ALJ’s ruling. The workshop convened on February 12, 2019, at the Commission’s San Francisco offices.

On February 28, 2019, the ALJ issued a ruling requesting parties to answer questions from the February 12 workshop, “February 28th Ruling Directing Responses to Questions Resulting from the February 11-12, 2019 Demand Response Auction Mechanism Workshop and Comments on Proposals to Improve the Mechanism.” On March 29, 2019, many parties submitted their responses to the February 28 ALJ ruling, and reply comments were filed April 10, 2019.

On July 12, 2019, the Commission issued D.19-07-009, authorizing an auction to take place in 2019 for deliveries between June 2020 and December 2020 (“2020 DRAM”), as well as annual auctions for deliveries in 2021, 2022, and 2023. The Commission ordered the IOUs to implement eight improvements⁸ for the 2020 DRAM and to submit this advice letter by August 12, 2019, addressing all contract improvements and RFO guidelines. D.19-07-009 also authorized a working group to convene to discuss a number of issues, including Refinements to Appendix A and B Guidelines on qualifying capacity and demonstrating capacity. The working group filed its report on August 9, 2019.

II. Modification to Product Design

Pursuant to D.19-07-009, the following modifications have been made to the DRAM product:

- Elimination of Reliability Demand Response Resource (RDRR) product⁹

from the Energy Division for future auction mechanisms.” D.18-11-029, mimeo, p. 78.) The Commission stated “[W]e also must ensure that if another auction is authorized, it is done prudently (i.e., with complete results of the evaluation.)” (*Id.* p. 80.)

⁷ *Id.* p.81.

⁸ The improvements include: providing accurate qualifying capacity (QC) estimates, imposing a penalty structure for shortfalls in demonstrated capacity (DC), calculating DC on invoices, establishing invoice deadlines, replacement of the residential set-aside with a 10 percent set-aside limited to new market entrants, elimination of the use of the August price cap, exclusion of the Reliability Demand Response Resources (RDRR) in DRAM, and publication of auction mechanism contract summaries. D.19-07-009, OP 6.

⁹ D.19-07-009, OP 6.

- Only system and flexible (with system) RA may be procured¹⁰

Such modifications apply to both the RFO protocols and throughout the contract, including, but not limited to, Section 1.1.

III. Solicitation Protocols and Valuation Criteria

The IOUs propose to follow the same protocols, procedures, use of an Independent Evaluator (IE), and valuation processes for the 2018-2019 DRAM pilot approved via Resolution E-4817 and Resolution E-4838 and the associated supplemental advice letter filings for the 2018-2019 DRAM. The primary difference will be the term of the agreement, the DRAM products to be procured, the new entrant procurement set-aside, elimination of the residential procurement set-aside, offer selection, the requirement to estimate qualifying capacity (QC) using the Commission-approved QC guidelines, the new demonstrated capacity performance bands, requirements for demonstrated capacity invoicing based on Commission-approved guidelines, and some of the contract provisions in compliance with D.19-07-009.

Term

Pursuant to D.19-07-009, the term of the 2020 DRAM will consist of June 2020 through December 2020.¹¹ Consistent with prior DRAM pilots, bidders are required to include a bid that offers capacity in August 2020.

Products

As stated in the prior section, the DRAM products will be limited to Proxy Demand Resource (PDR) providing system or flexible (with system) RA. Bidders may designate their product as either a Residential or Non-Residential Customer product, consistent with the definitions in prior DRAM solicitations.¹²

New Entrant Set-Aside

The 2016 DRAM pilot design included several “set aside” measures intended to remove barriers to participation. Some of these were one-time accommodations, such as the Base Interruptible Program (BIP) and Agricultural and Pumping Interruptible Program (API) special opt-outs, due to the timing of the 2016 pilot, where the 2016 contracts

¹⁰ The IOUs note that while the solicitation materials will reflect this, the contract will continue to include the local RA product since it may be procured in the subsequent solicitation taking place in the first quarter of 2020 for deliveries in calendar year 2021.

¹¹ D.19-07-009, p. 34.

¹² A Residential Customer Product is comprised solely of Residential Customers and Small Commercial Customers; provided that the percentage of Residential Customers in the PDR(s) constituting the DRAM Resource is equal to or greater than 90 percent. D.19-07-009, OP 6(g) excludes Reliability Demand Response Resources (RDRR) in DRAM.

were expected to be approved in the first quarter of 2016, after the standard opt-out periods. The 2016 DRAM, the 2017 DRAM, the 2018-2019 DRAM, and the 2019 DRAMs all included a Residential set-aside, requiring at least 20 percent of each IOU's total MWs purchased under the DRAM, to be reserved for the Residential Customer product. Pursuant to D.19-07-009, the IOUs replace the 20 percent residential set-aside with a 10 percent set-aside for new market entrants. A new market entrant is defined as a Provider who has not integrated any demand response resources into the CAISO market during the three years prior to a new Auction Mechanism solicitation involving any form of market-integrated demand response including but not limited to the Auction Mechanism or other resource adequacy contracts.¹³

Qualitative Criteria

The IOUs propose to keep the same qualitative criteria as the 2019 DRAM, but modify the prior performance qualitative criteria to refer to the bidder's prior performance with the same IOU in the most recent solicitations.

Summary of qualitative criteria used for the 2019 DRAM that will continue to be used for the 2020 DRAM:

	Answer	Score		Weight			Weighted Score
		Yes	No	SDG&E	SCE	PG&E	(Score x Weight)
Criteria							
Will your DRAM Resource require any permits, interconnection agreements, environmental studies, or additional land rights prior to operation?	Yes/No	1	0	3%	0%	0%	
Is there any ongoing investigation or was there an adverse finding that occurred within the last five years with respect to any alleged violation of any rule, regulation, or law associated with any commodity, securities, environmental, or financial market regarding any DR	Yes/No	1	0	3%	3%	0%	

¹³ D.19-07-009, p. 44.

services you were/are providing?							
Are you a certified small business? ¹⁴	Yes/No	0	1	0%	0%	1%	
Are you going to use Enabling Technology with at least 90 percent of the customers comprising your PDR customers?	Yes/No	0	1	3%	0%	0%	
Do you expect a majority of your resource/customers to emit GHG emissions (batteries charging from the grid are not 100% efficient and so they need more charging energy then discharged energy thereby causing GHG emissions as opposed to digital thermostats that do not materially cause GHG emissions)?	Yes/No	1	0	3%	0%	0%	

For clarity, the prior performance criteria will be broken out into separate criteria as follows, and the IOUs propose to cap the prior performance qualitative criteria to a 20 percent increase in cost for bid evaluation purposes.

Prior Performance Qualitative Criteria:

	Percent increase in cost for bid evaluation purposes
If you have not signed a DRAM purchase agreement when extended a shortlist offer.	+5 percent
If you have violated the confidentiality of the DRAM RFO or contract.	+5 percent
If you delivered, in aggregate, less than 50 percent of the contracted capacity across either of your 2019 DRAM contract(s) or your 2018-2019 DRAM contract(s) (applies to PG&E and SDG&E only).	+5 percent

¹⁴ For information about Small Business standards, please refer to one of the following sites:
 (1) California Department of General Services
 (2) Small Business Administration

If you delivered, in aggregate, less than X percent of the contracted capacity (as measured by coincident peak load reduction) across either of your 2019 DRAM contract(s) or your 2018-2019 DRAM contract(s) (applies to SCE only).	100 > X > 75: +10 percent 75 >= X > 50: +25 percent 50 >= X: +50 percent
If you did not have a 2018-2019 DRAM contract or a 2019 DRAM contract, but delivered, in aggregate, less than 50 percent of the contract capacity across your 2017 DRAM contract(s) (applies to PG&E and SDG&E only).	+5 percent
If you did not have a 2018-2019 DRAM contract or a 2019 DRAM contract, but delivered, in aggregate, less than X percent of the contract capacity (as measured by coincident peak load reduction) across your 2017 DRAM contract(s) (applies to SCE only).	100 > X > 75: +10 percent 75 >= X > 50: +25 percent 50 >= X: +50 percent
If you terminated or defaulted on a 2017 DRAM contract, 2018-2019 DRAM contract, or 2019 DRAM contract.	+15 percent

Offer Valuation and Selection

The IOUs propose to keep bid valuation the same as the 2019 DRAM, but modify the bid selection parameters, consistent with the Commission’s elimination of the use of the August bid price cap.¹⁵ Similarly to the 2019 DRAM RFO, the IOUs are not obligated to select an Offer if the Offer’s price is above the long-term avoided cost of generation¹⁶ and the DRAM working group discussed continuation of the IOUs’ ability to reject offers if one or more of the monthly capacity prices of the Offer were outliers, in conjunction with the Energy Division.

Requirement to Estimate QCs

The Decision requires DRPs to provide estimates of QC for each offer at the time of bidding by referencing historical performance data, consistent with the guidance provided in Appendix A of the decision. The DRPs are required to reference publicly available performance data that best represents the anticipated performance of the resource if historical performance data is not available.¹⁷

Contract revisions are described herein and within the pro forma attached to this advice letter.

¹⁵ D.19-07-009, OP 6.

¹⁶ D.19-07-009, p. 45.

¹⁷ D.19-07-009, OP 7.

IV. Qualifying Capacity Guidelines

After the solicitation stage, DRAM Sellers are required to provide QC estimates by referencing historical performance data¹⁸ at two additional stages: a) submission of the year-ahead RA plan and b) submission of the monthly supply plan. The QC estimates are to be consistent with the guidance provided in Appendix A of D.19-07-009, which has been incorporated into the DRAM contract under Exhibits F and G, with refinements discussed during the July DRAM working group meetings authorized by the same decision.

Beyond the implementation of the QC guidelines, the modifications to the DRAM contract extend to several additional areas, including the provision of the QC estimate information 10 business days in advance of these submissions.¹⁹ Similarly, modifications are intended to distinguish and clarify where contract provisions apply to the MW originally contracted (termed the Product Monthly Quantity), compared to the MW Sellers submit as a part of their monthly supply plans (termed the QC for each resource, or the aggregate amount where applicable for contracts with multiple PDRs). This distinction is particularly important with regards to the application of penalties, which D.19-07-009 limits to the shortfalls between the demonstrated capacity (DC) and the QC, not the Product Monthly Quantity.

The IOUs provide the following revisions in compliance with D.19-07-009 and consistent with the DRAM working group discussions seeking refinements to QC Guidelines in Appendix A of the decision:

- The time frames in Sections 1.3 and 1.4 have been revised from sixty (60) days to seventy-five (75) days to make them consistent with the time frames in Section 3.1 for delivery of supply plans and QC estimates before the first delivery month.²⁰ The IOUs note that timely CPUC approval of the Tier 1 advice letter containing the executed contracts (which will be submitted January 10, 2020), is imperative to allowing Sellers sufficient time to prepare for and meet these timelines.

¹⁸ Where historical performance data is not available, OP 7 requires a DRP to use publicly available performance data that best represents the anticipated performance of the resource, while complying with the guidance in Appendix A.

¹⁹ The IOUs believe that D.19-07-009 includes obvious errors that are revealed by versions of the red-lined Revised Proposed Decision which were not carried through from the Decision's dicta to the final issued version, and specifically, Appendix A, Implementation Guidelines for Qualifying Capacity and Appendix B, Implementation Guidelines for Demonstrated Capacity Invoicing. Pursuant to Rule 16.5, the IOUs submitted on August 9, 2019 a request for correction of such obvious errors. This includes a revision applied to page 53 of D.19-07-009, which modified the date QC estimates were due from 15 calendar day prior to the Seller's submittal of their year-ahead filings and monthly supply plans to 10 business days. However, this revision was not ultimately applied to Appendix A, which refers to 15 calendar days. The IOUs believe the Commission intended to revise the 15-calendar day deadline to a 10-business day deadline, and have provided revisions based on this interpretation, where applicable.

²⁰ For simplicity with the day-counting convention, the 10 business days was converted to 15 calendar days.

- Section 3.1(a) clarifies two sets of Seller's obligations and deadlines to deliver the DRAM product, including the submission of the supply plan in Subsection (i) 60 days before the showing month²¹ and the submission of the QC estimates 10 business days prior to that in Subsection (ii).²²
- Exhibit A includes a new defined term for both QC and QC Implementation Guidelines.
- Exhibits F and G provide the QC Implementation Guidelines²³ and the standardized format, respectively.²⁴

The Commission found it reasonable to continue its waiver of RA penalties associated with the IOUs' inability to meet their RA requirements while the IOUs continue to gain experience verifying Qualifying Capacity and due to DRAM Sellers' inability to follow through on contracted DRAM capacity to the IOUs.

V. Testing Requirements, Demonstrated Capacity, Invoicing, and Penalties

The IOUs provide the following revisions in compliance with D.19-07-009 and consistent with the DRAM working group discussions seeking refinements to Implementation Guidelines for DC Invoicing in Appendix B of the decision:

- Sections 1.6(a)(i-ii) edits reflect that the August dispatch or test requirement must be assessed as the average performance over two consecutive hours during the RA measurement hours, which are expected to align to the CAISO AAH.²⁵
- Section 1.6(a)(i) edits also reflect that the dispatch used to establish Demonstrated Capacity need not be a full dispatch. A replacement term, "DC Dispatch," was created to capture the revised requirement, and a clarifying sentence was added to the end of the section.
- Sections 1.6(b)(i-iii) is added to implement the dispatch and testing requirements associated to (at least 50 percent of the contracted months) and limitations on the use of bid data to establish DC.²⁶

²¹ Reflected as 15 days prior to the IOUs' compliance showing deadline, which is currently 45 days prior to the first day of the showing month.

²² D.19-07-009, p. 53. See footnote 18 regarding the day-counting convention and the misalignment between the dicta and Appendix A.A.

²³ The QC Implementation Guidelines (Exhibit F) are identical to D. 19-07-009, Appendix A. See also the IOUs' submission of Rule 16.5 request for correction of obvious errors, submitted on August 9, 2019. If obvious errors in Appendix A are corrected pursuant to the Rule 16.5 request, those corrections would also be reflected in Exhibit F of the pro forma.

²⁴ D.19-07-009, OP 8 authorizes the director of the Energy Division to work with parties to develop a standardized reporting format for the QC estimates. If updates are made, the IOUs plan to submit a supplemental advice letter to revise the draft format provided in Exhibit G.

²⁵ D.19-07-009, Appendix B, 1(a) and 2.

²⁶ D.19-07-009, Appendix B, 1, 1(b), and 1(c).

- Section 1.6(c) is added to implement the requirement for the same baseline methods must be used for DC assessment, QC estimates, and CAISO energy settlement.²⁷
- Section 1.6(e)(ii) is added to allow different dispatch or testing months for different PDRs.²⁸
- Section 1.6(f) is added to ensure a customer's performance is not counted in the performance of more than one PDR for the purposes of DC.²⁹
- Section 3.3(b) is superseded by the new testing requirements described in Section 1.6(a)(i), 1.6(b), and the definition of "DC Test," and has been removed.
- Section 3.4(d) is added to restrict changes to the composition of DRAM resources, with allowed exceptions, and Section 1.6(f) is added to prohibit double payments of capacity resulting from such changes.³⁰
- Section 4.1 includes updates to the DC payment calculation to apply the stricter performance structure in variable B of the formula³¹ and to eliminate the penalty for delivering RDRR since RDRR (formerly imposed by variable D of the formula) is no longer permitted in DRAM.³²
- Section 4.2 imposes a deadline for invoices to be submitted within 30 days of receiving 95 percent of the revenue quality meter data (RQMD) required for settlement of the DRAM Resource. It also imposes a consequence for late or missing invoices by stating that any such invoice will be treated as a dispatch-based invoice showing Demonstrated Capacity of less than 50 percent of Qualifying Capacity.³³

²⁷ D.19-07-009, Appendix B, 6 and 7.

²⁸ D.19-07-009, Appendix B, 1(d)

²⁹ D.19-07-009, Appendix B, 5

³⁰ D.19-07-009, p. 69, Appendix B(4). The IOUs note that they may utilize the requests for information or audit rights in the contract to enforce this requirement. In addition, while the contract permits customer movements between showing months, similar measures may be utilized to ensure customer movements between months do not result in the inflation of capacity (i.e., well-performing customers aren't shifted between PDRs to meet the dispatch and testing requirements for contracts with multiple PDRs as a way to inflate the capacity of the contract in non-August showing months).

³¹ D.19-07-009, OP 10.

³² D.19-07-009, OP 6(g).

³³ D.19-07-009, p. 71, OP 12, and Appendix B(8). See also the IOUs' submission of Rule 16.5 request for correction of obvious errors, submitted on or around the date of this advice letter submittal. The IOUs note that the DRAM working group discussed refinements to this requirement, including interpreting the 95 percent RQMD requirement in terms of the entire DRAM resource (as an aggregation of the PDRs in the contract) for the purposes of setting the date from which the 30 day deadline is calculated. This interpretation avoids implementation issues associated with the Buyer potentially receiving a separate invoice for each PDR in a contract; separate invoicing would have contradicted or complicated the parts of the Decision that require assessment of penalties and events of default on a contract (or DRAM Resource, based on the defined term) level (see pages 61-62) and the deadlines in the DRAM contract regarding the Buyer's obligations in Section 4.2(b) to pay invoices in a timely manner. This interpretation strikes a balance between what is reasonable to implement for invoicing purposes and the importance of assessing a PDR's DC performance relative to its QC, described on p. 59.

- Section 9.1(a)(iii) is modified to reflect the Commission's decision not to adopt an Event of Default tied to Qualifying Capacity.³⁴
- Section 9.1(b)(vi) is added to specify that the Buyer is permitted to default a Seller for underperformance in two sequential non-MOO showing months.³⁵
- Exhibit A includes more descriptive definitions for "DC Dispatch" and "DC Test."
- Exhibit C updates the DC form to these modifications.

VI. Miscellaneous Issues

Updates for Prohibited Resources

The IOUs provide updates to Section 7.2(b)(v) pursuant to Resolution E-4906, Resolution E-4838, and D.18-06-012:

- Section 7.2(b)(v)(B) reflects the revised attestation options and the information that needs to be provided for each option.³⁶
- Section 7.2(b)(v)(C) requires that Sellers store attestations and additional documentation and make such information available to the verification administrator or the Commission upon request.³⁷
- Section 7.2(b)(v)(E) clarifies that customers are required to respond to the Verification Administrator's requests, including premise access.³⁸
- Section 7.2(b)(v)(F) revises Type One and Type Two Non-Compliance definitions.³⁹
- Section 7.2(b)(v)(H) clarifies that language regarding the prohibited resources policy shall be included in the residential customer contracts and provided annually to the IOUs.⁴⁰
- Section 7.2(b)(v)(I) allows attestations to be updated at any time, provided appropriate documentation confirms the operational change.⁴¹
- The definition of Prohibited Resources in Exhibit A incorporates the exemption for resources that have received renewable certification from the California Air Resources Board and reflects the revised definition of energy storage resources.⁴²

Updates for Automated Demand Response (ADR)

³⁴ D. 19-07-009, p. 64.

³⁵ D.19-07-009, pp. 61-63. See also the IOUs' submission of Rule 16.5 request for correction of obvious errors, submitted on or around the date of this advice letter submittal.

³⁶ Resolution E-4906, OP 15.

³⁷ Resolution E-4906, OPs 6(b), 14, and 49.

³⁸ Resolution E-4906, OP 4.

³⁹ Resolution E-4906, OP 25.

⁴⁰ Resolution E-4838, OP 18

⁴¹ Resolution E-4906, OP 7.

⁴² D.18-06-012, OP 3.

The IOUs propose revisions to the ADR language in Section 6.6 of the DRAM contract, which are consistent with OP 6 of D.18-11-029 and excludes RDRR customers from eligibility for ADR incentives. In addition, a new defined term has been added to Exhibit A for “ADR Guidelines” which consist of the guidelines submitted in the Tier 2 advice letters on September 1 of each year, in compliance with OP 8 of D.18-11-029.

Other Miscellaneous Updates

- Section 1.5(b) removes the ability for a Seller to reduce its Product Monthly Quantity due to insufficient Rule 24 registrations, because the Commission has clarified that Rule 24/32 registrations do not limit DRAM procurement,⁴³ the IOUs have stated that they expect to have sufficient Rule 24/32 registrations during the 2020 DRAM,⁴⁴ and the remaining clause regarding “the actions or inactions of the Buyer or the CAISO” is sufficiently broad to address similar relief, if needed.
- Section 1.5(d) has been deleted because each of the IOUs has met the requirements in D.16-03-008 to enable real-time and ancillary services.
- Sections 5.3(a) and 5.5(a) have been made consistent with Section 5.4(a)(ii), and reworded to clarify that Performance Assurance is intended to secure obligations owing and unpaid from Seller to Buyer.
- Clarifications have been provided throughout the contract, including a new defined term “Availability Assessment Hours (AAH)” in Exhibit A, replacing the previous reference to the Must-Offer Obligation (MOO) hours, which was too broad to be consistent with the measurement of RA resources.⁴⁵
- The definition of “Capacity Baseline” has been revised to reference the CPUC-approved baselines for DRAM.⁴⁶
- Section 3.3(c) has been deleted because D.19-06-026 continues to exempt the DRAM pilot from being required to perform load impact analysis.⁴⁷
- The definition of “Settlement Amount” has been revised to use defined terms and to clarify which Showing Months are to be included in the calculation.
- Clarifications have been provided throughout regarding CAISO, FERC, and other Governmental Body jurisdictions, where applicable.
- Other modifications for clarity, consistency, and use of defined terms.

VII. Contract Variations Between IOUs

The attached pro forma reflects the SCE version of the contract. PG&E and SDG&E will update the pro forma with their company names and other IOU-specific items and definitions after Commission approval of this advice letter. In addition, the following variations will be applied per IOU:

⁴³ Resolution E-4817, pp. 30-31 and OP 6.

⁴⁴ See DRAM Working Group Report, filed August 9, 2019, under section 6, CAISO Registrations and Meter Reprogramming for Extension.

⁴⁵ D.19-07-009, Appendix A(B) and Appendix B(1)(a).

⁴⁶ D.19-07-009, OP 17.

⁴⁷ D.19-06-026, pp. 41-42.

Bankruptcy

The attached pro forma utilizes the same bankruptcy-related language in Sections 7.1(e) and 9.1(a)(iv) as the prior RFOs, and will remain applicable to SCE and SDG&E. However, with PG&E's bankruptcy, it will utilize different provisions in these sections that the Commission has previously approved for similar contracts.

- Section 9.1(a)(iv) will be clarified to not apply to PG&E's existing Chapter 11 cases.
- Section 7.1(e) will be clarified that it would not apply to the Buyer, though it would continue to apply to the Seller.
- Exhibit A will include a new defined term for "Chapter 11 Cases."

Negotiation

The attached pro forma redline shows the insertion of a new "Negotiation" Section 10.2. Consistent with feedback from parties during the DRAM working group authorized by D.19-07-009, SCE added this language to be consistent with PG&E and SDG&E's forms, but this language exists in the PG&E and SDG&E pro formas.

Access to Financial Information

SCE consults its internal accountants and other accounting firms to determine if the consolidation of the financial information is required. While all three IOUs treat the financial information from the Buyer confidentially, PG&E and SDG&E utilize their applicable provisions that would be consistent with 2019 DRAM contract.

Letter of Credit

The IOUs note that Exhibit B of the attached pro forma includes the letter of credit that SCE will utilize for the RFO, which has been updated to SCE's current form, but PG&E and SDG&E will utilize their own forms, which will be substantially similar to the form utilized for the 2019 DRAM RFO.

VIII. Budget Authorization

Per OPs 2 and 3 of D.19-07-009, the Commission authorized the following budgets for the 2020 DRAM pilot, to be recovered through the following methods:

Utility	Authorized 2020 DRAM Budget	Recovery Method
SCE	\$5.16 million	Base Revenue Requirement Balancing Account

PG&E	\$5.70 million	Demand Response Auction Mechanism subaccount in the Demand Response Expenditure Balancing Account
SDG&E	\$1.92 million	Advanced Metering and Demand Response Memorandum Account

The IOUs will apply this budget to incentive and administration payments to occur in 2019 and 2020, including the ability to administer and prepare for the 2020 DRAM pilot.

IX. Timeline

The IOUs will launch the 2020 DRAM RFO following all necessary approvals from the CPUC. The following schedule is noted as either prescribed in OP 4 of D.19-07-009 (with *italic* font), with additional non-binding timelines for the specific RFO milestones to achieve the adopted schedule. This schedule is based on the assumption of timely Commission action and approval of this Tier 2 advice letter.

Action	Date
<i>IOUs Submit Tier 2 Advice Letters for 2020 DRAM with Contract Improvements and Request for Offer Guidelines</i>	<i>August 12, 2019</i>
Protests Due	September 3, 2019
Replies to Protests Due (If Protested)	September 10, 2019
<i>Commission Approval of Tier 2 Advice Letter</i>	<i>September 11, 2019</i>
<i>IOUs Launch 2020 DRAM RFO for Deliveries Beginning June 2020</i>	<i>October 11, 2019</i>
Bidder's Conference Webinar	October 18, 2019
Deadline for RFO Bid Submissions	November 7, 2019
Request to Cure	November 11, 2019
Cure Period Ends	November 18, 2019
IOUs Notify Shortlisted Bidders of Selection	December 10, 2019
Deadline for Bidders to Sign Shortlist Letters (if applicable)	December 12, 2019
Deadline for Bidders to Sign Contracts	December 17, 2019
<i>IOUs Submit Tier 1 Advice Letters with Executed 2020 DRAM Contracts</i>	<i>January 10, 2020</i>
First QC Estimates Submitted for 2020 DRAM	March 16, 2020
<i>First Supply Plans Submitted for 2020 DRAM</i>	<i>April 1, 2020</i>
<i>Deliveries Begin for 2020 DRAM</i>	<i>June 1, 2020</i>

Protests

Anyone wishing to protest this filing may do so by letter sent via U.S. mail, facsimile or E-mail, no later than September 3, 2019, which is 20 days after the date of this filing. Protests must be submitted to:

CPUC Energy Division
ED Tariff Unit
505 Van Ness Avenue, 4th Floor
San Francisco, California 94102
Facsimile: (415) 703-2200
E-mail: EDTariffUnit@cpuc.ca.gov

Copies of protests also should be mailed to the attention of the Director, Energy Division, Room 4004, at the address shown above.

The protest shall also be sent to SCE either via E-mail or U.S. mail (and by facsimile, if possible) at the address shown below on the same date it is mailed or delivered to the Commission:

Gary A. Stern, Ph.D.
Managing Director, State Regulatory Operations
Southern California Edison Company
8631 Rush Street
Rosemead, California 91770
Telephone: (626) 302-9645
Facsimile: (626) 302-6396
E-mail: AdviceTariffManager@sce.com

Laura Genao
Managing Director, State Regulatory Affairs
c/o Karyn Gansecki
Southern California Edison Company
601 Van Ness Avenue, Suite 2030
San Francisco, California 94102
Facsimile: (415) 929-5544
E-mail: Karyn.Gansecki@sce.com

Erik Jacobson
Director, Regulatory Relations
Pacific Gas and Electric Company
77 Beale Street, Mail Code B10C
P.O. Box 770000
San Francisco, California 94177
Facsimile: (415) 973-1448
E-mail: PGETariffs@pge.com

Megan Caulson
Regulatory Tariff Manager
8330 Century Park Court, CP31F
San Diego, CA 92123-1548
E-mail: mcaulson@semprautilities.com

Any person (including individuals, groups, or organizations) may protest or respond to an advice letter (General Order 96-B, Section 7.4). The protest shall contain the following information: specification of the advice letter protested; grounds for the protest; supporting factual information or legal argument; name, telephone number, postal address, and (where appropriate) e-mail address of the protestant; and statement that the protest was sent to the utility no later than the day on which the protest was submitted to the reviewing Industry Division (General Order 96-B, Section 3.11).

Attachments

This advice letter contains the following attachments:

- Attachment A: 2020 DRAM Purchase Agreement (clean version)
- Attachment B: 2020 DRAM Purchase Agreement (redline version compared to Advice 3466-E et al)
- Attachment C: Letter to CPUC requesting correction of obvious errors in D.19-07-009, pursuant to Rule 16.5

This advice filing will not increase any rate or charge, cause the withdrawal of service, or conflict with any other schedule or rule.

Authorization

This advice letter is filed by SCE on behalf of, and with the authorization from, PG&E and SDG&E.

Tier Designation

Pursuant to D.19-07-009, this advice letter is submitted with a Tier 2 designation.

Effective Date

Pursuant to General Order 96-B, Section 5.8, this Tier 2 advice letter will be effective September 11, 2019, the 30th calendar day after the submittal date.

There are no restrictions on who may submit a protest, but the protest shall set forth specifically the grounds upon which it is based and must be received by the deadline shown above.

In accordance with General Rule 4 of GO 96-B, SCE is serving copies of this advice letter to the interested parties shown on the attached GO 96-B and A.17-01-012 et. al., service lists. Address change requests to the GO 96-B service list should be directed by electronic mail to AdviceTariffManager@sce.com or at (626) 302-4039. For changes to all other service lists, please contact the Commission's Process Office at (415) 703-2021 or by electronic mail at Process_Office@cpuc.ca.gov.

Further, in accordance with Public Utilities Code Section 491, notice to the public is hereby given by submitting and keeping the advice letter at SCE's corporate headquarters. To view other SCE advice letters submitted with the Commission, log on to SCE's web site at <https://www.sce.com/wps/portal/home/regulatory/advice-letters>.

For questions, please contact Godofredo de Vera at (626) 302-5150 or by electronic mail at nathanael.gonzalez@sce.com.

Southern California Edison Company

/s/ Gary A. Stern, Ph.D.
Gary A. Stern, Ph.D.

GAS:ng;jm
Enclosures



ADVICE LETTER SUMMARY

ENERGY UTILITY



MUST BE COMPLETED BY UTILITY (Attach additional pages as needed)

Company name/CPUC Utility No.: Southern California Edison Company (U 338-E)

Utility type:

- ELC GAS WATER
 PLC HEAT

Contact Person: Darrah Morgan
 Phone #: (626) 302-2086
 E-mail: AdviceTariffManager@sce.com
 E-mail Disposition Notice to: AdviceTariffManager@sce.com

EXPLANATION OF UTILITY TYPE
 ELC = Electric GAS = Gas WATER = Water
 PLC = Pipeline HEAT = Heat

(Date Submitted / Received Stamp by CPUC)

Advice Letter (AL) #: 4054-E

Tier Designation: 2

Subject of AL: Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company's Demand Response Auction Mechanism Pilot for 2020

Keywords (choose from CPUC listing): Compliance

AL Type: Monthly Quarterly Annual One-Time Other:

If AL submitted in compliance with a Commission order, indicate relevant Decision/Resolution #: Decision 19-07-009

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL:

Summarize differences between the AL and the prior withdrawn or rejected AL:

Confidential treatment requested? Yes No

If yes, specification of confidential information:

Confidential information will be made available to appropriate parties who execute a nondisclosure agreement. Name and contact information to request nondisclosure agreement/ access to confidential information:

Resolution required? Yes No

Requested effective date: 9/11/19

No. of tariff sheets: -0-

Estimated system annual revenue effect (%):

Estimated system average rate effect (%):

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting).

Tariff schedules affected: None

Service affected and changes proposed¹:

Pending advice letters that revise the same tariff sheets: None

¹Discuss in AL if more space is needed.

Protests and all other correspondence regarding this AL are due no later than 20 days after the date of this submittal, unless otherwise authorized by the Commission, and shall be sent to:

CPUC, Energy Division
Attention: Tariff Unit
505 Van Ness Avenue
San Francisco, CA 94102
Email: EDTariffUnit@cpuc.ca.gov

Name: Gary A. Stern, Ph.D.
Title: Managing Director, State Regulatory Operations
Utility Name: Southern California Edison Company
Address: 8631 Rush Street
City: Rosemead
State: California Zip: 91770
Telephone (xxx) xxx-xxxx: (626) 302-9645
Facsimile (xxx) xxx-xxxx: (626) 302-6396
Email: advicetariffmanager@sce.com

Name: Laura Genao c/o Karyn Gansecki
Title: Managing Director, State Regulatory Affairs
Utility Name: Southern California Edison Company
Address: 601 Van Ness Avenue, Suite 2030
City: San Francisco
State: California Zip: 94102
Telephone (xxx) xxx-xxxx: (415) 929-5515
Facsimile (xxx) xxx-xxxx: (415) 929-5544
Email: karyn.gansecki@sce.com

ENERGY Advice Letter Keywords

Affiliate	Direct Access	Preliminary Statement
Agreements	Disconnect Service	Procurement
Agriculture	ECAC / Energy Cost Adjustment	Qualifying Facility
Avoided Cost	EOR / Enhanced Oil Recovery	Rebates
Balancing Account	Energy Charge	Refunds
Baseline	Energy Efficiency	Reliability
Bilingual	Establish Service	Re-MAT/Bio-MAT
Billings	Expand Service Area	Revenue Allocation
Bioenergy	Forms	Rule 21
Brokerage Fees	Franchise Fee / User Tax	Rules
CARE	G.O. 131-D	Section 851
CPUC Reimbursement Fee	GRC / General Rate Case	Self Generation
Capacity	Hazardous Waste	Service Area Map
Cogeneration	Increase Rates	Service Outage
Compliance	Interruptible Service	Solar
Conditions of Service	Interutility Transportation	Standby Service
Connection	LIEE / Low-Income Energy Efficiency	Storage
Conservation	LIRA / Low-Income Ratepayer Assistance	Street Lights
Consolidate Tariffs	Late Payment Charge	Surcharges
Contracts	Line Extensions	Tariffs
Core	Memorandum Account	Taxes
Credit	Metered Energy Efficiency	Text Changes
Curtable Service	Metering	Transformer
Customer Charge	Mobile Home Parks	Transition Cost
Customer Owned Generation	Name Change	Transmission Lines
Decrease Rates	Non-Core	Transportation Electrification
Demand Charge	Non-firm Service Contracts	Transportation Rates
Demand Side Fund	Nuclear	Undergrounding
Demand Side Management	Oil Pipelines	Voltage Discount
Demand Side Response	PBR / Performance Based Ratemaking	Wind Power
Deposits	Portfolio	Withdrawal of Service
Depreciation	Power Lines	

Attachment A

2020 DRAM Purchase Agreement

(Clean Version)

[YEAR] DRAM RFO PRO FORMA

**DEMAND RESPONSE AUCTION MECHANISM RESOURCE PURCHASE
AGREEMENT**

between

[NAME OF SELLER]

and

SOUTHERN CALIFORNIA EDISON COMPANY

DEMAND RESPONSE AUCTION MECHANISM RESOURCE PURCHASE AGREEMENT
BETWEEN
[SELLER] AND SOUTHERN CALIFORNIA EDISON COMPANY

Table Of Contents

ARTICLE 1. TRANSACTION	1
1.1. Purchase and Sale of the Product.....	1
1.2. Term.....	3
1.3. Delivery Period.....	3
1.4. Seller’s Designation of the DRAM Resource.....	4
1.5. Product Monthly Quantity and Corresponding Contract Price	4
1.6. Demonstrated Capacity	5
ARTICLE 2. CPUC APPROVAL	8
2.1. Obtaining CPUC Approval.....	8
2.2. CPUC Approval Termination Right	8
ARTICLE 3. SELLER OBLIGATIONS	9
3.1. Delivery of Product.....	9
3.2. Resource Adequacy Benefits.....	9
3.3. Provision of Information	9
3.4. Seller’s Obligations	10
3.5. Indemnities for Failure to Perform.	11
ARTICLE 4. PAYMENT AND BILLING.....	11
4.1. Delivered Capacity Payment.....	11
4.2. Invoice and Payment Process.....	12
4.3. Allocation of Other CAISO Payments and Costs	14
ARTICLE 5. CREDIT AND COLLATERAL	14
5.1. Seller’s Credit and Collateral Requirements	14

**DEMAND RESPONSE RESOURCE PURCHASE AGREEMENT
BETWEEN
[SELLER] AND SOUTHERN CALIFORNIA EDISON COMPANY**

Table Of Contents (Continued)

5.2.	Grant of Security Interest/Remedies.....	14
5.3.	Reduction and Substitution of Performance Assurance	15
5.4.	Administration of Performance Assurance	16
5.5.	Exercise of Rights against Performance Assurance	18
5.6.	Financial Information.....	19
5.7.	Access to Financial Information	19
5.8.	Uniform Commercial Code Waiver	22
ARTICLE 6. SPECIAL TERMS AND CONDITIONS.....		22
6.1.	Limitation of Liability	22
6.2.	Buyer Provision of Information.....	22
6.3.	Changes in Applicable Laws	23
6.4.	DBE Reporting.....	23
6.5.	Governmental Charges.....	23
6.6.	Customers in Buyer Automated Demand Response Program	24
ARTICLE 7. REPRESENTATIONS, WARRANTIES AND COVENANTS		25
7.1.	Representations and Warranties of Both Parties	25
7.2.	Additional Seller Representations, Warranties and Covenants.....	26
ARTICLE 8. NOTICES.....		29
8.1.	Notices	29
8.2.	Contact Information	30
ARTICLE 9. EVENTS OF DEFAULT; TERMINATION		31
9.1.	Events of Default.....	31
9.2.	Early Termination	33

**DEMAND RESPONSE RESOURCE PURCHASE AGREEMENT
BETWEEN
[SELLER] AND SOUTHERN CALIFORNIA EDISON COMPANY**

Table Of Contents (Continued)

9.3. Termination Payment.....	33
9.4. Reserved.....	34
9.5. Suspension of Performance.....	34
9.6. Rights and Obligations Surviving Termination or Expiration.....	34
ARTICLE 10. DISPUTE RESOLUTION.....	34
10.1. Dispute Resolution.....	34
10.2. Negotiation.....	35
10.3. Mediation.....	36
10.4. Arbitration.....	36
10.5. Provisional Relief.....	39
ARTICLE 11. INDEMNIFICATION.....	39
11.1. Seller’s Indemnification Obligations.....	39
11.2. Indemnification Claims.....	40
ARTICLE 12. LIMITATION OF REMEDIES, LIABILITY, AND DAMAGES.....	40
ARTICLE 13. CONFIDENTIALITY.....	41
13.1. Confidentiality Obligation.....	41
13.2. Obligation to Notify.....	42
13.3. Remedies; Survival.....	42
ARTICLE 14. FORCE MAJEURE.....	42
ARTICLE 15. MISCELLANEOUS.....	43
15.1. General.....	43
15.2. Governing Law and Venue.....	43
15.3. Amendment.....	44

**DEMAND RESPONSE RESOURCE PURCHASE AGREEMENT
BETWEEN
[SELLER] AND *SOUTHERN CALIFORNIA EDISON COMPANY***

Table Of Contents (Continued)

15.4. Assignment.....	44
15.5. Successors and Assigns.....	44
15.6. Waiver.....	44
15.7. No Agency.....	44
15.8. No Third-Party Beneficiaries.....	44
15.9. Entire Agreement.....	45
15.10. Severability.....	45
15.11. Multiple Originals.....	45
15.12. Mobile Sierra.....	45
15.13. Performance Under this Agreement.....	45

**DEMAND RESPONSE RESOURCE PURCHASE AGREEMENT
BY AND BETWEEN
[NAME OF SELLER]
AND
SOUTHERN CALIFORNIA EDISON COMPANY**

PREAMBLE

This Demand Response Resource Purchase Agreement, together with its exhibits (the “Agreement”) is entered into by and between **SOUTHERN CALIFORNIA EDISON COMPANY**, a California corporation (“Buyer”), and *[Aggregator or Demand Response Provider]*, a *[Seller’s business registration]* (“Seller”), as of *[Date]* (“Execution Date”). Buyer and Seller are referred to herein individually as a “Party” and collectively as “Parties.” Unless the context otherwise specifies or requires, capitalized terms in this Agreement have the meanings set forth in Exhibit A.

AGREEMENT

In consideration of the agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

ARTICLE 1. TRANSACTION

1.1. Purchase and Sale of the Product

(a) During the Delivery Period, Seller shall sell and deliver, and Buyer shall purchase and receive, the Product as indicated in Table 1.1(b) in the amount of the Product Monthly Quantity, as indicated in Exhibit E, subject to and in accordance with the terms and conditions of this Agreement. The Product shall be a Proxy Demand Resource (PDR).

(b) The Product is:

	Type of Product	Local Capacity Area (as applicable)
<input type="checkbox"/>	Product A: System Capacity	Not applicable

	Type of Product	Local Capacity Area (as applicable)
<input type="checkbox"/>	Product B-1: Local Capacity with System Capacity	LA Basin LCA Substations
<input type="checkbox"/>	Product B-2: Local Capacity with System Capacity	Big Creek/Ventura LCA Substations
<input type="checkbox"/>	Product C1: Flexible Capacity (Flexible Category 1) with System Capacity	Not applicable
<input type="checkbox"/>	Product C2: Flexible Capacity (Flexible Category 2) with System Capacity	Not applicable
<input type="checkbox"/>	Product C3: Flexible Capacity (Flexible Category 3) with System Capacity	Not applicable
<input type="checkbox"/>	Product D1-1: Flexible Capacity (Flexible Category 1) with Local and System Capacity	LA Basin LCA Substations
<input type="checkbox"/>	Product D1-2: Flexible Capacity (Flexible Category 1) with Local and System Capacity	Big Creek/Ventura LCA Substations
<input type="checkbox"/>	Product D2-1: Flexible Capacity (Flexible Category 2) with Local and System Capacity	LA Basin LCA Substations
<input type="checkbox"/>	Product D2-2: Flexible Capacity (Flexible Category 2) with Local and System Capacity	Big Creek/Ventura LCA Substations

	Type of Product	Local Capacity Area (as applicable)
<input type="checkbox"/>	Product D3-1: Flexible Capacity (Flexible Category 3) with Local and System Capacity	LA Basin LCA Substations
<input type="checkbox"/>	Product D3-2: Flexible Capacity (Flexible Category 3) with Local and System Capacity	Big Creek/Ventura LCA Substations

(c) Seller to indicate whether the Product is:

_____ a Residential Customer Product; or

_____ not a Residential Customer Product

{SCE Comment: Seller to choose only one option which applies to all Product for this Agreement}

(d) If Seller has chosen to deliver Product that is not Residential Customer Product, its DRAM Resource may nevertheless include Residential Customers and Small Commercial Customers.

1.2. Term

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

1.3. Delivery Period

The “Delivery Period” shall commence on the later of (a) the first day of the first month that begins after seventy-five (75) days following CPUC Approval, and (b) *[Date]*, and shall continue in full force and effect until *[Date]* *{SCE Comment: The Date should be the last calendar day of the last Showing Month}*, unless terminated earlier in accordance with the terms and conditions of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, the Delivery Period will not commence until CPUC Approval is obtained or waived by Buyer in its sole discretion.

{SCE Comment: Dates will be based on Seller’s bid that was selected by SCE in the RFO. Currently that would be no earlier than [month, year] and no later than [month, year].}

1.4. Seller's Designation of the DRAM Resource

- (a) On or before the date that is seventy-five (75) days prior to the first Showing Month, and on a monthly basis thereafter no less than seventy-five (75) days prior to the applicable Showing Month if any of the information below changes, Seller shall:
 - (i) Provide to Buyer the Resource ID(s) for each PDR providing the Product pursuant to this Agreement.
 - (ii) Confirm in writing to Buyer that each PDR identified by Seller pursuant to Section 1.4(a)(i) is comprised solely of Bundled Service Customers or Unbundled Service Customers.
 - (iii) If the Product pursuant to this Agreement is a Joint Resource, Seller shall confirm in writing to Buyer (x) the amount of the capacity of such Joint Resource that will be used to show Demonstrated Capacity under this Agreement and (y) the total capacity of such Joint Resource.
- (b) Sellers may sell and deliver System Capacity and Local Capacity from PDRs and may sell and deliver Flexible Capacity only from PDRs.
- (c) The Parties shall cooperate to implement the requirements of Rule 24 to enroll Resource Customers in order for Seller to designate the PDR(s) pursuant Section 1.4(a)(i).

1.5. Product Monthly Quantity and Corresponding Contract Price

- (a) The Product Monthly Quantity and Contract Price for the type of Product indicated in Table 1.1(b) for each applicable Showing Month during the Delivery Period is set forth in Exhibit E.
- (b) In the event that Seller is not able to register the DRAM Resource for part or all of a Product Monthly Quantity for a Showing Month due solely to the actions or inactions of Buyer or the CAISO, then Seller may, in its sole discretion, by providing Notice to Buyer on or before the date that is sixty (60) days prior to the Showing Month for which Seller is unable to register the DRAM Resource, reduce the Product Monthly Quantity for the unregistered capacity by type of Product for such Showing Month; *provided*, Seller shall demonstrate to Buyer's reasonable satisfaction that Seller made commercially reasonable efforts to register the DRAM Resource corresponding to such reduced Product Monthly Quantity for the unregistered capacity by type of Product in the applicable Showing Month.
- (c) In the event that material changes to definition of Resource Adequacy, including but not limited to changes in the Resource Adequacy Availability Assessment Hours, are adopted during the Term of this Agreement, then Seller may, in its sole discretion, by providing Notice to Buyer on or before [month, year] either (i)

reduce the Product Monthly Quantity for the following year or (ii) terminate this Agreement.

- (d) Seller's exercise of its rights under Sections 1.5(b) or (c) will not be deemed to be a failure of Seller's obligation to sell or deliver the Product or a failure of Buyer's obligation to purchase or receive the Product, and will not be or cause an Event of Default by either Party. Neither Party shall have any further obligation or liability to the other and no Settlement Amount with respect to this Agreement will be due or owing by either Party upon termination of this Agreement due solely to Seller's exercise of its rights under Section 1.5(c).

1.6. Demonstrated Capacity

- (a) Each invoice submitted by Seller to Buyer pursuant to Section 4.2 shall include a statement, in a form substantially similar to Exhibit C, of the amount of the Qualifying Capacity for each type of Product for such Showing Month that Seller was capable of delivering ("Demonstrated Capacity"), utilizing the results from one of the following methods, as provided below (subject to the additional restrictions set forth in Section 1.6(b)).
 - (i) The results of a DC Dispatch of the applicable PDR in the DRAM Resource during the Showing Month, provided that the PDR provided load reduction during all of the hours referenced in the Dispatch Instruction corresponding to the applicable Availability Assessment Hours. The Demonstrated Capacity for System and Local Capacity will equal the maximum hourly load reduction during any hour of such DC Dispatch as calculated using the Capacity Baseline; provided that, for the Showing Month of August, the Demonstrated Capacity for System and Local Capacity will equal the average hourly load reduction during any two (2) consecutive hours as calculated using the Capacity Baseline. The Demonstrated Capacity for Flexible Capacity will equal the average hourly load reduction during any hour of such DC Dispatch as calculated using the Capacity Baseline; provided that, for the Showing Month of August, the Demonstrated Capacity for Flexible Capacity will equal the average hourly load reduction during any two (2) consecutive hours as calculated using the Capacity Baseline. If Seller submits the results of a DC Dispatch for less than one hundred percent (100%) of the Qualifying Capacity of the applicable PDR (a "Partial Dispatch") for its Demonstrated Capacity showing, the resulting load reduction will still be compared to the Qualifying Capacity of the entire PDR for purposes of deriving the DC-QC ratio of the DR Resource in accordance with Section 4.1.
 - (ii) In the event that there is no DC Dispatch of the PDR in the DRAM Resource for one hundred percent (100%) of the Qualifying Capacity of the applicable Showing Month, and if Seller does not submit the results of a Partial Dispatch during the Showing Month as contemplated under

1.6(a)(i) above, the results of a DC Test. The Demonstrated Capacity for System and Local Capacity will equal the maximum hourly load reduction during any hour of such DC Test as calculated using the Capacity Baseline; provided that, for the Showing Month of August the Demonstrated Capacity for System and Local Capacity will equal the average hourly load reduction during any two (2) consecutive hours as calculated using the Capacity Baseline. The Demonstrated Capacity for Flexible Capacity will equal the average hourly load reduction during any hour of such DC Test as calculated using the Capacity Baseline; provided that, for the Showing Month of August the Demonstrated Capacity for Flexible Capacity will equal the average hourly load reduction during any two (2) consecutive hours as calculated using the Capacity Baseline.

(iii) In the event that there is no DC Dispatch of the PDR in the DRAM Resource during the Showing Month for one hundred percent (100%) of the Qualifying Capacity of the applicable Showing Month, if Seller does not submit the results of a Partial Dispatch as contemplated under 1.6(a)(i) above, and there is no DC Test of the PDR in the DRAM Resource during the Showing Month as contemplated under 1.6(a)(ii) above, the Demonstrated Capacity will equal the average amount of capacity for such PDR in the DRAM Resource that the Seller bid into the applicable CAISO Markets solely during the Availability Assessment Hours of the Showing Month in compliance with the CAISO MOO.

(b) Seller's use of the methods described in Sections 1.6(a)(i)-(iii) is subject to the following additional restrictions:

(i) Demonstrated Capacity for each PDR in the DRAM Resource must be calculated under Section 1.6(a)(i) or 1.6(a)(ii) for the August Showing Month of each year and for at least fifty percent (50%) of all contracted Showing Months during the Delivery Period (rounded downward if the Delivery Period is an odd number of Showing Months). For example, if the Delivery Period consists of seven (7) Showing Months, then a DC Test or DC Dispatch shall be required for at least three (3) of such Showing Months, including the Showing Month of August.

(ii) Demonstrated Capacity for any PDR in the DRAM Resource shall not be calculated under Section 1.6(a)(iii) for more than five (5) consecutive Showing Months during the Delivery Period (prorated, if the Delivery Period is less than twelve (12) Showing Months, to a number equal to half of the Showing Months in the Delivery Period minus one: e.g., two consecutive Showing Months for a six-month Delivery Period).

(c) The same Capacity Baseline must be used (i) to estimate Qualifying Capacity for Seller's month-ahead submissions pursuant to Section 3.1(a) for a Showing Month; (ii) to calculate Demonstrated Capacity for the applicable Showing

Month; and (iii) for energy settlement at the CAISO for the applicable Showing Month.

- (d) Solely for purposes of establishing the Demonstrated Capacity pursuant to Section 1.6(a), Seller shall use data available through Buyer's Customer Data Access Systems that has been designated by Buyer as final Revenue Quality Meter Data and such data shall be considered final by the Parties as of the date Seller submits its invoice for the applicable Showing Month to Buyer.
- (e) If the DRAM Resource is composed of more than one PDR, then:
 - (i) Seller may establish the portion of the Demonstrated Capacity for each such PDR by using the methods described in Sections 1.6(a)(i) through (iii), in which case the Demonstrated Capacity will equal the sum of the individual PDRs' Demonstrated Capacities.
 - (ii) The Showing Months in which DC Dispatches or DC Tests are conducted may be different for each such PDR except for the Showing Month of August, in which a DC Dispatch or DC Test is required for every PDR in the DRAM Resource pursuant to Section 1.6(b)(i).
- (f) Seller shall not include the performance of any DRAM Resource Customer service account that was moved in a Showing Month pursuant to Section 3.4(d) in more than one PDR for purposes of the calculation of Demonstrated Capacity for such Showing Month.
- (g) If any respective PDR in the DRAM Resource is a Joint Resource, Seller's invoice shall indicate (x) the amount of the capacity of such Joint Resource used to show Demonstrated Capacity for a specific type of Product for such Showing Month and (y) the total capacity of such Joint Resource during such Showing Month.
- (h) If the type of Product Seller delivers under this Agreement is a Residential Customer Product, Seller's invoice shall indicate the number of Residential Customer SAID agreements and the number of Small Commercial SAID accounts in each PDR for such type of Product.
- (i) In addition to the requirements in Section 1.6(a), if Seller is electing Demonstrated Capacity for Local Capacity, then, as part of Seller's Demonstrated Capacity for Local Capacity, Seller's invoice shall indicate the number of SAID agreements in the applicable LCA that are associated with the Local Capacity as indicated in Table 1.1(b) and Exhibit C.
- (j) Following Buyer's receipt of Seller's invoice and Notice of Demonstrated Capacity, Buyer may, upon Notice to Seller, require Seller to provide documentation from Seller or Seller's SC that establishes to Buyer's reasonable satisfaction the Demonstrated Capacity of each Product type from a PDR or Joint Resource as stated by Seller in its invoice for the applicable Showing Month. In

the event that Seller does not provide such documentation within ten (10) Business Days from Buyer's Notice or such documentation is not reasonably satisfactory to Buyer, then Buyer may require an audit of Seller or Seller's SC records upon Notice ("Audit Notice"). With respect to an Audit Notice, Seller shall cause its SC to allow Buyer or its designated independent third-party auditor to have access to the records and data necessary to conduct such audit within five (5) Business Days of Seller's receipt of an Audit Notice; *provided*, such audit will be limited solely to verification of the data upon which Seller based its claim of the amount of the Demonstrated Capacity. If the type of Product designated in Section 1.1(b) is a Residential Customer Product, then, in addition to the documentation specified above, Buyer may, in its Audit Notice, require Seller or Seller's SC to provide additional documentation that establishes to Buyer's reasonable satisfaction that the type of Product is Residential Customer Product as stated by Seller in its invoice for the applicable Showing Month. Buyer's costs, including the costs for any third-party auditor, incurred in connection with the conducting such audit are the sole responsibility of Buyer.

ARTICLE 2. CPUC APPROVAL

2.1. Obtaining CPUC Approval

Within thirty (30) days after the Execution Date, Buyer shall file with the Commission the appropriate request for CPUC Approval. Seller shall use commercially reasonable efforts to support Buyer in preparing for and obtaining CPUC Approval. Buyer 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.

2.2. CPUC Approval Termination Right

- (a) Either Party has the right to terminate this Agreement upon 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 Buyer in its sole discretion within sixty (60) days after Buyer files its request for CPUC Approval and (ii) such Notice of termination is given on or before the ninetieth (90th) day after Buyer files the request for CPUC Approval.
- (b) 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 Product or a failure of Buyer to purchase or receive the Product, and will not be or cause an Event of Default by either Party. No Settlement Amount with respect to this Agreement will be due or owing by either Party, and neither Party shall have any obligation or liability to the other, upon termination of this Agreement due solely to failure to obtain CPUC Approval.

ARTICLE 3. SELLER OBLIGATIONS

3.1. Delivery of Product

- (a) No later than the deadlines set forth in subsections (i) and (ii) below, Seller shall submit, or cause Seller's SC(s) to submit:
 - (i) No later than fifteen (15) calendar days prior to Buyer's Compliance Showing deadlines each year or Showing Month (as applicable), Notice to Buyer which shall include Seller's Supply Plan for such year or Showing Month (as applicable) in (A) a form substantially similar to Exhibit D, or (B) a form as communicated in writing by Buyer to Seller no later than fifteen (15) Business Days prior to Buyer's Compliance Showing deadlines for such year or Showing Month (as applicable). Such Supply Plan shall include the Qualifying Capacity for each PDR identified by Seller pursuant to Section 1.4(a)(i), the sum of which shall not exceed the Product Monthly Quantity.
 - (ii) No later than ten (10) Business Days prior to the deadline for Seller's Supply Plan submission in subsection (i) immediately above, the additional information required by the implementation guidelines set forth in D.19-07-009, Appendix A, attached hereto as Exhibit F (the "QC Implementation Guidelines"), including the Qualifying Capacity for each PDR identified by Seller pursuant to Section 1.4(a)(i), presented in **[a form substantially similar to Exhibit G][the standardized reporting format developed by the CPUC pursuant to Ordering Paragraph 8 of D.19-07-009]**.
- (b) Seller shall, on a timely basis, submit, or cause its SC to submit, a Supply Plan to CAISO in accordance with the CAISO Tariff. The quantities in the Supply Plan that is submitted to the Buyer under Section 3.1(a)(i) shall exactly match what is submitted by the Seller or its SC to the CAISO due on the earliest monthly applicable Buyer's Compliance Showing deadlines with CAISO and CPUC.

3.2. Resource Adequacy Benefits

Seller grants, pledges, assigns, and otherwise commits to Buyer the Qualifying Capacity for each PDR specified in the Supply Plan and all Resource Adequacy Benefits of the Product as associated with the DRAM Resource to enable Buyer to meet its RAR, Local RAR and/or Flexible RAR, as applicable. The Parties shall take all commercially reasonable actions, and execute all documents or instruments necessary, to effect the use of the Product for Buyer's sole benefit.

3.3. Provision of Information

Within a reasonable period of time, or such time prescribed by the CPUC, Seller shall provide to the CPUC all information requested by the CPUC relating to Seller's obligations and performance pursuant to this Agreement and the DRAM Pilot Program to which this Agreement relates. In responding to any information request from the CPUC,

the Seller may designate information for confidential treatment consistent with CAISO and/or Commission rule, tariff or decision. Any such confidential information provided by Seller to the CPUC shall be held in confidence by the CPUC and excluded from public inspection or disclosure, unless inspection or disclosure is otherwise required by Applicable Laws.

3.4. Seller's Obligations

- (a) Seller shall, and shall cause each of the PDRs in the DRAM Resource and corresponding DRPs and SCs to, comply with all applicable CAISO Tariff provisions, CPUC Decisions and all other Applicable Laws, including the Bidding of the DRAM Resource into the applicable CAISO Markets during the Availability Assessment Hours as required by the CAISO Tariff.
- (b) Seller shall or shall cause Seller's DRP to execute Buyer's Demand Response Provider Service Agreement in accordance with Rule 24.
- (c) Seller shall not include any Customer premises or resource in a PDR in the DRAM Resource that is concurrently enrolled in or otherwise concurrently committed to any other demand response program offered, maintained, or funded by Buyer (e.g., without limitation, behind-the-meter storage products in the Energy Storage RFO), or that is registered with CAISO as a part of any other demand response resource or Distributed Energy Resource Aggregation, other than as provided under this Agreement.
- (d) Seller shall not change or modify the customer composition of the DRAM Resource, including without limitation moving a DRAM Resource Customer service account in or out of any PDR of the DRAM Resource, during any Showing Month except under the following circumstances:
 - (i) Seller may add a newly recruited service account to a PDR in the DRAM Resource if that service account is not part of a PDR that is already included in a supply plan submitted by Seller to Buyer or any other LSE for the same Showing Month.
 - (ii) Seller may remove a service account from a PDR in the DRAM Resource.
 - (iii) If as a result of the changes in Sections 3.4(d)(i) and 3.4(d)(ii) a PDR in the DRAM Resource becomes large enough to trigger the 10 MW telemetry requirement, Seller may split the affected PDR into two or more smaller resources as necessary to comply with CAISO requirements.
 - (iv) If as a result of the changes in Sections 3.4(d)(i) and 3.4(d)(ii) a PDR in the DRAM Resource becomes small enough to drop below the 100 kW minimum PDR size, Seller may combine the affected PDR with other resources as necessary to comply with CAISO requirements.

- (v) If a service account has moved to a new LSE (e.g., to or from a community choice aggregator), and if the CAISO Tariff requires PDRs to consist of service accounts that are customers of the same LSE, then Seller may add or remove the affected service accounts as necessary to comply with CAISO requirements.

3.5. Indemnities for Failure to Perform.

Seller agrees to indemnify, defend and hold harmless Buyer from any costs, penalties, fines or charges assessed against Buyer by the CPUC, CAISO, FERC, or any other Governmental Body with jurisdiction over Buyer, resulting from Seller's failure to do, or cause to be done, any of the following:

- (a) Provide all of the Product Monthly Quantity in any Showing Month, except to the extent (i) such failure is solely the result of a failure by Buyer to perform any of its obligations pursuant to Section 6.2, or (ii) Seller reduces the Product Monthly Quantity in accordance with Section 1.5(b) or (c);
- (b) Submit timely and accurate Supply Plans that identify Buyer's right to the Product Monthly Quantity for each Showing Month;
- (c) Comply with the requirements in Section 3.2 to enable Buyer to meet its RAR;
- (d) Meet CPUC Resource Adequacy requirements per the CPUC Filing Guide; or
- (e) Comply with the CAISO Tariff.

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

Notwithstanding Seller's obligations in Section 3.5(a), Seller is not required to indemnify or reimburse Buyer for any costs allocated to Buyer by the CAISO for any capacity procured by CAISO pursuant to the Capacity Procurement Mechanism with respect to any Shortfall Capacity.

ARTICLE 4. PAYMENT AND BILLING

4.1. Delivered Capacity Payment

Buyer shall make a monthly payment to Seller, after the applicable Showing Month, ("Delivered Capacity Payment") equal to the product of (A x B x C).

$$\text{Delivered Capacity Payment} = [A \times B \times C]$$

Where:

A = The Contract Price for the applicable Showing Month, including SC costs.

B = The value from the chart below corresponding to the applicable ratio of Demonstrated Capacity (which shall be a total sum of the individual PDRs in the DRAM Resource) as a percentage of the Qualifying Capacity (which shall be a total sum of the individual PDRs in the DRAM Resource) (“DC-QC Ratio”):

Delivered Capacity (DC) Payment Values		
Band	DC- QC Ratio	Value for B
Tolerance	> 90.00%	Qualifying Capacity (kW)
Pro-rated	> 70.00% to 90.00%	Demonstrated Capacity (kW)
De-rated	50.00% to 70.00%	Demonstrated Capacity (kW) * 75%
Forfeiture	< 50.00%	0

C = 1.0 if Seller has chosen (i) not to deliver Residential Customer Product in Section 1.1(c) or (ii) to deliver Residential Customer Product in Section 1.1(c) and the Product delivered meets the definition of Residential Customer Product, or 0.90 if the Product delivered does not meet the definition of Residential Customer Product.

4.2. Invoice and Payment Process

- (a) Within thirty (30) days after Seller has received Revenue Quality Meter Data for at least ninety-five percent (95%) of all intervals required for settlement of the DRAM Resource for the applicable Showing Month, Seller will render to Buyer an invoice for the Demonstrated Capacity and associated payment amount due, if any, with respect to such Showing Month. Seller’s failure to render any invoice on or before the deadline set forth herein shall be deemed to be a submission by the Seller of a DC Dispatch-based invoice with Demonstrated Capacity at an amount below fifty percent (50%) of the Qualifying Capacity for the applicable Showing Month (i.e., within the “forfeiture” payment band in the chart in Section 4.1).

- (b) Buyer will pay Seller all undisputed invoice amounts on or before the later of (i) the twentieth (20th) day of each month, or (ii) the tenth (10th) day after receipt of Seller's invoice and Demonstrated Capacity or, if such day is not a Business Day, then on the next Business Day.
- (c) Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Cash Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.
- (d) Buyer may offset against any future payments by any amount(s) that were previously overpaid.
- (e) 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 10 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 ten (10) Business Days of such resolution.
- (f) Buyer may deduct any amounts that would otherwise be due to Seller under this Agreement from any amounts owing and unpaid by Seller to Buyer under this Agreement.
- (g) With respect to any Joint Resource, if Seller and any third party both submit claims to Buyer for payment with respect to such Joint Resource which, when added together, exceed the total capacity of the Joint Resource, Buyer shall not be obligated to make payment to Seller in respect of such Joint Resource until Seller reconciles the error with such third party and Seller re-submits the corrected invoice to Buyer.
- (h) With respect to a Joint Resource, if such Joint Resource's Demonstrated Capacity for a particular type of Product in any Showing Month is less than such Joint Resource's assigned NQC and/or EFC for such type of Product (as set forth in Exhibit C), Seller shall have the right to demonstrate to Buyer the Joint Resource's actual performance, and shall be compensated in accordance with Section 1.6. In the event Buyer finds Seller's demonstration inconclusive, the Joint Resource's total capacity shall be allocated pro-rata among the parties with rights to a portion of such Joint Resource's type of Product based on the information required to be provided in Section 1.6(g), and Seller's compensation

shall be calculated using its percentage allocation of such PDR's capacity, accordingly.

4.3. Allocation of Other CAISO Payments and Costs

As between Buyer and Seller, Seller shall retain any revenues Seller or Seller's SC may receive from and pay all costs, penalties, charges charged to Seller or Seller's SC by the CAISO or any other third party in connection with the DRAM Resource, except as expressly provided otherwise in this Agreement.

ARTICLE 5. CREDIT AND COLLATERAL

5.1. Seller's Credit and Collateral Requirements

- (a) If, at any time during the Term Seller does not have a Credit Rating, or if its Credit Rating is below BBB- from S&P or Baa3 from Moody's, if rated by both S&P and Moody's or below BBB- from S&P or Baa3 from Moody's, if rated by either S&P or Moody's, but not both, Seller shall provide and maintain collateral with Buyer in an amount equal to twenty percent (20%) of the sum of the estimated Delivered Capacity Payments for all of the remaining months of the Delivery Period including the current month, with such estimated Delivered Capacity Payments being based on the applicable Monthly Quantity values times the applicable Contract Price ("Performance Assurance").
- (b) If Seller's Credit Rating is at or above BBB- from S&P and Baa3 from Moody's, if rated by both S&P and Moody's, or at or above BBB- from S&P or Baa3 from Moody's, if rated by either S&P or Moody's, but not both, Seller shall have no obligation to provide Performance Assurance to Buyer, and Sections 5.2 through 5.5 will not be applicable.
- (c) If required pursuant to Section 5.1(a), Seller shall post the Performance Assurance with Buyer within ten (10) Business Days of the Execution Date.

5.2. Grant of Security Interest/Remedies

- (a) To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing security interest in, and lien on (and right of setoff against), and collateral assignment of, the Performance Assurance and all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Buyer, and each Party agrees to take such action as the other Party reasonably requires in order to perfect Buyer's first-priority security interest in, and lien on (and right of setoff against), such Performance Assurance and collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, Buyer, if it is the Non-Defaulting Party, may do any one

or more of the following: (i) exercise any of the rights and remedies of a Buyer with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. In such an event Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under the Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

5.3. Reduction and Substitution of Performance Assurance

- (a) If the amount of Performance Assurance held by Buyer exceeds the amount required pursuant to Section 5.1, on any Business Day, Seller may give Notice to Buyer requesting a reduction in the amount of Performance Assurance previously provided by Seller for the benefit of Buyer, provided that, (i) after giving effect to the requested reduction in Performance Assurance, no Event of Default or Potential Event of Default with respect to Seller has occurred and is continuing, (ii) no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to Seller for which there exist any unsatisfied payment obligations, and (iii) no amounts are owing and unpaid from Seller to Buyer hereunder. A permitted reduction in Performance Assurance may be effected by the Transfer of Cash to Seller or the reduction of the amount of an outstanding Letter of Credit previously issued for the benefit of Buyer. Seller shall have the right to specify the means of effecting the reduction in Performance Assurance. In all cases, the cost and expense of reducing Performance Assurance (including, but not limited to, the reasonable costs, expenses, and attorneys' fees of Buyer) shall be borne by Seller. Unless otherwise agreed in writing by the Parties, (iii) if Seller's reduction demand is made on or before the Notification Time on a Business Day, then Buyer shall have five (5) Business Days to effect a permitted reduction in Performance Assurance, and (iv) if Seller's reduction demand is made after the Notification Time on a Business Day, then Buyer shall have six (6) Business Days to effect a permitted reduction in Performance Assurance, in each case, if such reduction is to be effected by the return of Cash to Seller. If a permitted reduction in Performance Assurance is to be effected by a reduction in the amount of an outstanding Letter of Credit previously issued for the benefit of Buyer, Buyer shall promptly take such action as is reasonably necessary to effectuate such reduction.
- (b) Except when an Event of Default or Potential Event of Default with respect to Seller shall have occurred and be continuing or an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to Seller for which there exist any unsatisfied payment obligations, Seller may

substitute Performance Assurance for other existing Performance Assurance of equal value upon five (5) Business Days' Notice (provided such Notice is made on or before the Notification Time, otherwise the notification period shall be six (6) Business Days) to Buyer. Upon the Transfer to Buyer of the substitute Performance Assurance, Buyer shall Transfer the relevant replaced Performance Assurance to Seller within five (5) Business Days. Notwithstanding anything herein to the contrary, no such substitution shall be permitted unless (i) the substitute Performance Assurance is Transferred simultaneously or has been Transferred to Buyer prior to the release of the Performance Assurance to be returned to Seller and the security interest in, and general first lien upon, such substituted Performance Assurance granted pursuant hereto in favor of Buyer shall have been perfected as required by applicable law and shall constitute a first priority perfected security interest therein and general first lien thereon, and (ii) after giving effect to such substitution, the substitute Performance Assurance shall equal the amount of Performance Assurance being replaced. Each substitution of Performance Assurance shall constitute a representation and warranty by Seller that the substituted Performance Assurance shall be subject to and governed by the terms and conditions of this Article 5, including without limitation the security interest in, general first lien on and right of offset against, such substituted Performance Assurance granted pursuant hereto in favor of Buyer pursuant to this Article 5.

- (c) The Transfer of any Performance Assurance by Buyer in accordance with this Section 5.3 shall be deemed a release by Buyer of its security interest, general first lien and right of offset granted pursuant to this Article 5 hereof only with respect to such returned Performance Assurance. In connection with each Transfer of any Performance Assurance pursuant to this Article 5, Seller will, upon request of Buyer, execute a receipt showing the Performance Assurance Transferred to it.

5.4. Administration of Performance Assurance

- (a) Cash. Performance Assurance provided in the form of Cash to Buyer shall be subject to the following provisions:
 - (i) Notwithstanding the provisions of applicable law, if no Event of Default has occurred and is continuing with respect to Buyer and no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to Buyer for which there exist any unsatisfied payment obligations, then Buyer 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.
 - (ii) So long as no Event of Default or Potential Event of Default with respect to Seller has occurred and is continuing, and no Early Termination Date

has occurred or been designated as the result of an Event of Default with respect to Seller, and no amounts are owing and unpaid from Seller to Buyer hereunder, and to the extent that an obligation to Transfer Performance Assurance would not be created or increased by the Transfer, in the event that Buyer is holding Cash, Buyer will Transfer (or caused to be Transferred) to Seller, in lieu of any interest or other amounts paid or deemed to have been paid with respect to such Cash (all of which may be retained by Buyer), the Interest Amount when Buyer returns the Cash to Seller following the termination or expiration of this Agreement, as applicable and in conformity with Section 9.6. On or after the occurrence of a Potential Event of Default or an Event of Default with respect to Seller or an Early Termination Date as a result of an Event of Default with respect to Seller, Buyer shall retain any such Interest Amount as additional Performance Assurance hereunder until the obligations of Seller under the Agreement have been satisfied in the case of an Early Termination Date or for so long as such Event of Default is continuing in the case of an Event of Default.

- (b) Letters of Credit. Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions:
- (i) Each Letter of Credit shall be maintained for the benefit of Buyer. Seller shall (A) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (B) if the bank or financial institution that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide either a substitute Letter of Credit or Cash, in each case at least thirty (30) calendar days prior to the expiration of the outstanding Letter of Credit, and (C) if a bank or financial institution issuing a Letter of Credit shall fail to honor Buyer's properly documented request to draw on an outstanding Letter of Credit, provide for the benefit of Buyer either a substitute Letter of Credit that is issued by a bank or financial institution acceptable to Buyer or Cash, in each case within one (1) Business Day after such refusal.
 - (ii) As one method of providing Performance Assurance, Seller may increase the amount of an outstanding Letter of Credit or establish one or more additional Letters of Credit.
 - (iii) Upon the occurrence of a Letter of Credit Default, Seller agrees to Transfer to Buyer either a substitute Letter of Credit or Cash, in each case on or before the first (1st) Business Day after the occurrence thereof (or the fifth (5th) Business Day after the occurrence thereof if only clause (i) under the definition of Letter of Credit Default applies).
 - (iv) Upon or at any time after the occurrence and continuation of an Event of Default or Letter of Credit Default with respect to Seller, or if an Early Termination Date has occurred or been designated as a result of an Event

of Default with respect to Seller for which there exist any unsatisfied payment obligations, then Buyer may draw on the entire, undrawn portion of any outstanding Letter of Credit upon submission to the bank or financial institution issuing such Letter of Credit of one or more certificates specifying that such Event of Default, Letter of Credit Default or Early Termination Date has occurred and is continuing. Cash proceeds received from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for Seller's obligations to Buyer and Buyer shall have the rights and remedies set forth in Section 5.5 with respect to such Cash proceeds. Notwithstanding Buyer's receipt of Cash proceeds of a drawing under the Letter of Credit, Seller shall remain liable (A) for any failure to Transfer sufficient Performance Assurance and (B) for any amounts owing to Buyer and remaining unpaid after the application of the amounts so drawn by Buyer.

- (v) In all cases, the costs and expenses of establishing, renewing, substituting, canceling, and increasing the amount of a Letter of Credit shall be borne by Seller.
- (c) Care of Performance Assurance. Except as otherwise provided in Section 5.4(a)(i) and beyond the exercise of reasonable care in the custody thereof, Buyer 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. Buyer shall be deemed to have exercised reasonable care in the custody and preservation of the Performance Assurance in its possession if the Performance Assurance is accorded treatment substantially equal to that which it accords its own property, and shall not be liable or responsible for any loss or damage to any of the Performance Assurance, or for any diminution in the value thereof, except to the extent such loss or damage is the result of Buyer's willful misconduct or gross negligence. Buyer shall at all times retain possession or control of any Performance Assurance Transferred to it.

5.5. Exercise of Rights against Performance Assurance

- (a) If an Event of Default with respect to Seller has occurred and is continuing or an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to Seller, or if amounts are owing and unpaid from Seller to Buyer hereunder, Buyer may exercise any one or more of the rights and remedies provided under this Agreement, or as otherwise available under Applicable Law. Without limiting the foregoing, if at any time an Event of Default with respect to Seller has occurred and is continuing, or an Early Termination Date occurs or is deemed to occur as a result of an Event of Default with respect to Seller, then Buyer may, in its sole discretion, exercise any one or more of the following rights and remedies:
 - (i) All rights and remedies available to a Buyer under the Uniform Commercial Code and any other applicable jurisdiction and other

Applicable Laws with respect to the Performance Assurance held by or for the benefit of Buyer;

- (ii) The right to set off any Performance Assurance held by or for the benefit of Buyer against and in satisfaction of any amount payable by Seller in respect of any of its obligations; and
 - (iii) The right to draw on any outstanding Letter of Credit issued for its benefit.
- (b) Buyer 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 Buyer for any amount payable by Seller in respect of any of its obligations remaining unpaid after any such liquidation, application and set off.

5.6. Financial Information

If requested by a Party, the other Party shall deliver, if available, (a) within one hundred twenty (120) days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year setting forth in each case in comparative form the figures for the previous year for the Party, as the case may be, and (b) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of a quarterly report containing unaudited consolidated financial statements for such fiscal quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year, and if the Party files reports with the Securities and Exchange Commission, certified in accordance with all applicable laws and regulations, including without limitation all applicable Securities and Exchange Commission rules and regulations. If the Party does not file reports with the Securities and Exchange Commission, the reports must be certified by a Chief Financial Officer, Treasurer or any Assistant Treasurer as being fairly stated in all material respects (subject to normal year end audit adjustments); provided, for the purposes of this Section 5.6, if a Party's financial statements are publicly available electronically on the Securities and Exchange Commission's website, then this requirement shall be deemed satisfied. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

5.7. Access to Financial Information

- (a) Buyer shall determine, through consultation with its internal accountants and review with their independent registered public accounting firm, that Buyer is required to consolidate Seller's financial statements with Buyer'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 Buyer accounting treatment for this Agreement (the “Financial Consolidation Requirement”).

- (b) If the Financial Consolidation Requirement is applicable, then:
- (i) Within twenty (20) days following the end of each calendar year (for each year that such treatment is required), Seller shall deliver to Buyer 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. Buyer shall provide to Seller a checklist before the end of each year listing the items which Buyer believes are material to Buyer 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 month’s 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 Buyer within five (5) Business Days after those statements are issued.
 - (ii) Within fifteen (15) days following the end of each fiscal quarter (for each quarter that such treatment is required), Seller shall deliver to Buyer 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. Buyer shall provide to Seller a checklist before the end of each quarter listing items which Buyer believes are material to Buyer 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 Buyer 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 Buyer 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 Buyer, Seller shall allow Buyer’s independent registered public

accounting firm such access to Seller's records and personnel, as reasonably required so that Buyer'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 shall be borne by Buyer. If Buyer's independent registered public accounting firm during or as a result of the audits permitted in this Section 5.7(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 ninety (90) days of Seller's receipt of Notice from Buyer, Seller shall remediate any such material weakness or significant deficiency; provided, 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) Buyer shall treat Seller's financial statements and other financial information provided under the terms of this Section 5.7 in strict confidence and, accordingly:
 - (i) Shall utilize such Seller financial information only for purposes of preparing, reviewing or certifying Buyer's or any Buyer parent company financial statements, for making regulatory, tax or other filings required by law in which Buyer 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 Buyer's or any Buyer parent company financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Buyer parent company financial statement and to those persons who are entitled to receive confidential information as identified in Article 13; and
 - (iii) Buyer shall ensure that its internal auditors and independent registered public accounting firm (1) treat as confidential any information disclosed to them by Buyer pursuant to this Section 5.7, (2) use such information solely for purposes of conducting the audits described in this Section 5.7, 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 (2) Business Days following the occurrence of any event affecting Seller which Seller understands, during the Term, would require Buyer to disclose such event in a Form 8-K filing with the SEC, Seller shall provide to Buyer a Notice describing such event in sufficient detail to permit Buyer to make a Form 8-K filing.

- (f) If, after consultation and review, the Parties do not agree on issues raised by Section 5.7(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 Buyer is required. Based on this recommendation, Seller and Buyer shall mutually agree on how to resolve the dispute. If Seller fails to provide the data consistent with the mutually agreed upon resolution, Buyer may declare an Event of Default pursuant to Section 9.1. If the independent audit firm associated with Buyer still determines, after review by the third-party independent audit firm, that Buyer must consolidate, then Seller shall provide the financial information necessary to permit consolidation to Buyer; provided, in addition to the protections in Article 13, 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.

5.8. 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, those provisions set forth in Article 5 and Article 9, 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 5 and Article 9; 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.

ARTICLE 6. SPECIAL TERMS AND CONDITIONS

6.1. Limitation of Liability

Buyer has no obligations to any person or entity that is, or may participate as, a DRAM Resource Customer, DRP (if Seller is not a DRP), or Seller's SC and Seller shall indemnify Buyer against any claim made by any such DRAM Customer, the DRP (if Seller is not a DRP), or Seller's SC with respect to its participation in or with the PDR or DRAM Resource, as applicable.

6.2. Buyer Provision of Information

Buyer shall, to the extent available and permitted by Applicable Law, including Rule 24, provide specific information consistent with the CISR-DRP form adopted by the CPUC

in D.13-12-029 and Resolution E-4630 including, but not limited to, usage, and/or meter data of a Customer to Seller, if Seller provides to Buyer written authorization from such Customer to release such information. Such written authorization must be provided in a form reasonably acceptable to Buyer. Buyer shall be liable for penalties or charges incurred by Seller from either the CAISO or the CPUC resulting solely from Buyer's failure to provide timely, accurate data to Seller in accordance with this Section 6.2.

6.3. Changes in Applicable Laws

- (a) If a change in Applicable Laws renders this Agreement or any material terms herein incapable of being performed or administered, then either Party, on Notice, may request the other Party to enter into good faith negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed or administered, while attempting to preserve to the maximum extent possible the benefits, burdens and obligations set forth in this Agreement as of the Execution Date. The Parties acknowledge that such changes may require the approval of the CPUC before becoming effective.
- (b) If the Parties have been unable to reach agreement within thirty (30) days after receipt of such Notice, then either Party may terminate this Agreement by providing Notice. A Party's exercise of its rights under this Section 6.3 will not be deemed to be a failure of Seller to sell or deliver the Product or a failure of Buyer to purchase or receive the Product, and will not be or cause an Event of Default by either Party. Neither Party shall have any further obligation or liability to the other and no Settlement Amount with respect to this Agreement will be due or owing by either Party upon termination of this Agreement due solely to a Party's exercise of its right pursuant to this Section 6.3.

6.4. DBE Reporting

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

- (i) Buyer has the right to disclose to the CPUC all such information provided by Seller pursuant to this Section 6.4.
- (ii) Seller shall make reasonable efforts to accommodate requests by the CPUC (or by Buyer in response to a request by the CPUC) to audit Seller in order to verify data provided by Seller pursuant to this Section 6.4.

6.5. Governmental Charges

Seller shall pay on request and indemnify Buyer against any taxes (including without limitation, any applicable transfer taxes and stamp, registration or other documentary

taxes), assessments, or charges that may become payable by reason of the security interests, general first lien and right of offset granted under this Agreement or the execution, delivery, performance or enforcement of this Agreement, as well as any penalties with respect thereto.

6.6. Customers in Buyer Automated Demand Response Program

Seller agrees to and acknowledges the following with respect to Buyer's non-residential Customers which are included in Seller's DRAM Resource and have received ADR incentives or rebates to install demand response capable control technologies:

- (a) Customers in Seller's DRAM Resource are eligible for ADR incentives or rebates, subject to the requirements of this Agreement, Commission requirements, and Applicable Laws. The Customer remains responsible for fulfilling its obligations under Buyer's ADR program rules during the time period such ADR Customer is in Seller's DRAM Resource.
- (b) Seller shall be responsible for (i) notification to ADR Customers in its DRAM Resource of each Bid awarded by the CAISO ("Award") for a PDR, and (ii) operation of the ADR Customers' ADR control technology in response to an Award. During the time period that an ADR Customer is enrolled in a DRAM Resource, Buyer (or its agent) will not send notifications to such ADR Customer of Awards and will not operate ADR Customers' ADR control technology.
- (c) If Seller or its DRP enrolls a Customer who has received ADR incentives or rebates in Seller's DRAM Resource, Seller shall provide Buyer (or its agent) with Notice within five (5) Business Days of such enrollment of the ADR Customer's enrollment along with the ADR Customer's name, service account address, SAID, location, the ADR agreement, and confirmation that the ADR Customer has unenrolled from all or any of Buyer's event-based demand response programs (other than ADR) prior to enrolling in Seller's DRAM Resource. Seller shall provide Buyer (or its agent) with Notice within fifteen (15) days after such Customer leaves Seller's DRAM Resource.
- (d) Customers who have received ADR incentives within the past year who enroll in a DRAM Resource will be required to demonstrate performance through the DRAM Resource to qualify for additional ADR incentive payments as indicated in the statewide ADR Guidelines.
- (e) Buyer (or its agent) may communicate (i) with Seller's Customers who have received ADR incentives or rebates about the requirements for the Customer to participate in a demand response program, and (ii) with Seller's Customers with respect to anything involving their ADR incentive or rebate eligibility.
- (f) Seller shall provide to Buyer (or its agent) all information necessary for Buyer to administer the Customers' ADR incentives or rebates, including, but not limited to: (i) the information described in Section 6.6(c), (ii) the days in each Showing Month of Dispatch of the applicable PDR in the DRAM Resource, (iii) all hours

in such Showing Month, corresponding to the days in subsection (ii), when Seller dispatched or called on the ADR Customer to respond to an Award, and (iv) information on ADR Customers that Seller did not dispatch or call on to respond to an Award for such Showing Month. The Customer's participation in the Seller's DRAM Resource as described in this Section 6.6(f) will be used in conjunction with the ADR Customer's participation in Buyer's demand response programs, to calculate the Customer's actual performance and subsequent incentive payments.

- (g) If Seller does not provide all the information Buyer needs to administer the ADR incentives for the Customer, the ADR Customer will be in non-compliance with the requirements of the ADR program.
- (h) Following the termination or expiration of this Agreement, Buyer (or its agent) may notify the Customers in Seller's DRAM Resource that have received ADR incentives or rebates of their commitment to participate in a demand response program for a total of three years.

ARTICLE 7. REPRESENTATIONS, WARRANTIES AND COVENANTS

7.1. Representations and Warranties of Both Parties

On the Execution 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 Buyer, 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 and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (d) This Agreement constitutes its legally valid and binding obligation, enforceable against it in accordance with its terms;
- (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 Product under this Agreement in accordance with the terms of this Agreement.

7.2. Additional Seller Representations, Warranties and Covenants

- (a) On the Execution Date, Seller represents and warrants to Buyer that Seller has not used, granted, pledged, assigned, or otherwise committed any of the Monthly Quantity to meet the RAR, Local RAR and/or Flexible RAR, as applicable, or confer Resource Adequacy Benefits upon, any entity other than Buyer during the Delivery Period.
- (b) Seller covenants that throughout the Delivery Period:
 - (i) Seller will deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person;
 - (ii) Seller has been authorized by each Customer, to act as an aggregator on behalf of such Customer to participate as a PDR in the DRAM Resource, if Seller is not also a Customer;
 - (iii) The DRP has been authorized by each Customer to act on behalf of such Customer to participate as a PDR for the DRAM Resource, if Seller is not the DRP; and
 - (iv) Seller will not use, grant, pledge, assign, or otherwise commit any Product Monthly Quantity to meet the RAR, Local RAR, and/or Flexible RAR, as applicable, of, or confer Resource Adequacy Benefits of the Product upon, any entity other than Buyer during the Delivery Period;
 - (v) During each month of the Delivery Period, if any participating Customers in the DRAM Resource have a Prohibited Resource, Seller shall ensure that such Prohibited Resource is not used to reduce load during a Dispatch by any PDR providing Product to Buyer during such month, as follows:
 - A. For all Residential Customers, Seller shall include a provision in its contract forbidding the use of Prohibited Resources to reduce load during a Dispatch by any PDR providing Product to Buyer. Any

customer that does not accept the prohibition will not be eligible to participate in the Seller's DRAM Resource.

- B. Seller shall require from each of its non-Residential Customers an attestation form attesting to one of the following conditions: (1) the customer does not have a Prohibited Resource on site; (2) the customer has a Prohibited Resource on site and will not use the resource to reduce load during a Dispatch by any PDR providing Product to Buyer; or, (3) the Customer has a Prohibited Resource on site and may have to use the resource during Demand Response events for operational, health or safety reasons. For conditions (1) and (2) above, each attestation must provide the number of unit(s) of Prohibited Resources on site and the nameplate capacity of the Prohibited Resource (or, if the Recruited Account has multiple Prohibited Resources, the sum of the nameplate capacity values from all Prohibited Resources on site) (the "Default Adjustment Value"). Customers must agree to a default adjustment in which the amount of Product such Customer can provide is reduced by the Default Adjustment Value, regardless of whether the Prohibited Resource was actually used.. Customers with multiple service accounts enrolled through Seller may submit one attestation form per attestation scenario.
- C. Seller shall collect and store all such Customer attestations and make them available upon request, to a Verification Administrator or the CPUC. Seller shall also collect and store supporting documentation, such as nameplate capacities for each resource under each attestation scenario, and make them available upon request to the Verification Administrator or the CPUC.
- D. For non-Residential Customers, the attestation shall occur at the time of enrollment and may be provided with a wet signature, a click, or an electronic signature. Any non-Residential customer that does not complete this component of the enrollment process will not be eligible to participate in Seller's DRAM Resource.
- E. Seller shall include provisions in its contracts that Customers are subject to random annual audits (i) requiring compliance with verification requests and facility access for Site visits as deemed necessary by the Verification Administrator; (ii) requiring the Recruited Account to provide the Verification Administrator with written operating manifest(s), date and time stamped photo(s) of the Prohibited Resource unit(s), load curtailment plan(s), single line diagram(s) permit copy(ies), or other information or documentation about their onsite Prohibited Resources; and (iii) allowing SCE or its contractor(s) to install monitoring equipment at the Sites for the purposes of verification of attestations.

- F. Seller shall include additional and separate provisions near the beginning of its contracts with Customers explaining and implementing these restrictions specifying that Customer compliance will be subject to verification, indicating the consequences for noncompliance with the provision. All Contracts with non-Residential Customers shall indicate that the non-compliance consequences will be as set forth in this section. If the instance of non-compliance involves clerical or administrative errors, such as an inaccurate listing of a Customer name or the nameplate value of a Prohibited Resource in an attestation, or a failure to include a Customer's Prohibited Resource on an attestation, provided in all cases that such Prohibited Resource is not used in violation of the terms of this Agreement (collectively, "Type One Non-Compliance"), Seller shall specify that Customers will have sixty days from receipt of notice to cure such Type-One Non-Compliance. If the instance of non-compliance involves either (a) the Customer does not attest to the use of any Prohibited Resource but is using a Prohibited Resource to reduce load during a demand response event; or (b), a Customer submits an invalid nameplate capacity value for the Prohibited Resource(s) that is lower than the actual capacity value on the nameplate (collectively "Type Two Non-Compliance"), then Customer will be removed from Seller's DR program as follows. If there is an instance of (a) an uncured Type One Non-Compliance, or (b) a Type Two Non-Compliance, the consequences will be removal from Seller's DR program and ineligibility to enroll in any DR program subject to the prohibited resource requirement in D.16-09-056 for twelve calendar months from the removal date (for a single instance of noncompliance), or three years from the removal date (for two or more instances of noncompliance).
- G. Seller shall provide such documentation as may be reasonably necessary for Buyer to verify the accuracy of the attestations referenced in subsections B(1)–(3) above and Seller's compliance with and enforcement of this Section 7.2(b)(v). For all non-Residential Customers, (a) Sellers will provide the Default Adjustment Values (DAVs) monthly (with Demonstrated Capacity information); and, (b) Sellers will ensure that bids in the wholesale market reflect portfolio amounts prior to de-rating. Seller shall comply with any Prohibited Resource audit verification plan that is developed in accordance with D. 16-09-056 and approved by the CPUC (the Plan).
- H. On an annual basis, Seller shall provide to Buyer the language on the prohibition included in its respective residential customer contracts. Seller will develop metrics, targets and record keeping systems to assess the effectiveness of its Customer outreach and notification efforts required under this Section 7.2(b)(v), and will provide such materials to the CPUC upon Buyer's request.

- I. Seller shall include provisions in its contracts with non-Residential Customers permitting updates to their attestations to (x) add, remove or modify an on-site Prohibited Resource; (y) change the status or use of a Prohibited Resource to reduce load during any Dispatch; or (z) change the Default Adjustment Value, but only if, in each case, the change is supported by documentation that confirms the operational change and can be verified by SCE or a Verification Administrator.

- (vi) If any respective PDR is a Joint Resource, Seller shall ensure that: (x) the use of the Joint Resource does not result in Buyer making payment in respect of Demonstrated Capacity for a type of Product in excess of the total capacity of the Joint Resource, whether to Seller or any other party, regardless of whether payment is made under this Agreement, another agreement in the DRAM Pilot Program, any other demand resource agreement or program, or any combination thereof; (y) the use of the Joint Resource does not result in Buyer making payment more than once in respect of capacity relating to a particular customer registered in the Joint Resource, regardless of whether payment is made under this Agreement, another agreement in the DRAM Pilot Program, any other demand resource agreement or program, or any combination thereof; and (z) Seller has the right to access and provide to Buyer the records and data regarding any DRAM Resource Customer that is not designated by Seller under Section 1.6(g) as part of the amount to be used to show Demonstrated Capacity for a type of Product under this Agreement to permit Buyer to audit such Joint Resource under Section 1.6(i) to the same extent Buyer may audit PDRs that are not Joint Resources.

ARTICLE 8. NOTICES

8.1. Notices

Notices, requests, statements or payments from one Party to the other Party shall be made to the addresses and persons specified in Section 8.2. All Notices, requests, statements or payments from one Party to the other Party shall be made in writing and may be delivered by hand delivery, first class United States mail, overnight courier service, e-mail or facsimile. Notice from one Party to the other Party by e-mail or facsimile (where confirmation of successful transmission is received) shall be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it shall be deemed received on the next Business Day). Notice from one Party to the other Party by hand delivery or overnight delivery shall be deemed to have been received when delivered. A Party may change its contact information by providing Notice of the same in accordance herewith.

8.2. Contact Information

For Buyer:

Billing Representative

[Name]

Phone:

Facsimile:

Email:

Contract Representative

[Name]

Phone:

Facsimile:

Email:

Supply Plan Contact

[Name]

Phone:

Facsimile:

Email:

Settlements

[Name]

Phone:

Facsimile:

Email:

Other Buyer Contact Information

Wire Transfer

BNK:

ABA:

ACCT:

Credit and Collections

Attn:

Phone:

Facsimile:

Email:

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

[Name]

Phone:

Facsimile:

Email:

For Seller:

Billing Representative

[Name]

Phone:

Facsimile:

Email:

Contract Representative

[Name]

Phone:

Facsimile:

Email:

Supply Plan Contact

[Name]

Phone:

Facsimile:

Email:

Other Seller Contact Information

ACH

BNK:

ABA:

ACCT:

Credit and Collections

Attn:

Phone:

Facsimile:

Email:

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

[Name]

Phone:

Facsimile:

Email:

The Parties acknowledge and agree that those persons set forth in this Section 8.2 are designated by each Party as their respective authorized representatives to act on their behalf for the purposes described therein.

ARTICLE 9. EVENTS OF DEFAULT; TERMINATION

9.1. 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; or
 - (v) A Merger Event occurs with respect to such Party.
- (b) With respect to Seller:
- (i) The failure of Seller to satisfy the collateral requirements set forth in Article 5;
 - (ii) During the Term, Seller makes any material misrepresentation or omission in any report required to be made or furnished by Seller, the Seller's DRP or the Seller's SC pursuant to this Agreement;
 - (iii) During the Delivery Period, Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, to any party other than Buyer without Buyer's written consent; or
 - (iv) During the Term, the occurrence and continuation of a default, event of default or other similar condition or event (however described) in respect of Seller under one or more agreements or instruments relating to indebtedness for borrowed money (whether present or future, contingent or otherwise), which results in such indebtedness for borrowed money (whether present or future, contingent or otherwise) becoming, or becoming capable at such time of being declared, immediately due and payable under such agreements or instruments, before it would otherwise have been due and payable, or a default by Seller in making one or more payments on the due date thereof in an aggregate amount of not less than **[To be determined]** under such agreements or instruments (after giving effect to any applicable notice requirement or grace period).
 - (v) During the Term, Seller fails to comply with the requirements of Section 7.2(b)(v), where such breach is not remedied within thirty (30) days of Notice of such breach by Buyer.
 - (vi) The aggregate Demonstrated Capacity for the DRAM Resource is less than fifty percent (50%) of the aggregate Qualifying Capacity for the

DRAM Resource in any two (2) sequential Showing Months for which Demonstrated Capacity was calculated with reference to the results of a DC Dispatch pursuant to Section 1.6(a)(i) or a DC Test pursuant to Section 1.6(a)(ii) (excluding any intervening months with invoices based on MOO bids pursuant to Section 1.6(a)(iii)).

9.2. Early Termination

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

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

9.3. Termination Payment

- (a) As soon as practicable after an Early Termination Date is declared, the Non-Defaulting Party shall provide Notice to the Defaulting Party of the amount 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.
- (b) 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.
- (c) 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 Party’s calculation of the Termination Payment, provide to the other Party a detailed written explanation of the basis for such dispute. Any disputes as to the calculation of the Termination Payment which the Parties are unable to resolve may be submitted to dispute resolution as provided in Article 10.

9.4. Reserved

9.5. 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.

9.6. Rights and Obligations Surviving Termination or Expiration

The rights and obligations that are intended to survive a termination or expiration of this Agreement are all of those rights and obligations that this Agreement expressly provides survive any such termination or expiration and those that arise from a Party's covenants, agreements, representations, and warranties applicable to, or to be performed, at or during any time before or as a result of the termination or expiration of this Agreement, including:

- (a) A Party's obligation to provide information, including but not limited to Sections 3.3, 5.7, 6.2 and 6.4.
- (b) A Party's obligations with respect to invoices and payments pursuant to this Agreement;
- (c) The obligation of Seller to maintain Performance Assurance as set forth in Section 5.1;
- (d) The obligation of Buyer to return any Performance Assurance under Section 5.3;
- (e) The right to pursue remedies as set forth in Sections 9.2(d) and Article 10;
- (f) The obligations with respect to a Termination Payment as set forth in Section 9.3;
- (g) The dispute resolution provisions of Article 10;
- (h) The indemnity obligations expressly set forth in this Agreement;
- (i) The limitation of liabilities as set forth in Sections 3.5, 6.1 and Article 12; and
- (j) The obligation of confidentiality as set forth in Article 13.

ARTICLE 10. DISPUTE RESOLUTION

10.1. Dispute Resolution

Other than requests for provisional relief under Section 10.5, 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 10.3 below, and if the matter is not resolved through mediation, then for final and binding arbitration under the procedures described in Section 10.4 below.

The Parties waive any right to a jury and agree that there will be no interlocutory appellate relief (such as writs) available. Any Dispute resolution process pursuant to this Article 9 shall be commenced within one (1) year of the date of the occurrence of the facts giving rise to the Dispute, without regard to the date such facts are discovered; provided, if the facts giving rise to the Dispute were not reasonably capable of being discovered at the time of their occurrence, then such one (1) year period shall commence on the earliest date that such facts were reasonably capable of being discovered. If the Dispute resolution process pursuant to Article 10 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.

10.2. Negotiation

Except for disputes arising with respect to a Termination Payment, the Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement by prompt negotiations between each Party's Contract Representative, as identified on the Cover Sheet hereof, or such other person designated in writing as a representative of the Party ("Manager"). Either Manager may request a meeting (in person or telephonically) to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt such request, at a mutually agreed time and place. If the matter is not resolved within 15 Business Days of their first meeting ("Initial Negotiation End Date"), the Managers shall refer the matter to the designated senior officers of their respective companies, who shall have authority to settle the dispute ("Executive(s)"). Within five (5) Business Days of the Initial Negotiation End Date ("Referral Date"), each Party shall provide one another written notice confirming the referral and identifying the name and title of the Executive who will represent the Party.

Within 5 Business Days of the Referral Date the Executives shall establish a mutually acceptable location and date, which date shall not be greater than 30 calendar days from the Referral Date, to meet. After the initial meeting date, the Executives shall meet, as often as they reasonably deem necessary to exchange the relevant information and to attempt to resolve the dispute.

All communication and writing exchanged between the Parties in connection with these negotiations shall be confidential and shall not be used or referred to in any subsequent binding adjudicatory process between the Parties.

If the matter is not resolved within 45 calendar days of the Referral Date, or if the Party receiving the written request to meet, pursuant to the first paragraph of this Section 10.2, refuses or will not meet within 10 Business Days, either Party may initiate mediation of the controversy or claim according to the terms of the following Section 10.3.

If a dispute exists with respect to the Termination Payment, and such dispute cannot be resolved by good faith negotiation of the Parties within 10 Business Days of the Non-Defaulting Party's receipt of the detailed basis for the explanation of the dispute then either Party may refer the matter directly to Arbitration, as set forth in Section 10.4 below.

10.3. Mediation

Either Party may initiate mediation by providing Notice to the other Party 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.

10.4. Arbitration

Either Party may initiate binding arbitration with respect to the matters first submitted to mediation by providing Notice in accordance with Article 7 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 10.3, 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 10.3 above, the Dispute resolution process shall be deemed complete and further resolution of such Dispute shall be barred, without regard to any other limitations period set forth by law or statute.

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

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

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

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

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

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

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

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

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

- (a) Before discovery commences, the Parties shall exchange an initial disclosure of all documents and percipient witnesses which they intend to rely upon or use at any arbitration proceeding (except for documents and witnesses to be used solely for impeachment);
- (b) The initial disclosure will occur within thirty (30) days after the initial conference with the Arbitrator or at such time as the Arbitrator may order;
- (c) Discovery may commence at any time after the Parties' initial disclosure;

- (d) The Parties will not be permitted to propound any interrogatories or requests for admissions;
- (e) Discovery will be limited to twenty-five (25) document requests (with no subparts), three (3) lay witness depositions, and three (3) expert witness depositions (unless the Arbitrator holds otherwise following a showing by the Party seeking the additional documents or depositions that the documents or depositions are critical for a fair resolution of the Dispute or that a Party has improperly withheld documents);
- (f) Each Party is allowed a maximum of three (3) expert witnesses, excluding rebuttal experts;
- (g) Within sixty (60) days after the initial disclosure, or at such other time as the Arbitrator may order, the Parties shall exchange a list of all experts upon which they intend to rely at the arbitration proceeding;
- (h) Within thirty (30) days after the initial expert disclosure, the Parties may designate a maximum of two (2) rebuttal experts;
- (i) Unless the Parties agree otherwise, all direct testimony will be in form of affidavits or declarations under penalty of perjury; and
- (j) Each Party shall make available for cross examination at the arbitration hearing its witnesses whose direct testimony has been so submitted.

Subject to Article 11, the Arbitrator will have the authority to grant any form of equitable or legal relief a Party might recover in a court action. The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms of the Agreement, that money damages would not be a sufficient remedy for any breach of these provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to specific performance and injunctive or other equitable relief as a remedy for a breach of Article 13.

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.

10.5. 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 Article 13 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 10. The Parties further acknowledge and agree that the results of the arbitration may be rendered ineffectual without the provisional relief.

Such a request for provisional relief does not waive a Party's right to seek other remedies for the breach of the provisions specified above in accordance with Article 10, 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.

ARTICLE 11. INDEMNIFICATION

11.1. 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 11.1, Seller releases, and shall indemnify, defend and hold harmless Buyer, and Buyer'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 7 or any payment disputes resulting from the use of a Joint Resource;
- (ii) Seller's failure to fulfill its obligations regarding Resource Adequacy Benefits as set forth in Article 3;
- (iii) any violation of Applicable Law or the CAISO Tariff arising out of or in connection with Seller's performance of, or failure to perform this Agreement;
- (iv) injury or death to persons, including Buyer employees, and physical damage to property, including Buyer property, where the damage arises out of, is related to, or is in connection with, Seller's obligations or performance under this Agreement.

This indemnity applies notwithstanding Buyer's active or passive negligence; *provided*, Buyer 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.

11.2. Indemnification Claims

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

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

- (a) Seller will have the right to control the defense and settlement of any claims in a manner not adverse to Buyer but cannot admit any liability or enter into any settlement without Buyer's approval.
- (b) Buyer may employ counsel at its own expense with respect to any claims or demands asserted or sought to be collected against it; *provided*, if counsel is employed due to a conflict of interest or because Seller does not assume control of the defense, Seller will bear the expense of this counsel.

ARTICLE 12. LIMITATION OF REMEDIES, LIABILITY, AND DAMAGES

EXCEPT AS SET FORTH HEREIN WITH RESPECT TO THE PRODUCT, 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 9.3, 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 11 (INDEMNITY), NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

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

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

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

ARTICLE 13. CONFIDENTIALITY

13.1. Confidentiality Obligation

Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's or the Party's Affiliates' officers, directors, employees, lenders, counsel, accountants, advisors, or Rating Agencies, who have a need to know such information and have agreed to keep such terms confidential) except (a) in order to comply with any Applicable Law, summons, subpoena, exchange rule, or accounting disclosure rule or standard, or to make any showing required by any applicable Governmental Body other than as set forth in Sections 13.1(e) and (f); (b) to the extent

necessary for the enforcement of this Agreement; (c) as may be obtained from a non-confidential source that disclosed such information in a manner that did not violate its obligations to the non-disclosing Party in making such disclosure; (d) to the extent such information is or becomes generally available to the public prior to such disclosure by a Party; (e) when required to be released in connection with any regulatory proceeding (provided that the releasing Party makes reasonable efforts to obtain confidential treatment of the information being released); (f) with respect to Buyer, as may be furnished to its duly authorized Governmental Bodies, including without limitation the Commission and all divisions thereof, to Buyer's Procurement Review Group, a group of participants including members of the Commission and other governmental agencies and consumer groups established by the Commission in Commission decisions 02-08-071 and 03-06-071, and to Buyer's Cost Allocation Mechanism Group established by the CPUC in D.07-12-052, or (g) Seller may disclose the transfer of the Monthly Quantity under this Agreement to its SC in order for such SC to timely submit accurate Supply Plans. The existence of this Agreement is not subject to this confidentiality obligation; *provided*, neither Party shall make any public announcement relating to this Agreement unless required pursuant to subsection (a) or (e) of the foregoing sentence of this Article 13.

13.2. Obligation to Notify

In connection with discovery requests or orders pertaining confidential information in connection with this Agreement as referenced in Section 13.1(a) ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts to:

- (a) Notify the other Party before disclosing the Confidential Information; and
- (b) Prevent or limit such disclosure.

After using such reasonable efforts, the Disclosing Party will not be:

- (c) Prohibited from complying with a Disclosure Order; or
- (d) Liable to the other Party for monetary or other damages incurred in connection with the disclosure of the Confidential Information.

13.3. Remedies; Survival

The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. With respect to information provided in connection with this Agreement, this obligation shall survive for a period of three (3) years following the expiration or termination of this Agreement.

ARTICLE 14. FORCE MAJEURE

To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its

obligations with respect to this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

ARTICLE 15. MISCELLANEOUS

15.1. 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 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 Applicable Law, tariff, rule, or regulation.
- (h) 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 Buyer and Seller are each “forward contract merchants” within the meaning of the Bankruptcy Code.

15.2. 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.

15.3. Amendment

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

15.4. Assignment

Neither Party shall assign this Agreement or its rights hereunder, as the case may be, without the prior written consent of the other Party, which consent may not be unreasonably withheld; *provided*, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof or thereof, as the case may be, in connection with any financing or other financial arrangements to any person or entity whose creditworthiness is equal to or higher than that of such Party, (ii) transfer or assign this Agreement to an Affiliate of such Party which Affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party and whose creditworthiness is equal to or higher than that of such Party; *provided*, in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

15.5. 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.

15.6. 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.

15.7. 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.

15.8. 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).

15.9. 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.

15.10. 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.

15.11. 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.

15.12. Mobile Sierra

Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to the FERC pursuant to the provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party, or the FERC acting *sua sponte* shall be the “public interest” standard of review set forth in *United States 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).

15.13. Performance Under this Agreement

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

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Execution Date.

**SOUTHERN CALIFORNIA EDISON
COMPANY**, a California corporation

[SELLER]

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

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

EXHIBIT A

DEFINITIONS

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

"ADR Guidelines" means the guidelines for Buyer's Automated Demand Response Program implemented pursuant to Decisions 12-04-045, 14-05-025, and 18-11-029, as modified or updated from time to time, including the updates to the guidelines that are submitted in the Tier Two advice letter process on September 1 of each year in compliance with Ordering Paragraph 8 of Decision 18-11-029.

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

"Agreement" has the meaning in the Preamble.

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

"Arbitrator" has the meaning set forth in Article 10.

"Audit Notice" has the meaning set forth in Section 1.6(i).

"Automated Demand Response" or "ADR" is Buyer's demand response program offering Customers an incentive to install automated communication equipment and associated software that enhances their ability to reduce load during Buyer's demand response program events. For purposes ADR, Seller's participation in the CAISO Markets pursuant to this Agreement is a Buyer demand response program, pursuant to the September 24, 2015 disposition letter from Commission staff. The CPUC approved the ADR programs by Decision 12-04-045 and Decision 14-05-025.

"Automated Demand Response Customer" or "ADR Customer" is a Non-Residential Customer that has installed the ADR equipment under Buyer's ADR and received, at minimum, approval from Buyer that it has been approved for its first (60%) incentive payment.

"Availability Assessment Hours" or "AAH" has the meaning set forth in the CAISO Tariff.

"Award" has the meaning set forth in Section 6.6(a).

"Bankrupt" means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of

creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

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

“Big Creek/Ventura LCA Substations” means the following substations located in the CAISO area: ACTON SC, ANAVERDE, BIG CRK1, DEL SUR, FRAZPARK, GOLETA, GORMAN, GREATLKS, HELIJET, LANCSTR, LANPRI, LITTLERK, MOORPARK, NEENACH, OASIS SC, OSO, PALMDALE, PIUTE, PSTRIA, PURIFY, QUARTZHL, RECTOR, REDMAN, RITE AID, RITTER, ROCKAIR, ROSAMOND, S.CLARA, SAUGUS, SHUTTLE, SPRINGVL, TORTOISE, VESTAL, WESTPAC, and WILSONA.

“Bid” shall have the meaning in the CAISO Tariff.

“Bundled Service Customer” means a customer of Buyer as a utility distribution company who takes bundled services from Buyer as a utility distribution company including having all its power requirements purchased by Buyer.

“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.

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

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

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

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

“Capacity Baseline” means a CAISO baseline as applicable to the PDR(s) in the DRAM Resource, as specified in the CAISO Tariff and approved by the CPUC for retail settlement purposes in the DRAM, and as limited by the following: (i) a day matching customer load ten-in-ten baseline with a 20 percent (20%) cap; (ii) a weather matching baseline with a 40 percent (40%) cap; (iii) the use of control groups; and (iv) a five-in-ten baseline for residential customers, with a 40 percent (40%) cap, as utilized for the calculation of Qualifying Capacity and Demonstrated Capacity, and for CAISO settlements, in accordance with Section 1.6 of this Agreement.

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

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

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

“Claiming Party” has the meaning set forth in Article 14.

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

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

“Contract Price” means the price for each type of Product as specified in Exhibit E for each Showing Month.

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

“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 both Parties, including without limitation terms and conditions related to cost recovery and cost allocation of amounts paid to Seller under the Agreement; (ii) does not contain conditions or modifications unacceptable to both Parties; and (iii) finds that any procurement pursuant to this Agreement satisfies the requirement to procure preferred resources under Commission Decision 13-02-015.

“CPUC Decisions” means Commission Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-031, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 09-12-053, 10-06-036, 10-12-038, 11-06-022, 11-10-003, 12-06-025, 13-02-006, 13-04-013, 13-06-024, 14-03-026, 14-06-050, 14-12-024, 15-02-007, 15-06-063, 19-07-009, 19-06-026 and any other existing or subsequent decisions, resolutions, or rulings related to resource adequacy, including, without limitation, the CPUC Filing Guide, in each case as may be amended from time to time by the CPUC.

“CPUC Filing Guide” is the 2019 annual document issued by the Commission which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the Commission’s resource adequacy program.

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

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

“Customer Data Access Systems” has the meaning described in CPUC Decision 13-09-025.

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

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

“DC Dispatch” means a Dispatch of a PDR in the DRAM Resource in the CAISO market, in accordance with the CAISO Tariff, for a duration of (i) one (1) hour within the Availability Assessment Hours for all Showing Months except the Showing Month of August) or (ii) two (2) consecutive hours within the Availability Assessment Hours for the Showing Month of August; provided that, such two (2) consecutive hour requirement may be satisfied by a combination of a DC Dispatch and a DC Test.

“DC-QC Ratio” has the meaning set forth in Section 4.1.

“DC Test” means a capacity test of a PDR in the DRAM Resource for one hundred percent (100%) of such PDR’s Qualifying Capacity for the applicable Showing Month (where such Qualifying Capacity has been submitted in Seller’s Supply Plan for that Showing Month), with a duration of at least two (2) consecutive Availability Assessment Hours, conducted by the Seller’s SC during the applicable Showing Month, in accordance with the CAISO Tariff and D.14-06-050, Appendix B.

“Defaulting Party” has the meaning set forth in Section 9.1.

“Delivered Capacity Payment” has the meaning described in and is calculated pursuant to Section 4.1.

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

“Demand Response Provider” or “DRP” has the meaning in the CAISO Tariff.

“Demonstrated Capacity” has the meaning set forth in Section 1.6(a).

“Dispatch” means the act of reducing all or a portion of the electrical consumption of the PDR pursuant to a Dispatch Instruction.

“Dispatch Instruction” has the meaning in the CAISO Tariff.

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

“Distributed Energy Resource Aggregation” has the meaning in the CAISO Tariff.

“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.

“DRAM Pilot Program” means the program during *[Year]* for the Product as described in CPUC D.14-12-024 and D.17-10-017.

“DRAM Resource” means the sum of the PDR(s) that Seller identifies pursuant to Section 1.4 that will provide Product to Buyer.

“DRAM Resource Customer” is a Bundled Service Customer and/or Unbundled Service Customer account at the Service Account Identification level that is included in the DRAM Resource.

“Early Termination Date” has the meaning set forth in Section 9.2(a).

“EFC” shall mean Effective Flexible Capacity as defined in the CAISO Tariff.

“Event of Default” has the meaning set forth in Section 9.1.

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

“Executive(s)” has the meaning set forth in Section 10.2.

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

“Financial Consolidation Requirement” has the meaning set forth in Section 5.7(a).

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

“Flexible Capacity” means any and all flexible resource adequacy attributes associated with the PDR(s) designated by Seller pursuant to Section 1.4, as such attributes may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction, that can be counted toward Flexible RAR, and which may be (i) exclusive of Local Capacity and (ii) be in Flexible Category 1 (base flexibility), 2 (peak flexibility) or 3 (super-peak flexibility) as described in the CAISO Tariff.

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

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

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

“IFRS” means the International Financial Reporting Standards.

“Initial Negotiation End Date” has the meaning set forth in Section 10.2.

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

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

“JAMS” has the meaning set forth in Article 10.

“Joint Resource” means respectively a PDR which includes DRAM Resource Customers registered by the Seller (or its DRP) and other customers registered by another aggregator (or its DRP) who are not considered part of the respective PDR for purposes of meeting Seller’s obligations under this Agreement.

“LA Basin LCA Substations” means the following substations located in the CAISO area: ALMITOSW, AMERON, BANNING, BARRE, BOTTLE, CABAZON, CARODEAN, CENTER, CHEVMAIN, CHINO, CONCHO, DELAMO, DEVERS, EAGLOCK, EISENHOW, EL CASCO, EL NIDO, ELLIS, ETIWANDA, FARREL, GARNET, GOODRICH, GOULD, HI DESER, HINSON, IEEC-G1, IEEC-G2, INDIAN W, JOHANNA, LA FRESA, LAGUBELL, LCIENEGA, LITEHIPE, LTHRNECK, LWIS ANM, MARASCHI, MESA CAL, MIRALOMA, OLINDA, PADUA, RIOHONDO, SANBRDNO, SANTA RO, SANTIAGO, SONG2XR1, SONG2XR2, SONG2XU1, SONG2XU2, SONG3XR1, SONG3XR2, SONG3XU1, SONG3XU2, TAMARISK, THORNHIL, VALLEY-S, VALLEYSC, VIEJO66, VILLA PK, VSTA, WALNUT, WINTEC8, WINTECX1, WINTECX2, YUCCA, and ZANJA.

“LCA Customers” means a Customer that either (i) directly takes or receives electricity services from Buyer’s LCA or (ii) directly takes or receives electricity services from a lower voltage substation that electrically connects to Buyer’s LCA.

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

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

“Local Capacity” means any and all resource adequacy attributes or other locational attributes associated with the PDR(s) designated by Seller and comprised of LCA Customers pursuant to Section 1.4, from a Local Capacity Resource (as defined in CAISO Tariff) in Buyer's Local Capacity Area, as applicable and as such attributes may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction, that can be counted toward Local RAR, which may be exclusive of any Flexible Capacity, as applicable to the Product.

“Local Capacity Area” or “LCA” means the areas where LCA Customers are electrically interconnected to any of the LA Basin LCA Substations and/or the Big Creek/Ventura LCA Substations.

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

“LSE” means load-serving entity.

“Manager” has the meaning set forth in Section 10.2.

“Mediator” has the meaning set forth in Section 10.3.

“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.

“Monthly Quantity” means the aggregate amount of all Product Monthly Quantities set forth in Exhibit E that Seller has agreed to provide to Buyer from the DRAM Resource for each day of the respective Showing Months for the respective types of Product.

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

“Must-Offer Obligation” or “MOO” means Seller’s obligation to Bid or cause Seller’s SC to Bid the DRAM Resource into the CAISO Markets based on the type of Product and in accordance with the CAISO Tariff.

“NQC” shall mean Net Qualifying Capacity as defined in the CAISO Tariff.

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

“Non-Competitive Behavior” means bidding behavior providing clear evidence of market manipulation or collusion.

“Non-Defaulting Party” has the meaning set forth in Section 9.2.

“Notice” means notices, requests, statements or payments provided in accordance with Article 8.

“Partial Dispatch” has the meaning set forth in Section 1.6(a).

“Performance Assurance” has the meaning set forth in Section 5.1(a). Performance Assurance must be in the form of Cash or Letter of Credit. Any Cash received and held by Buyer after drawing on any Letter of Credit will constitute Performance Assurance in the form of Cash.

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

“Procurement Review Group” has the meaning set forth in Article 13.

“Product” means either System Capacity, Local Capacity and/or Flexible Capacity. The particular type of Product sold by Seller to Buyer under this Agreement is specified in Table 1.1(b). Buyer and Seller will have separate contracts for separate products and will combine multiple awards of the same product into one contract at a weighted average price.

“Prohibited Resource” means a distributed generation technology using diesel, natural gas, gasoline, propane, or liquefied petroleum gas, in topping cycle Combined Heat and Power (CHP) or non-CHP configuration. The following resources are exempt: pressure reduction turbines and waste-heat-to-power bottoming cycle CHP, resources using renewable fuels (i.e., renewable gas, renewable diesel, and biodiesel) that have received certification from the California Air Resources Board, as well as energy storage resources not coupled with fossil fueled resources.

“Proxy Demand Resource” or “PDR” has the meaning in the CAISO Tariff.

“Product Monthly Quantity” means the respective amount of each type of Product set forth in Exhibit E that Seller has agreed to provide to Buyer from the DRAM Resource for each day of the respective Showing Months.

“QC Implementation Guidelines” has the meaning set forth in Section 3.1(b).

“Qualifying Capacity” means the load reduction for each PDR in the DRAM Resource, calculated utilizing the Capacity Baseline, consistent with the QC Implementation Guidelines, the CPUC Decisions and the CAISO Tariff.

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

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

“Referral Date” has the meaning set forth in Section 10.2.

“Resource Adequacy” and “Resource Adequacy Benefits” have the meanings set forth in the CPUC Decisions.

“Resource ID” has the meaning in the CAISO Tariff.

“Residential Customer” means a DRAM Resource Customer which is a Single Family or Multi-Family Dwelling customer on a Domestic rate, including RV Parks, Residential Hotels, and Mobile Home Parks and includes electric vehicle charging for customers on Domestic Rate if separately metered, as such capitalized terms are defined in Rule 1.

“Residential Customer Product” means Product that is comprised solely of Residential Customers and Small Commercial Customers; *provided* that the percentage of Residential Customers in the PDR(s) constituting the DRAM Resource is equal to or greater than ninety percent (90%). Where multiple PDRs, or portions thereof, are used to meet Seller’s Demonstrated Capacity obligations, the percentage requirements apply in the aggregate, based on the total number of PDR Customer service accounts in the DRAM Resource used to show Demonstrated Capacity.

“Revenue Quality Meter Data” means Interval Meter Data that has been validated, edited, and estimated in accordance with the Direct Access Standards for Metering and Meter Data as described in Rule 22.

“Rule 24” means Direct Participation Demand Response:
https://www.sce.com/NR/sc3/tm2/pdf/Rule_24.pdf.

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

“SAID” or “Service Account Identification” means a Buyer specific identifier or number for tracking energy service deliveries for a specific load through one or more meters at a customer premises or location as described in Rule 1.

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

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

“Settlement Amount” means the sum of the estimated Delivered Capacity Payments for all of the remaining Showing Months of the original Delivery Period as in effect prior to such early termination, including the current Showing Month if not invoiced pursuant to Section 4.2, as of the Early Termination Date, with such estimated Delivered Capacity Payments being based on the sum of the applicable Product Monthly Quantity times the applicable Contract Price for each type of Product.

“Shortfall Capacity” means the amount of capacity with respect to the Product Monthly Quantity for a type of Product for any portion of a Showing Month which was shown by Buyer in its Compliance Showing that CAISO determines requires outage replacement in accordance with Section 40.7 of the CAISO Tariff.

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

“Small Commercial Customer” means a DRAM Resource Customer which is a non-residential customers with monthly maximum demand of 20 kW or less, including agricultural/pumping customers (PA-1, PA-2, TOU-PA-2 rates) and TOU-EV3, service to electric charging facilities with monthly maximum demand of 20 kW or less. Excludes customers on rate schedules for fixed usage and unmetered service (Schedules LS-1, LS-2, OL-1, TC-1, Wi-Fi-1, and WTR).

“Successor” means any successor accounting practices to GAAP or IFRS.

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

“System Capacity” means system Resource Adequacy Benefits associated with the PDR(s) designated by Seller pursuant to Section 1.4, as such attributes may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction, that can be counted toward RAR, which may be exclusive of any Local Capacity and Flexible Capacity as indicated on Table 1.1(b).

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

“Termination Payment” means the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement, which shall include the Settlement Amount, less any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date. If Buyer is the Non-Defaulting Party and reasonably expect to incur penalties, fines or costs from the CPUC, the CAISO, or any other Governmental Body, then Buyer may estimate the of those penalties or fines and include them in the Termination Payment amount.

“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.

“Unbundled Service Customer” means a retail customer of the Buyer acting as a utility distribution company, who takes and receives its electrical power requirements from a different Load Serving Entity that is not the Buyer, pursuant to CPUC Rule 22 Direct Access or Rule 23 Community Choice Service.

EXHIBIT B

Form of Letter of Credit

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT

Bank Reference Number: _____

Issuance Date:

Issuing Bank:

[insert bank name and address]

Applicant:

[insert applicant name and address]

BENEFICIARY:

Southern California Edison Company
2244 Walnut Grove Avenue
GO 1, Quad 2A
Rosemead, CA 91770
Attn: Manager of Risk Operations and Collateral Management

Available Amount: [insert amount and spell out]

Expiration Date: [insert date]

Ladies and Gentlemen:

_____ (the "Bank") hereby establishes this Irrevocable Nontransferable Standby Letter of Credit ("Letter of Credit") in favor of Southern California Edison Company, a California corporation (the "Beneficiary"), for the account of _____, a _____ corporation, also known as ID# _____ (the "Applicant"), for the amount stated above (the "Available Amount"), effective immediately.

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

For the purpose hereof, "Business Day" shall mean any day other than:

1. A Saturday or a Sunday,
2. A day on which banking institutions in the city of Los Angeles, California, are required or authorized by Law to remain closed, or
3. A day on which the payment system of the Federal Reserve System is not operational.

It is a condition of this Letter of Credit that the Expiration Date shall be automatically extended without amendment for one (1) year from the Expiration Date hereof or any future Expiration Date unless at least sixty (60) days prior to such Expiration Date, we send notice to you by certified mail or hand delivered courier, at the address stated below, that we elect not to extend this Letter of Credit for any such additional period.

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

1. A copy of this Letter of Credit and all amendments;
2. A copy of the Drawing Certificate in the form of Attachment "A" attached hereto and which forms an integral part hereof, duly completed and bearing the signature of an authorized representative of the Beneficiary signing as such; and
3. A copy of the Sight Draft in the form of Attachment "B" attached hereto and which forms an integral part hereof, duly completed and bearing the signature of an authorized representative of the Beneficiary.

Drawings may also be presented by facsimile transmission ("Fax") to fax number [insert number] under telephone pre-advice to [insert number] or alternatively to [insert number]; provided that such Fax presentation is received on or before the Expiration Date on this instrument in accordance with the terms and conditions of this Letter of Credit. It is understood that any such Fax presentation shall be considered the sole operative instrument of drawing. In the event of presentation by Fax, the original documents should not also be presented.

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

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

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

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

Banking charges shall be the sole responsibility of the Applicant.

This Letter of Credit sets forth in full our obligations and such obligations shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the attachment referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such attachment. Except in the case of an increase in the Available Amount or extension of the Expiration Date, this Letter of Credit may not be amended or modified without the Beneficiary's prior written consent.

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

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

AUTHORIZED SIGNATURE for Bank

By

Name: [print name]_____

Title: [print title]_____

ATTACHMENT A

DRAWING CERTIFICATE

TO [ISSUING BANK NAME & ADDRESS]

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT
REFERENCE NUMBER: _____

DATE: _____

[insert Beneficiary name] (the “Beneficiary”), demands *[Issuing Bank Name]* (the “Bank”) payment to the order of the Beneficiary the amount of U.S. \$_____ (_____ U.S. Dollars), drawn under the Letter of Credit referenced above (the “Letter of Credit”), for the following reason(s) [check applicable provision]:

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

B. The Letter of Credit will expire in fewer than twenty (20) Business Days (as defined in the Agreement) from the date hereof, and the Counterparty or its successor has not provided Beneficiary alternative financial security acceptable to Beneficiary.

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

Authorized Signature for Beneficiary:

[insert Beneficiary name]

By:

Name: [print name]

Title: [print title]

ATTACHMENT B

SIGHT DRAFT

[INSERT DATE]

TO:
[ISSUING BANK NAME & ADDRESS]

PAY AT SIGHT TO THE ORDER OF [INSERT BENEFICIARY NAME] (THE
“BENEFICIARY”) THE AMOUNT OF USD [INSERT AMOUNT] DRAWN UNDER
[ISSUING BANK NAME] IRREVOCABLE NON-TRANSFERABLE STANDBY
LETTER OF CREDIT NUMBER [INSERT NUMBER] ISSUED ON [INSERT DATE].

FUNDS PAID PURSUANT TO THE PROVISIONS OF THE LETTER OF CREDIT
SHALL BE WIRE TRANSFERRED TO THE BENEFICIARY IN ACCORDANCE WITH
THE FOLLOWING INSTRUCTIONS:

[INSERT WIRING INSTRUCTION]

AUTHORIZED SIGNATURE
[INSERT BENEFICIARY NAME]

NAME: [PRINT NAME]

TITLE: [PRINT TITLE]

EXHIBIT C-2

Form of Notice of Demonstrated Capacity

**EXHIBIT E
PRODUCT MONTHLY QUANTITY
AND
CORRESPONDING CONTRACT PRICE**

Showing Month	Product [Insert]	
	[Year]	
	Monthly Quantity (kW for each day of Showing Month)	Contract Price (\$/kW-month)
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

[Parties to complete one table for each type of Product indicated in Table 1.1(b) and accepted bid information.]

EXHIBIT F
IMPLEMENTATION GUIDELINES FOR QUALIFYING CAPACITY
(D.19-07-009 Appendix A)

- A. Sellers should provide the following details to the Utility for demand response resources being offered, with the auction capacity bid submission no later than 15 calendar days before the year-ahead filings and monthly Supply Plans are due for the Seller:
1. Customer class (or percent of mix): Residential, Non-residential
 2. Nature of load being aggregated: such as, whole house, Air Conditioning load, storage, building load, pumps, Electric Vehicles, or other (describe)
 3. Dispatch method: automated via cloud control, or other (describe)
 4. Projected number of Service Accounts
 5. Projected aggregated load (if storage based, projected aggregated capacity)
 6. Projected percentage of load impact or reduction (if storage based, projected percentage of capacity delivered)
 7. Supporting historical performance data for A.6 (from a prior test or market dispatch for a demand response resource with similar characteristics as A.1, A.2, and A.3). Where historical data is not available, the Provider should reference suitable publicly available performance data that best represents the anticipated performance of the resource. Along with the supporting performance data, the following details for the resource associated with the supporting performance data should be provided to establish similar characteristics:
 - a. Customer class (or percentage mix): Residential, Non-residential
 - b. Nature of load being aggregated: such as, whole house, Air Conditioning load, storage, building load, pumps, Electric Vehicles, or other (describe)
 - c. Dispatch method: automated via cloud control, or other (describe)
 - d. Number of Service Accounts
 - e. Aggregated load (if storage based, aggregated capacity)
 - f. Percentage of load impact or reduction delivered (if storage based, percentage of capacity delivered.)
 8. Estimated Qualifying Capacity = A.5 x A.6
- B. Qualifying Capacity estimates should be provided for the resource adequacy measurement hours and are expected to align with the CAISO Availability Assessment Hours.
- C. The same baseline must be used for estimation of Qualifying Capacity at different stages of the contract.
- D. To the extent the projected percentage load impact for capacity delivered in A.6 deviates from the supporting data in A.7, the Provider should provide supplemental information to explain the reasonableness of the resulting “Estimated Qualifying Capacity” provided in A.8.

- E. To the extent the contract/ resource consists of heterogenous combination of load types (in terms of A.1 through A.3 characteristics), the Provider could subdivide the contract/resource and provide the above information for each component and apply a weighted average to estimate Qualifying Capacity in A.8.
- F. For auction bid submissions and the year-ahead resource adequacy filing, it is sufficient to provide the above information for the month with the highest megawatts. For monthly resource adequacy Supply Plan submissions, the above information should correspond to the actual delivery month.
- G. At the auction bid submissions and the year-ahead resource adequacy filing, it is sufficient to provide the above information at the contract level. For monthly resource adequacy Supply Plan submissions, the above information must be provided at the resource level.

EXHIBIT G
ESTIMATE OF QUALIFYING CAPACITY
(D.19-07-009 Appendix A)

1. Customer class (or percent of mix):
 - a. Residential
 - b. Non-residential
2. Nature of load being aggregated:
 - a. whole house
 - b. Air Conditioning load
 - c. storage, building load
 - d. pumps
 - e. Electric Vehicles
 - f. other (describe)
3. Dispatch method:
 - a. automated via cloud control
 - b. other (describe)
4. Projected number of Service Accounts
5. Projected aggregated load (if storage based, projected aggregated capacity)
6. Projected percentage of load impact or reduction (if storage based, projected percentage of capacity delivered) *
7. Estimated Qualifying Capacity = Item 5 x Item 6

* Attach supporting historical performance data for Item 6 (from a prior test or market dispatch for a demand response resource with similar characteristics as Items 1, 2 and 3). Where historical data is not available, Seller should reference suitable publicly available performance data that best represents the anticipated performance of the resource. Along with the supporting performance data, the following details for the resource associated with the supporting performance data should be provided to establish similar characteristics:

- a. Customer class (or percentage mix): Residential, Non-residential
- b. Nature of load being aggregated: such as, whole house, Air Conditioning load, storage, building load, pumps, Electric Vehicles, or other (describe)
- c. Dispatch method: automated via cloud control, or other (describe)
- d. Number of Service Accounts
- e. Aggregated load (if storage based, aggregated capacity)
- f. Percentage of load impact or reduction delivered (if storage based, percentage of capacity delivered.)

Attachment B

2020 DRAM Purchase Agreement

**(redline version compared to Advice
3466-E et al)**

~~2019~~[YEAR] DRAM RFO PRO FORMA

DEMAND RESPONSE AUCTION MECHANISM RESOURCE PURCHASE
AGREEMENT

between

[NAME OF SELLER]

and

SOUTHERN CALIFORNIA EDISON COMPANY

DEMAND RESPONSE AUCTION MECHANISM RESOURCE PURCHASE AGREEMENT
BETWEEN
[SELLER] AND SOUTHERN CALIFORNIA EDISON COMPANY

Table Of Contents

ARTICLE 1. TRANSACTION	1
1.1. Purchase and Sale of the Product	1
1.2. Term	3
1.3. Delivery Period	3
1.4. Seller’s Designation of the DRAM Resource	4
1.5. Product Monthly Quantity and Corresponding Contract Price	4
1.6. Demonstrated Capacity	5
ARTICLE 2. CPUC APPROVAL	78
2.1. Obtaining CPUC Approval	78
2.2. CPUC Approval Termination Right	78
ARTICLE 3. SELLER OBLIGATIONS	89
3.1. Delivery of Product	89
3.2. Resource Adequacy Benefits	89
3.3. Provision of Information and Testing	89
3.4. Seller’s Obligations	910
3.5. Indemnities for Failure to Perform.	1011
ARTICLE 4. PAYMENT AND BILLING	1011
4.1. Delivered Capacity Payment	1011
4.2. Invoice and Payment Process	1112
4.3. Allocation of Other CAISO Payments and Costs	1214

DEMAND RESPONSE RESOURCE PURCHASE AGREEMENT
BETWEEN
[SELLER] AND SOUTHERN CALIFORNIA EDISON COMPANY

Table Of Contents (Continued)

ARTICLE 5. CREDIT AND COLLATERAL	12 14
5.1. Seller’s Credit and Collateral Requirements	12 14
5.2. Grant of Security Interest/Remedies	13 14
5.3. Reduction and Substitution of Performance Assurance	13 15
5.4. Administration of Performance Assurance	15 16
5.5. Exercise of Rights against Performance Assurance	17 18
5.6. Financial Information	17 19
5.7. Access to Financial Information	18 19
5.8. Uniform Commercial Code Waiver	20 22
ARTICLE 6. SPECIAL TERMS AND CONDITIONS	21 22
6.1. Limitation of Liability	21 22
6.2. Buyer Provision of Information	21 22
6.3. Changes in Applicable Laws	21 23
6.4. DBE Reporting	22 23
6.5. Governmental Charges	22 23
6.6. Customers in Buyer Automated Demand Response Program or Other Utility Program	22 24
ARTICLE 7. REPRESENTATIONS, WARRANTIES AND COVENANTS	24 25
7.1. Representations and Warranties of Both Parties	24 25
7.2. Additional Seller Representations, Warranties and Covenants	25 26
ARTICLE 8. NOTICES	28 29
8.1. Notices	28 29
8.2. Contact Information	28 30

DEMAND RESPONSE RESOURCE PURCHASE AGREEMENT
BETWEEN
[SELLER] AND SOUTHERN CALIFORNIA EDISON COMPANY

Table Of Contents (Continued)

ARTICLE 9. EVENTS OF DEFAULT; TERMINATION	<u>3031</u>
9.1. Events of Default	<u>3031</u>
9.2. Early Termination	<u>3133</u>
9.3. Termination Payment	<u>3133</u>
9.4. Reserved	<u>3234</u>
9.5. Suspension of Performance	<u>3234</u>
9.6. Rights and Obligations Surviving Termination or Expiration	<u>3234</u>
ARTICLE 10. DISPUTE RESOLUTION	<u>3334</u>
10.1. Dispute Resolution	<u>3334</u>
10.2. <u>Negotiation</u>	<u>35</u>
<u>10.3.</u> Mediation	<u>3336</u>
10.3 <u>10.4.</u> Arbitration	<u>34</u>
10.4. Dispute Resolution.	<u>36</u>
10.5. Provisional Relief	<u>3639</u>
ARTICLE 11. INDEMNIFICATION	<u>3739</u>
11.1. Seller's Indemnification Obligations	<u>3739</u>
11.2. Indemnification Claims	<u>3740</u>
ARTICLE 12. LIMITATION OF REMEDIES, LIABILITY, AND DAMAGES	<u>3840</u>
ARTICLE 13. CONFIDENTIALITY	<u>3941</u>
13.1. Confidentiality Obligation	<u>3941</u>
13.2. Obligation to Notify	<u>3942</u>
13.3. Remedies; Survival	<u>4042</u>

DEMAND RESPONSE RESOURCE PURCHASE AGREEMENT
BETWEEN
[SELLER] AND SOUTHERN CALIFORNIA EDISON COMPANY

Table Of Contents (Continued)

ARTICLE 14. FORCE MAJEURE	40 42
ARTICLE 15. MISCELLANEOUS	40 43
15.1. General	40 43
15.2. Governing Law and Venue	41 43
15.3. Amendment	41 44
15.4. Assignment	41 44
15.5. Successors and Assigns	41 44
15.6. Waiver	42 44
15.7. No Agency	42 44
15.8. No Third-Party Beneficiaries	42 44
15.9. Entire Agreement	42 45
15.10. Severability	42 45
15.11. Multiple Originals	42 45
15.12. Mobile Sierra	43 45
15.13. Performance Under this Agreement	43 45

**DEMAND RESPONSE RESOURCE PURCHASE AGREEMENT
BY AND BETWEEN
[NAME OF SELLER]
AND
SOUTHERN CALIFORNIA EDISON COMPANY**

PREAMBLE

This Demand Response Resource Purchase Agreement, together with its exhibits (the "Agreement") is entered into by and between **SOUTHERN CALIFORNIA EDISON COMPANY**, a California corporation ("Buyer"), and [Aggregator or Demand Response Provider], a [Seller's business registration] ("Seller"), as of [Date] ("Execution Date"). Buyer and Seller are referred to herein individually as a "Party" and collectively as "Parties." Unless the context otherwise specifies or requires, capitalized terms in this Agreement have the meanings set forth in Exhibit A.

AGREEMENT

In consideration of the agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

ARTICLE 1. TRANSACTION

1.1. Purchase and Sale of the Product

(a) During the Delivery Period, Seller shall sell and deliver, and Buyer shall purchase and receive, the Product~~(s)~~ as indicated in Table 1.1(b) in the ~~respective~~ amount of the Product Monthly Quantity, as indicated in Exhibit E, subject to and in accordance with the terms and conditions of this Agreement. ~~More than one type of The Product from Table 1.1(b) may be indicated. Each type of Product indicated in Table 1.1(b) shall be referred to individually or collectively as "Product" for purposes of this Agreement, as applicable shall be a Proxy Demand Resource (PDR).~~

(b) The Product is:

	Type of Product	Local Capacity Area (as applicable)
<input type="checkbox"/>	Product A: System Capacity	Not applicable

	Type of Product	Local Capacity Area (as applicable)
<input type="checkbox"/>	Product B-1: Local Capacity with System Capacity	LA Basin LCA Substations
<input type="checkbox"/>	Product B-2: Local Capacity with System Capacity	Big Creek/Ventura LCA Substations
<input type="checkbox"/>	Product C1: Flexible Capacity (Flexible Category 1) with System Capacity	Not applicable
<input type="checkbox"/>	Product C2: Flexible Capacity (Flexible Category 2) with System Capacity	Not applicable
<input type="checkbox"/>	Product C3: Flexible Capacity (Flexible Category 3) with System Capacity	Not applicable
<input type="checkbox"/>	Product D1-1: Flexible Capacity (Flexible Category 1) with Local and System Capacity	LA Basin LCA Substations
<input type="checkbox"/>	Product D1-2: Flexible Capacity (Flexible Category 1) with Local and System Capacity	Big Creek/Ventura LCA Substations
<input type="checkbox"/>	Product D2-1: Flexible Capacity (Flexible Category 2) with Local and System Capacity	LA Basin LCA Substations
<input type="checkbox"/>	Product D2-2: Flexible Capacity (Flexible Category 2) with Local and System Capacity	Big Creek/Ventura LCA Substations

	Type of Product	Local Capacity Area (as applicable)
<input type="checkbox"/>	Product D3-1: Flexible Capacity (Flexible Category 3) with Local and System Capacity	LA Basin LCA Substations
<input type="checkbox"/>	Product D3-2: Flexible Capacity (Flexible Category 3) with Local and System Capacity	Big Creek/Ventura LCA Substations

(c) Seller to indicate whether the Product is:

___ a Residential Customer Product; or

___ not a Residential Customer Product

{SCE Comment: Seller to choose only one option which applies to all Products Product for this Agreement}

(d) If Seller has chosen to deliver Product that is not Residential Customer Product, its DRAM Resources Resource may nevertheless include Residential Customers and Small Commercial Customers.

~~(e) Seller to indicate whether the Product is:~~

~~___ a Proxy Demand Resource (PDR); or~~

~~___ a Reliability Demand Response Resource (RDRR).~~

1.2. Term

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

1.3. Delivery Period

The “Delivery Period” shall commence on the later of (a) the first day of the first month that begins after ~~sixty~~ seventy-five (60/75) days following CPUC Approval, and (b) [Date] *{SCE Comment: The Date should be the last calendar day of the last Showing Month}*, unless terminated earlier in accordance with the terms and conditions of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, the Delivery Period will not commence until CPUC Approval is obtained or waived by Buyer in its sole discretion. *{SCE Comment: Dates will be based on Seller’s bid that was selected by SCE in the RFO.*

Currently that would be no earlier than January [month, 2019 year] and no later than December [month, 2019 year].

1.4. Seller's Designation of the DRAM Resource

- (a) On or before the ~~later of (1) the first day of the first month that begins after the date that is sixty (60) days following CPUC Approval, and (2) the date that is sixtyseventy-five (6075) days prior to the first Showing Month, and on a monthly basis thereafter no less than sixtyseventy-five (6075) days prior to the applicable Showing Month if any of the information below changes, Seller shall:~~
 - (i) Provide to Buyer the Resource ID(s) for each PDR ~~or RDRR~~ providing ~~each type of the~~ Product pursuant to this Agreement.
 - (ii) Confirm in writing to Buyer that each PDR ~~or RDRR~~ identified by Seller pursuant to Section 1.4(a)(i) ~~for each type of Product~~ is comprised solely of Bundled Service Customers or Unbundled Service Customers.
 - (iii) If the Product pursuant to this Agreement is a Joint Resource, Seller shall confirm in writing to Buyer (x) the amount of the capacity of such Joint Resource that will be used to show Demonstrated Capacity ~~for the applicable type of Product~~ under this Agreement and (y) the total capacity of such Joint Resource ~~for the applicable type of Product~~.
- (b) Sellers may sell and deliver System Capacity and Local Capacity from PDRs ~~or RDRRs~~ and may sell and deliver Flexible Capacity only from PDRs.
- (c) The Parties shall cooperate to implement the requirements of Rule 24 to enroll Resource Customers in order for Seller to designate the PDR(s) ~~and/or RDRR(s)~~ pursuant Section 1.4(a)(i).

1.5. Product Monthly Quantity and Corresponding Contract Price

- (a) The Product Monthly Quantity and Contract Price for the type of Product indicated in Table 1.1(b) for each applicable Showing Month during the Delivery Period is set forth in Exhibit E.
- (b) In the event that Seller is not able to register the DRAM Resource for part or all of a Product Monthly Quantity for a Showing Month due solely to ~~(i) the actions or inactions of Buyer or the CAISO, or (ii) insufficient Rule 24 registrations under D.16-06-008 Ordering Paragraph 6~~, then Seller may, in its sole discretion, by providing Notice to Buyer on or before the date that is sixty (60) days prior to the Showing Month for which Seller is unable to register the DRAM Resource, reduce the Product Monthly Quantity for the unregistered capacity by type of Product for such Showing Month; *provided*, Seller shall demonstrate to Buyer's reasonable satisfaction that Seller made commercially reasonable efforts to register the DRAM Resource corresponding to such reduced Product Monthly

Quantity for the unregistered capacity by type of Product in the applicable Showing Month.

- (c) In the event that material changes to definition of Resource Adequacy, including but not limited to changes in the Resource Adequacy Availability Assessment Hours, are adopted during the Term of this Agreement, then Seller may, in its sole discretion, by providing Notice to Buyer on or before ~~August 1 [month, 2018 year]~~ either (i) reduce the Product Monthly Quantity for the following year or (ii) terminate this Agreement.
- ~~(d) In the event that the Buyer has not yet enabled real time or ancillary services functionality that is adequate for the Buyer's CPUC approved Rule 24 registrations, by the time that the DRAM Resource is offered into the CAISO Markets (on or after January 1, 2019 per the terms of this Agreement), Buyer shall provide Notice to Seller at least 60 days prior to the Showing Month and Seller shall be exempt from both any obligation to provide Flexible Capacity and any associated penalties. Once Buyer has provided 30 days' Notice to Seller that Buyer has enabled real time or ancillary services functionality that is adequate for the Buyer's approved 24 registrations, so that Sellers are able to provide Flexible Capacity to the CAISO Markets, this Section 1.5(d) shall have no further effect.~~
- (d) ~~(e)~~ Seller's exercise of its rights under Sections 1.5(b) or (c) will not be deemed to be a failure of Seller's obligation to sell or deliver the Product or a failure of Buyer's obligation to purchase or receive the Product, and will not be or cause an Event of Default by either Party. Neither Party shall have any further obligation or liability to the other and no Settlement Amount with respect to this Agreement will be due or owing by either Party upon termination of this Agreement due solely to Seller's exercise of its rights under Section 1.5(c).

1.6. Demonstrated Capacity

- (a) Each invoice submitted by Seller to Buyer pursuant to Section 4.2 shall include a statement, in a form substantially similar to Exhibit C, of the amount of the ~~Product Monthly Quantity~~ Qualifying Capacity for each type of Product for such Showing Month that Seller was capable of delivering ("Demonstrated Capacity"), ~~including utilizing the results from~~ one of the following methods, as provided below: (subject to the additional restrictions set forth in Section 1.6(b)).
- (i) The results of a DC Dispatch of the applicable PDR ~~or RDRR~~ in the DRAM Resource during the Showing Month, provided that the PDR ~~or RDRR~~ provided load reduction during all of the hours referenced in the Dispatch Instruction corresponding to the applicable ~~MOO~~ hours Availability Assessment Hours. The Demonstrated Capacity for System and Local Capacity will equal the maximum hourly load reduction during any hour of such DC Dispatch as calculated using the Capacity Baseline ~~and the~~ provided that, for the Showing Month of August, the Demonstrated Capacity for System and Local Capacity will equal the

average hourly load reduction during any two (2) consecutive hours as calculated using the Capacity Baseline. The Demonstrated Capacity for Flexible Capacity will equal the average hourly load reduction during any hour of such DC Dispatch as calculated using the Capacity Baseline; provided that, for the Showing Month of August, the Demonstrated Capacity for Flexible Capacity will equal the average hourly load reduction during any two (2) consecutive hours as calculated using the Capacity Baseline. If Seller submits the results of a DC Dispatch for less than one hundred percent (100%) of the Qualifying Capacity of the applicable PDR (a "Partial Dispatch") for its Demonstrated Capacity showing, the resulting load reduction will still be compared to the Qualifying Capacity of the entire PDR for purposes of deriving the DC-OC ratio of the DR Resource in accordance with Section 4.1.

- (ii) In the event that there is no ~~Full~~DC Dispatch of the PDR ~~or RDRR~~ in the DRAM Resource for one hundred percent (100%) of the Qualifying Capacity of the applicable Showing Month, and if Seller does not submit the results of a Partial Dispatch during the Showing Month as contemplated under 1.6(a)(i) above, the results of a ~~capacity test conducted by the Seller's SC during the applicable Showing Month, if and as required under Section 3.3(b) below~~DC Test. The Demonstrated Capacity for System ~~or~~and Local Capacity ~~with respect to such PDR or RDRR~~ will equal the maximum hourly load reduction during any hour of such ~~test~~DC Test as calculated using the Capacity Baseline; provided that, for the Showing Month of August the Demonstrated Capacity for System and Local Capacity will equal the average hourly load reduction during any two (2) consecutive hours as calculated using the Capacity Baseline. The Demonstrated Capacity for Flexible Capacity ~~with respect to such PDR~~ will equal the average hourly load reduction during any hour of such ~~test~~DC Test as calculated using the Capacity Baseline; ~~or~~provided that, for the Showing Month of August the Demonstrated Capacity for Flexible Capacity will equal the average hourly load reduction during any two (2) consecutive hours as calculated using the Capacity Baseline.
- (iii) In the event that there is no ~~Full~~DC Dispatch of the ~~applicable~~-PDR ~~or RDRR~~ in the DRAM Resource during the Showing Month for one hundred percent (100%) of the Qualifying Capacity of the applicable Showing Month, if Seller does not submit the results of a Partial Dispatch as contemplated under 1.6(a)(i) above, ~~or test~~and there is no DC Test of the ~~applicable~~-PDR ~~or RDRR~~ in the DRAM Resource during the Showing Month as contemplated under 1.6(a)(ii) above, the Demonstrated Capacity will equal the average amount of capacity for ~~the applicable~~such PDR ~~or RDRR~~ in the DRAM Resource that the Seller bid into the applicable CAISO Markets solely during the ~~hours~~Availability Assessment Hours of the Showing Month in compliance with the CAISO MOO.

- (b) Seller's use of the methods described in Sections 1.6(a)(i)-(iii) is subject to the following additional restrictions:
- (i) Demonstrated Capacity for each PDR in the DRAM Resource must be calculated under Section 1.6(a)(i) or 1.6(a)(ii) for the August Showing Month of each year and for at least fifty percent (50%) of all contracted Showing Months during the Delivery Period (rounded downward if the Delivery Period is an odd number of Showing Months). For example, if the Delivery Period consists of seven (7) Showing Months, then a DC Test or DC Dispatch shall be required for at least three (3) of such Showing Months, including the Showing Month of August.
 - (ii) Demonstrated Capacity for any PDR in the DRAM Resource shall not be calculated under Section 1.6(a)(iii) for more than five (5) consecutive Showing Months during the Delivery Period (prorated, if the Delivery Period is less than twelve (12) Showing Months, to a number equal to half of the Showing Months in the Delivery Period minus one; e.g., two consecutive Showing Months for a six-month Delivery Period).
- (c) The same Capacity Baseline must be used (i) to estimate Qualifying Capacity for Seller's month-ahead submissions pursuant to Section 3.1(a) for a Showing Month; (ii) to calculate Demonstrated Capacity for the applicable Showing Month; and (iii) for energy settlement at the CAISO for the applicable Showing Month.
- (d) ~~(b)~~ Solely for purposes of establishing the Demonstrated Capacity pursuant to Section 1.6(a), Seller shall use data available through Buyer's Customer Data Access Systems that has been designated by Buyer as final Revenue Quality Meter Data and such data shall be considered final by the Parties as of the date Seller submits its invoice for the applicable Showing Month to Buyer.
- (e) ~~(e)~~ If the DRAM Resource is composed of more than one PDR ~~or RDRR~~, then :
- (i) Seller may establish the portion of the Demonstrated Capacity for ~~a specific type of Product associated with~~ each such PDR ~~or RDRR~~ by using the methods ~~based on the descriptions~~ described in Sections 1.6(a)(i) ~~through~~ (iii), in which case the Demonstrated Capacity ~~for a specific type of Product~~ will equal the sum of the individual ~~PDR or RDRRs demonstrated capacities~~. PDRs' Demonstrated Capacities.
 - (ii) The Showing Months in which DC Dispatches or DC Tests are conducted may be different for each such PDR except for the Showing Month of August, in which a DC Dispatch or DC Test is required for every PDR in the DRAM Resource pursuant to Section 1.6(b)(i).
- (f) Seller shall not include the performance of any DRAM Resource Customer service account that was moved in a Showing Month pursuant to Section 3.4(d) in

more than one PDR for purposes of the calculation of Demonstrated Capacity for such Showing Month.

- (g) ~~(d)~~ If any respective PDR ~~or RDRR~~ in the DRAM Resource is a Joint Resource, Seller's invoice shall indicate (x) the amount of the capacity of such Joint Resource used to show Demonstrated Capacity for a specific type of Product for such ~~month~~ Showing Month and (y) the total capacity of such Joint Resource during such ~~month~~ Showing Month.
- (h) ~~(e)~~ If the type of Product Seller delivers under this Agreement is a Residential Customer Product, Seller's invoice shall indicate the number of Residential Customer SAID agreements and the number of Small Commercial SAID accounts in each PDR ~~or RDRR~~ for such type of Product.
- (i) ~~(f)~~ In addition to the requirements in Section 1.6(a), if Seller is electing Demonstrated Capacity for Local Capacity, then, as part of Seller's Demonstrated Capacity for Local Capacity, Seller's invoice shall indicate the number of SAID agreements in the applicable LCA that are associated with the Local Capacity as indicated in Table 1.1(b) and Exhibit C.
- (j) ~~(g)~~ Following Buyer's receipt of Seller's invoice and Notice of Demonstrated Capacity, Buyer may, upon Notice to Seller, require Seller to provide documentation from Seller or Seller's SC that establishes to Buyer's reasonable satisfaction the Demonstrated Capacity of each Product type from a PDR, ~~RDRR~~ or Joint Resource as stated by Seller in its invoice for the applicable Showing Month. In the event that Seller does not provide such documentation within ten (10) Business Days from Buyer's Notice or such documentation is not reasonably satisfactory to Buyer, then Buyer may require an audit of Seller or Seller's SC records upon Notice ("Audit Notice"). With respect to an Audit Notice, Seller shall cause its SC to allow Buyer or its designated independent third-party auditor to have access to the records and data necessary to conduct such audit within five (5) Business Days of Seller's receipt of an Audit Notice; *provided*, such audit will be limited solely to verification of the data upon which Seller based its claim of the amount of the Demonstrated Capacity. If the type of Product designated in Section 1.1(b) is a Residential Customer Product, then, in addition to the documentation specified above, Buyer may, in its Audit Notice, require Seller or Seller's SC to provide additional documentation that establishes to Buyer's reasonable satisfaction that the type of Product is Residential Customer Product as stated by Seller in its invoice for the applicable Showing Month. Buyer's costs, including the costs for any third-party auditor, incurred in connection with the conducting such audit are the sole responsibility of Buyer.

ARTICLE 2. CPUC APPROVAL

2.1. Obtaining CPUC Approval

Within thirty (30) days after the Execution Date, Buyer shall file with the Commission the appropriate request for CPUC Approval. Seller shall use commercially reasonable efforts to support Buyer in preparing for and obtaining CPUC Approval. Buyer 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.

2.2. CPUC Approval Termination Right

- (a) Either Party has the right to terminate this Agreement upon 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 Buyer in its sole discretion within sixty (60) days after Buyer files its request for CPUC Approval and (ii) such Notice of termination is given on or before the ninetieth (90th) day after Buyer files the request for CPUC Approval.
- (b) 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 Product or a failure of Buyer to purchase or receive the Product, and will not be or cause an Event of Default by either Party. No Settlement Amount with respect to this Agreement will be due or owing by either Party, and neither Party shall have any obligation or liability to the other, upon termination of this Agreement due solely to failure to obtain CPUC Approval.

ARTICLE 3. SELLER OBLIGATIONS

3.1. Delivery of Product

- (a) No later than the deadlines set forth in subsections (i) and (ii) below, Seller shall submit, or cause Seller's SC(s) to submit:
 - (i) ~~(a) No later than ten ~~fifteen~~ (10) 15 Business Days before the earliest monthly applicable calendar days prior to~~ Buyer's Compliance Showing deadlines ~~with the CAISO and the CPUC for each year or Showing Month, Seller shall submit, or shall cause Seller's SC(s) to submit (as applicable),~~ Notice to Buyer which ~~includes~~ shall include Seller's Supply Plan for such year or Showing Month (as applicable) in (A) a form substantially similar to Exhibit D, or ~~in (B)~~ a form as communicated in writing by Buyer to Seller no later than fifteen (15) Business Days prior to Buyer's Compliance Showing deadlines for ~~a such year or Showing Month (as applicable). Such Supply Plan shall include the Qualifying Capacity for each PDR identified by Seller pursuant to Section 1.4(a)(i), the sum of which shall not exceed the Product Monthly Quantity.~~

(ii) No later than ten (10) Business Days prior to the deadline for Seller's Supply Plan submission in subsection (i) immediately above, the additional information required by the implementation guidelines set forth in D.19-07-009, Appendix A, attached hereto as Exhibit F (the "OC Implementation Guidelines"), including the Qualifying Capacity for each PDR identified by Seller pursuant to Section 1.4(a)(i), presented in [a form substantially similar to Exhibit G][the standardized reporting format developed by the CPUC pursuant to Ordering Paragraph 8 of D.19-07-009].

- (b) Seller shall, on a timely basis, submit, or cause its SC to submit, a Supply Plan to CAISO in accordance with the CAISO Tariff ~~to identify and confirm the Product Monthly Quantity for each type of Product to be provided to Buyer from the DRAM Resource for each Showing Month.~~ The quantities in the Supply Plan that is submitted to the Buyer under Section 3.1(a)(i) shall exactly match what is submitted by the Seller or its SC to the CAISO due on the earliest monthly applicable Buyer's Compliance Showing deadlines with CAISO and CPUC.

3.2. Resource Adequacy Benefits

Seller grants, pledges, assigns, and otherwise commits to Buyer the ~~Product Monthly Quantity~~ Qualifying Capacity for each PDR specified in the Supply Plan and all Resource Adequacy Benefits of the Product as associated with the DRAM Resource to enable Buyer to meet its RAR, Local RAR and/or Flexible RAR, as applicable. The Parties shall take all commercially reasonable actions, and execute all documents or instruments necessary, to effect the use of the Product for Buyer's sole benefit.

3.3. Provision of Information ~~and Testing~~

~~(a)~~— Within a reasonable period of time, or such time prescribed by the CPUC, Seller shall provide to the CPUC all information requested by the CPUC relating to Seller's obligations and performance pursuant to this Agreement and the DRAM ~~IV~~ Pilot Program to which this Agreement relates. In responding to any information request from the CPUC, the Seller may designate information for confidential treatment consistent with CAISO and/or Commission rule, tariff or decision. Any such confidential information provided by Seller to the CPUC shall be held in confidence by the CPUC and excluded from public inspection or disclosure, unless inspection or disclosure is otherwise required by Applicable Laws.

~~(b)~~— ~~If a PDR or RDRR in the DRAM Resource has not had a Full Dispatch during August, then Seller shall cause a test of such PDR(s) or RDRR(s) in accordance with D.14-06-050, Appendix B, prior to expiration of that month, and provide the results of such test to Buyer through their Demonstrated Capacity.~~

~~In addition, if the Delivery Period is greater than six months in the calendar year, and if a test or Full Dispatch has not occurred within the first half of the Delivery Period in the calendar year, excluding August, then a test must be conducted in~~

~~accordance with D.14-06-050, Appendix B, within the first half of the Delivery Period (e.g., for an Agreement with an eight month term, a second test would be required at some point in the first four months). Such test may not occur in August. Seller is permitted multiple retests during the calendar month of such testing.~~

~~If the test results demonstrate a capacity of 50.00 percent (%) or less of the Product Monthly Quantity for that month, then a retest would be required for those PDR or RDRR that are 50 percent (%) or less of their Product Monthly Quantity, within 30 days of Seller receiving data of the test results, if a Full Dispatch has not occurred during that 30 day period. If the retest results demonstrate a capacity of 50 percent (50%) or less of the applicable Product Monthly Quantity, then Seller will conduct an additional retest.~~

- ~~(e) Seller shall comply with the requirements for load impact analysis in D.14-06-050, Appendix B, and provide to the CPUC a load impact evaluation consistent with the Load Impact Protocols in D.08-04-050 and data required by D.14-06-050. This Section 3.3(e) is applicable only for DRAM Resources for which historical data are available. If historical data are not available, Seller is not required to perform a load impact analysis. Pursuant to Decision 16-06-045, Ordering Paragraph 5a, this provision is moot for the 2018 and 2019 RA Compliance Year.~~

3.4. Seller's Obligations

- (a) Seller shall, and shall cause each of the PDRs ~~or RDRRs~~ in the DRAM Resource and corresponding DRPs and SCs to, comply with all applicable CAISO Tariff provisions, CPUC Decisions and all other Applicable Laws, including the Bidding of the DRAM Resource into the applicable CAISO Markets during the Availability Assessment Hours as required by the CAISO Tariff.
- (b) Seller shall or shall cause Seller's DRP to execute Buyer's Demand Response Provider Service Agreement in accordance with Rule 24.
- (c) ~~(+)~~ Seller shall not include any Customer premises or resource in a PDR ~~or RDRR~~ in the DRAM Resource that is concurrently enrolled in or otherwise concurrently committed to any other demand response program offered, maintained, or funded by Buyer (e.g., without limitation, behind-the-meter storage products in the Energy Storage RFO), or that is registered with CAISO as a part of any other demand response resource or Distributed Energy Resource Aggregation, other than as provided under this Agreement.
- (d) Seller shall not change or modify the customer composition of the DRAM Resource, including without limitation moving a DRAM Resource Customer service account in or out of any PDR of the DRAM Resource, during any Showing Month except under the following circumstances:

- (i) Seller may add a newly recruited service account to a PDR in the DRAM Resource if that service account is not part of a PDR that is already included in a supply plan submitted by Seller to Buyer or any other LSE for the same Showing Month.
- (ii) Seller may remove a service account from a PDR in the DRAM Resource.
- (iii) If as a result of the changes in Sections 3.4(d)(i) and 3.4(d)(ii) a PDR in the DRAM Resource becomes large enough to trigger the 10 MW telemetry requirement, Seller may split the affected PDR into two or more smaller resources as necessary to comply with CAISO requirements.
- (iv) If as a result of the changes in Sections 3.4(d)(i) and 3.4(d)(ii) a PDR in the DRAM Resource becomes small enough to drop below the 100 kW minimum PDR size, Seller may combine the affected PDR with other resources as necessary to comply with CAISO requirements.
- (v) If a service account has moved to a new LSE (e.g., to or from a community choice aggregator), and if the CAISO Tariff requires PDRs to consist of service accounts that are customers of the same LSE, then Seller may add or remove the affected service accounts as necessary to comply with CAISO requirements.

3.5. Indemnities for Failure to Perform.

Seller agrees to indemnify, defend and hold harmless Buyer from any costs, penalties, fines or charges assessed against Buyer by the CPUC ~~or the~~, CAISO, ~~FERC, or any other~~ Governmental Body with jurisdiction over Buyer, resulting from Seller's failure to do, or cause to be done, any of the following:

- (a) Provide ~~any portion~~ all of the Product Monthly Quantity ~~for~~ in any ~~portion of the Delivery Period~~ Showing Month, except to the extent (i) such failure is solely the result of a failure by Buyer to perform any of its obligations pursuant to Section 6.2, or (ii) Seller reduces ~~at the Product~~ Monthly Quantity in accordance with Section 1.5(b) or (c);
- (b) Submit timely and accurate Supply Plans that identify Buyer's right to the Product Monthly Quantity for each Showing Month;
- (c) Comply with the requirements in Section 3.2 to enable Buyer to meet its RAR; ~~or~~
- (d) Meet CPUC Resource Adequacy requirements per the CPUC Filing Guide; or
- (e) Comply with the CAISO Tariff.

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

positions to minimize these costs, penalties, fines and charges. If Seller fails to pay the foregoing penalties, fines, charges, or costs, or fails to reimburse Buyer for those penalties, fines, charges, or costs, then Buyer may offset those penalties, fines, charges or costs against any amounts it may owe to Seller under this Agreement.

Notwithstanding Seller's obligations in Section 3.5(a), Seller is not required to indemnify or reimburse Buyer for any costs allocated to Buyer by the CAISO for any capacity procured by CAISO pursuant to the Capacity Procurement Mechanism with respect to any Shortfall Capacity.

ARTICLE 4. PAYMENT AND BILLING

4.1. Delivered Capacity Payment

Buyer shall make a monthly payment to Seller, after the applicable Showing Month, ("Delivered Capacity Payment") equal to the product of (A x B x ~~C x D~~) ~~for each type of Product.~~

$$\text{Delivered Capacity Payment} = [A \times B \times C \times \del{D}]$$

Where:

A = The Contract Price ~~of the applicable type of Product~~ for the applicable Showing Month, including SC costs.

B = The ~~lesser of (i) the Demonstrated Capacity for each type of Product for the applicable Showing Month, and (ii) the corresponding Product Monthly Quantity for the applicable Showing Month~~ value from the chart below corresponding to the applicable ratio of Demonstrated Capacity (which shall be a total sum of the individual PDRs in the DRAM Resource) as a percentage of the Qualifying Capacity (which shall be a total sum of the individual PDRs in the DRAM Resource) ("DC-QC Ratio");

<u>Delivered Capacity (DC) Payment Values</u>		
<u>Band</u>	<u>DC- QC Ratio</u>	<u>Value for B</u>
<u>Tolerance</u>	<u>≥ 90.00%</u>	<u>Qualifying Capacity (kW)</u>
<u>Pro-rated</u>	<u>≥ 70.00% to 90.00%</u>	<u>Demonstrated Capacity (kW)</u>
<u>De-rated</u>	<u>50.00% to 70.00%</u>	<u>Demonstrated Capacity (kW) * 75%</u>

<u>Forfeiture</u>	<u>< 50.00%</u>	<u>0</u>
-------------------	--------------------	----------

C = 1.0 if Seller has chosen (i) not to deliver Residential Customer Product in Section 1.1(c) or (ii) to deliver Residential Customer Product in Section 1.1(c) and the Product delivered meets the definition of Residential Customer Product, or 0.90 if the Product delivered does not meet the definition of Residential Customer Product.

~~D = (i) 1.0 if Seller has chosen to deliver RDRR in Section 1.1(e); or (ii) if Seller has chosen to deliver PDR in Section 1.1(e), the percentage of Product delivered that is PDR.~~

4.2. Invoice and Payment Process

- (a) ~~As soon as practicable~~ Within thirty (30) days after ~~the end of each~~ Seller has received Revenue Quality Meter Data for at least ninety-five percent (95%) of all intervals required for settlement of the DRAM Resource for the applicable Showing Month, Seller will render to Buyer an invoice for the Demonstrated Capacity and associated payment obligations amount due, if any, ~~incurred hereunder~~ with respect to such Showing Month. Seller's failure to render any invoice on or before the deadline set forth herein shall be deemed to be a submission by the Seller of a DC Dispatch-based invoice with Demonstrated Capacity at an amount below fifty percent (50%) of the Qualifying Capacity for the applicable Showing Month (i.e., within the "forfeiture" payment band in the chart in Section 4.1).
- (b) Buyer will pay Seller all undisputed invoice amounts on or before the later of (i) the twentieth (20th) day of each month, or (ii) the tenth (10th) day after receipt of Seller's invoice and Demonstrated Capacity or, if such day is not a Business Day, then on the next Business Day.
- (c) Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Cash Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.
- (d) Buyer may offset against any future payments by any amount(s) that were previously overpaid.
- (e) 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 10 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 ten (10) Business Days of such resolution.

- (f) Buyer may deduct any amounts that would otherwise be due to Seller under this Agreement from any amounts owing and unpaid by Seller to Buyer under this Agreement.
- (g) With respect to any Joint Resource, if Seller and any third party both submit claims to Buyer for payment with respect to such Joint Resource which, when added together, exceed the total capacity of the Joint Resource, Buyer shall not be obligated to make payment to Seller in respect of such Joint Resource until Seller reconciles the error with such third party and Seller re-submits the corrected invoice to Buyer.
- (h) With respect to a Joint Resource, if such Joint Resource's Demonstrated Capacity for a particular type of Product in any Showing Month is less than such Joint Resource's assigned NQC and/or EFC for such type of Product (as set forth in Exhibit C), Seller shall have the right to demonstrate to Buyer the Joint Resource's actual performance, and shall be compensated in accordance with Section 1.6. In the event Buyer finds Seller's demonstration inconclusive, the Joint Resource's total capacity shall be allocated pro-rata among the parties with rights to a portion of such Joint Resource's type of Product based on the information required to be provided in Section 1.6(dg), and Seller's compensation shall be calculated using its percentage allocation of such PDR's ~~or RDRR's~~ capacity, accordingly.

4.3. Allocation of Other CAISO Payments and Costs

As between Buyer and Seller, Seller shall retain any revenues Seller or Seller's SC may receive from and pay all costs, penalties, charges charged to Seller or Seller's SC by the CAISO or any other third party in connection with the DRAM Resource, except as expressly provided otherwise in this Agreement.

ARTICLE 5. CREDIT AND COLLATERAL

5.1. Seller's Credit and Collateral Requirements

- (a) If, at any time during the Term Seller does not have a Credit Rating, or if its Credit Rating is below BBB- from S&P or Baa3 from Moody's, if rated by both S&P and Moody's or below BBB- from S&P or Baa3 from Moody's, if rated by either S&P or Moody's, but not both, Seller shall provide and maintain collateral with Buyer in an amount equal to twenty percent (20%) of the sum of the estimated Delivered Capacity Payments for all of the remaining months of the

Delivery Period including the current month, with such estimated Delivered Capacity Payments being based on the applicable Monthly Quantity values times the applicable Contract Price ("Performance Assurance").

- (b) If Seller's Credit Rating is at or above BBB- from S&P and Baa3 from Moody's, if rated by both S&P and Moody's, or at or above BBB- from S&P or Baa3 from Moody's, if rated by either S&P or Moody's, but not both, Seller shall have no obligation to provide Performance Assurance to Buyer, and Sections 5.2 through 5.5 will not be applicable.
- (c) If required pursuant to Section 5.1(a), Seller shall post the Performance Assurance with Buyer within ten (10) Business Days of the Execution Date.

5.2. Grant of Security Interest/Remedies

- (a) To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing security interest in, and lien on (and right of setoff against), and collateral assignment of, the Performance Assurance and all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Buyer, and each Party agrees to take such action as the other Party reasonably requires in order to perfect Buyer's first-priority security interest in, and lien on (and right of setoff against), such Performance Assurance and collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, Buyer, if it is the Non-Defaulting Party, may do any one or more of the following: (i) exercise any of the rights and remedies of a Buyer with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. In such an event Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under the Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

5.3. Reduction and Substitution of Performance Assurance

- (a) If the amount of Performance Assurance held by Buyer exceeds the amount required pursuant to Section 5.1, on any Business Day, Seller may give Notice to Buyer requesting a reduction in the amount of Performance Assurance previously provided by Seller for the benefit of Buyer, provided that, (i) after giving effect to

the requested reduction in Performance Assurance, no Event of Default or Potential Event of Default with respect to Seller has occurred and is continuing, ~~and~~ (ii) no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to Seller for which there exist any unsatisfied payment obligations, and (iii) no amounts are owing and unpaid from Seller to Buyer hereunder. A permitted reduction in Performance Assurance may be effected by the Transfer of Cash to Seller or the reduction of the amount of an outstanding Letter of Credit previously issued for the benefit of Buyer. Seller shall have the right to specify the means of effecting the reduction in Performance Assurance. In all cases, the cost and expense of reducing Performance Assurance (including, but not limited to, the reasonable costs, expenses, and attorneys' fees of Buyer) shall be borne by Seller. Unless otherwise agreed in writing by the Parties, (iii) if Seller's reduction demand is made on or before the Notification Time on a Business Day, then Buyer shall have five (5) Business Days to effect a permitted reduction in Performance Assurance, and (iv) if Seller's reduction demand is made after the Notification Time on a Business Day, then Buyer shall have six (6) Business Days to effect a permitted reduction in Performance Assurance, in each case, if such reduction is to be effected by the return of Cash to Seller. If a permitted reduction in Performance Assurance is to be effected by a reduction in the amount of an outstanding Letter of Credit previously issued for the benefit of Buyer, Buyer shall promptly take such action as is reasonably necessary to effectuate such reduction.

- (b) Except when an Event of Default or Potential Event of Default with respect to Seller shall have occurred and be continuing or an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to Seller for which there exist any unsatisfied payment obligations, Seller may substitute Performance Assurance for other existing Performance Assurance of equal value upon five (5) Business Days' Notice (provided such Notice is made on or before the Notification Time, otherwise the notification period shall be six (6) Business Days) to Buyer. Upon the Transfer to Buyer of the substitute Performance Assurance, Buyer shall Transfer the relevant replaced Performance Assurance to Seller within five (5) Business Days. Notwithstanding anything herein to the contrary, no such substitution shall be permitted unless (i) the substitute Performance Assurance is Transferred simultaneously or has been Transferred to Buyer prior to the release of the Performance Assurance to be returned to Seller and the security interest in, and general first lien upon, such substituted Performance Assurance granted pursuant hereto in favor of Buyer shall have been perfected as required by applicable law and shall constitute a first priority perfected security interest therein and general first lien thereon, and (ii) after giving effect to such substitution, the substitute Performance Assurance shall equal the amount of Performance Assurance being replaced. Each substitution of Performance Assurance shall constitute a representation and warranty by Seller that the substituted Performance Assurance shall be subject to and governed by the terms and conditions of this Article 5, including without limitation the security interest in, general first lien on and right of offset against, such substituted

Performance Assurance granted pursuant hereto in favor of Buyer pursuant to this Article 5.

- (c) The Transfer of any Performance Assurance by Buyer in accordance with this Section 5.3 shall be deemed a release by Buyer of its security interest, general first lien and right of offset granted pursuant to this Article 5 hereof only with respect to such returned Performance Assurance. In connection with each Transfer of any Performance Assurance pursuant to this Article 5, Seller will, upon request of Buyer, execute a receipt showing the Performance Assurance Transferred to it.

5.4. Administration of Performance Assurance

- (a) Cash. Performance Assurance provided in the form of Cash to Buyer shall be subject to the following provisions:
 - (i) Notwithstanding the provisions of applicable law, if no Event of Default has occurred and is continuing with respect to Buyer and no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to Buyer for which there exist any unsatisfied payment obligations, then Buyer 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.
 - (ii) So long as no Event of Default or Potential Event of Default with respect to Seller has occurred and is continuing, and no Early Termination Date ~~for which any unsatisfied payment obligations of Seller exist~~ has occurred or been designated as the result of an Event of Default with respect to Seller, and no amounts are owing and unpaid from Seller to Buyer hereunder, and to the extent that an obligation to Transfer Performance Assurance would not be created or increased by the Transfer, in the event that Buyer is holding Cash, Buyer will Transfer (or caused to be Transferred) to Seller, in lieu of any interest or other amounts paid or deemed to have been paid with respect to such Cash (all of which may be retained by Buyer), the Interest Amount when Buyer returns the Cash to Seller following the termination or expiration of this Agreement, as applicable and in conformity with Section 9.6. On or after the occurrence of a Potential Event of Default or an Event of Default with respect to Seller or an Early Termination Date as a result of an Event of Default with respect to Seller, Buyer shall retain any such Interest Amount as additional Performance Assurance hereunder until the obligations of Seller under the Agreement have been satisfied in the case of an Early Termination Date or for so long as such Event of Default is continuing in the case of an Event of Default.

- (b) Letters of Credit. Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions:
- (i) Each Letter of Credit shall be maintained for the benefit of Buyer. Seller shall (A) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (B) if the bank or financial institution that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide either a substitute Letter of Credit or Cash, in each case at least thirty (30) calendar days prior to the expiration of the outstanding Letter of Credit, and (C) if a bank or financial institution issuing a Letter of Credit shall fail to honor Buyer's properly documented request to draw on an outstanding Letter of Credit, provide for the benefit of Buyer either a substitute Letter of Credit that is issued by a bank or financial institution acceptable to Buyer or Cash, in each case within one (1) Business Day after such refusal.
 - (ii) As one method of providing Performance Assurance, Seller may increase the amount of an outstanding Letter of Credit or establish one or more additional Letters of Credit.
 - (iii) Upon the occurrence of a Letter of Credit Default, Seller agrees to Transfer to Buyer either a substitute Letter of Credit or Cash, in each case on or before the first (1st) Business Day after the occurrence thereof (or the fifth (5th) Business Day after the occurrence thereof if only clause (i) under the definition of Letter of Credit Default applies).
 - (iv) Upon or at any time after the occurrence and continuation of an Event of Default or Letter of Credit Default with respect to Seller, or if an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to Seller for which there exist any unsatisfied payment obligations, then Buyer may draw on the entire, undrawn portion of any outstanding Letter of Credit upon submission to the bank or financial institution issuing such Letter of Credit of one or more certificates specifying that such Event of Default, Letter of Credit Default or Early Termination Date has occurred and is continuing. Cash proceeds received from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for Seller's obligations to Buyer and Buyer shall have the rights and remedies set forth in Section 5.5 with respect to such Cash proceeds. Notwithstanding Buyer's receipt of Cash proceeds of a drawing under the Letter of Credit, Seller shall remain liable (A) for any failure to Transfer sufficient Performance Assurance and (B) for any amounts owing to Buyer and remaining unpaid after the application of the amounts so drawn by Buyer.
 - (v) In all cases, the costs and expenses of establishing, renewing, substituting, canceling, and increasing the amount of a Letter of Credit shall be borne by Seller.

- (c) **Care of Performance Assurance.** Except as otherwise provided in Section 5.4(a)(i) and beyond the exercise of reasonable care in the custody thereof, Buyer 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. Buyer shall be deemed to have exercised reasonable care in the custody and preservation of the Performance Assurance in its possession if the Performance Assurance is accorded treatment substantially equal to that which it accords its own property, and shall not be liable or responsible for any loss or damage to any of the Performance Assurance, or for any diminution in the value thereof, except to the extent such loss or damage is the result of Buyer's willful misconduct or gross negligence. Buyer shall at all times retain possession or control of any Performance Assurance Transferred to it.

5.5. Exercise of Rights against Performance Assurance

- (a) If an Event of Default with respect to Seller has occurred and is continuing or an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to Seller, or if amounts are owing and unpaid from Seller to Buyer hereunder, Buyer may exercise any one or more of the rights and remedies provided under this Agreement, or as otherwise available under Applicable Law. Without limiting the foregoing, if at any time an Event of Default with respect to Seller has occurred and is continuing, or an Early Termination Date occurs or is deemed to occur as a result of an Event of Default with respect to Seller, then Buyer may, in its sole discretion, exercise any one or more of the following rights and remedies:
 - (i) All rights and remedies available to a Buyer under the Uniform Commercial Code and any other applicable jurisdiction and other Applicable Laws with respect to the Performance Assurance held by or for the benefit of Buyer;
 - (ii) The right to set off any Performance Assurance held by or for the benefit of Buyer against and in satisfaction of any amount payable by Seller in respect of any of its obligations; and
 - (iii) The right to draw on any outstanding Letter of Credit issued for its benefit.
- (b) Buyer 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 Buyer for any amount payable by Seller in respect of any of its obligations remaining unpaid after any such liquidation, application and set off.

5.6. Financial Information

If requested by a Party, the other Party shall deliver, if available, (a) within one hundred twenty (120) days following the end of each fiscal year, a copy of the annual report

containing audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year setting forth in each case in comparative form the figures for the previous year for the Party, as the case may be, and (b) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of a quarterly report containing unaudited consolidated financial statements for such fiscal quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year, and if the Party files reports with the Securities and Exchange Commission, certified in accordance with all applicable laws and regulations, including without limitation all applicable Securities and Exchange Commission rules and regulations. If the Party does not file reports with the Securities and Exchange Commission, the reports must be certified by a Chief Financial Officer, Treasurer or any Assistant Treasurer as being fairly stated in all material respects (subject to normal year end audit adjustments); provided, for the purposes of this Section 5.6, if a Party's financial statements are publicly available electronically on the Securities and Exchange Commission's website, then this requirement shall be deemed satisfied. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

5.7. Access to Financial Information

- (a) Buyer shall determine, through consultation with its internal accountants and review with their independent registered public accounting firm, that Buyer is required to consolidate Seller's financial statements with Buyer'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 Buyer accounting treatment for this Agreement (the "Financial Consolidation Requirement").
- (b) If the Financial Consolidation Requirement is applicable, then:
 - (i) Within twenty (20) days following the end of each calendar year (for each year that such treatment is required), Seller shall deliver to Buyer 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. Buyer shall provide to Seller a checklist before the end of each year listing the items which Buyer believes are material to Buyer 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 month's 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 Buyer within five (5) Business Days after those statements are issued.

- (ii) Within fifteen (15) days following the end of each fiscal quarter (for each quarter that such treatment is required), Seller shall deliver to Buyer 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. Buyer shall provide to Seller a checklist before the end of each quarter listing items which Buyer believes are material to Buyer 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 Buyer 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 Buyer 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 Buyer, Seller shall allow Buyer's independent registered public accounting firm such access to Seller's records and personnel, as reasonably required so that Buyer'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 shall be borne by Buyer. If Buyer's independent registered public accounting firm during or as a result of the audits permitted in this Section 5.7(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 ninety (90) days of Seller's receipt of Notice from Buyer, Seller shall remediate any such material weakness or significant deficiency; provided, 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) Buyer shall treat Seller's financial statements and other financial information provided under the terms of this Section 5.7 in strict confidence and, accordingly:

- (i) Shall utilize such Seller financial information only for purposes of preparing, reviewing or certifying Buyer's or any Buyer parent company financial statements, for making regulatory, tax or other filings required by law in which Buyer 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 Buyer's or any Buyer parent company financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Buyer parent company financial statement and to those persons who are entitled to receive confidential information as identified in Article 13; and
 - (iii) Buyer shall ensure that its internal auditors and independent registered public accounting firm (1) treat as confidential any information disclosed to them by Buyer pursuant to this Section 5.7, (2) use such information solely for purposes of conducting the audits described in this Section 5.7, 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 (2) Business Days following the occurrence of any event affecting Seller which Seller understands, during the Term, would require Buyer to disclose such event in a Form 8-K filing with the SEC, Seller shall provide to Buyer a Notice describing such event in sufficient detail to permit Buyer to make a Form 8-K filing.
- (f) If, after consultation and review, the Parties do not agree on issues raised by Section 5.7(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 Buyer is required. Based on this recommendation, Seller and Buyer shall mutually agree on how to resolve the dispute. If Seller fails to provide the data consistent with the mutually agreed upon resolution, Buyer may declare an Event of Default pursuant to Section 9.1. If the independent audit firm associated with Buyer still determines, after review by the third-party independent audit firm, that Buyer must consolidate, then Seller shall provide the financial information necessary to permit consolidation to Buyer; provided, in addition to the protections in Article 13, 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.

5.8. 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, those provisions set forth in Article 5 and Article 9, 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 5 and Article 9; 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.

ARTICLE 6. SPECIAL TERMS AND CONDITIONS

6.1. Limitation of Liability

Buyer has no obligations to any person or entity that is, or may participate as, a DRAM Resource Customer, DRP (if Seller is not a DRP), or Seller's SC and Seller shall indemnify Buyer against any claim made by any such DRAM Customer, the DRP (if Seller is not a DRP), or Seller's SC with respect to its participation in or with the PDR~~+~~~~RDRR~~ or DRAM Resource, as applicable.

6.2. Buyer Provision of Information

Buyer shall, to the extent available and permitted by Applicable Law, including Rule 24, provide specific information consistent with the CISR-DRP form adopted by the CPUC in D.13-12-029 and Resolution E-4630 including, but not limited to, usage, and/or meter data of a Customer to Seller, if Seller provides to Buyer written authorization from such Customer to release such information. Such written authorization must be provided in a form reasonably acceptable to Buyer. Buyer shall be liable for penalties or charges incurred by Seller from either the CAISO or the CPUC resulting solely from Buyer's failure to provide timely, accurate data to Seller in accordance with this Section 6.2.

6.3. Changes in Applicable Laws

- (a) If a change in Applicable Laws renders this Agreement or any material terms herein incapable of being performed or administered, then either Party, on Notice, may request the other Party to enter into good faith negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed or administered, while attempting to preserve to the maximum extent possible the benefits, burdens and obligations set forth in this Agreement as of the Execution Date. The Parties acknowledge that such changes may require the approval of the CPUC before becoming effective.

- (b) If the Parties have been unable to reach agreement within thirty (30) days after receipt of such Notice, then either Party may terminate this Agreement by providing Notice. A Party's exercise of its rights under this Section 6.3 will not be deemed to be a failure of Seller to sell or deliver the Product or a failure of Buyer to purchase or receive the Product, and will not be or cause an Event of Default by either Party. Neither Party shall have any further obligation or liability to the other and no Settlement Amount with respect to this Agreement will be due or owing by either Party upon termination of this Agreement due solely to a Party's exercise of its right pursuant to this Section 6.3.

6.4. DBE Reporting

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

- (i) Buyer has the right to disclose to the CPUC all such information provided by Seller pursuant to this Section 6.4.
- (ii) Seller shall make reasonable efforts to accommodate requests by the CPUC (or by Buyer in response to a request by the CPUC) to audit Seller in order to verify data provided by Seller pursuant to this Section 6.4.

6.5. Governmental Charges

Seller shall pay on request and indemnify Buyer against any taxes (including without limitation, any applicable transfer taxes and stamp, registration or other documentary taxes), assessments, or charges that may become payable by reason of the security interests, general first lien and right of offset granted under this Agreement or the execution, delivery, performance or enforcement of this Agreement, as well as any penalties with respect thereto.

6.6. Customers in Buyer Automated Demand Response Program ~~or Other Utility Program~~

Seller agrees to and acknowledges the following with respect to Buyer's ~~ADR~~non-residential Customers which are included in Seller's DRAM Resource and have received ADR incentives or rebates to install demand response capable control technologies:

- (a) ~~ADR~~Customers in ~~Buyer~~Seller's ADR~~DRAM Resource~~ are eligible ~~to participate concurrently in Buyer's ADR and Seller's DRAM Resource~~for ADR incentives or rebates, subject to the requirements of this Agreement, Commission requirements, and Applicable Laws. The ~~ADR~~Customer remains responsible for fulfilling its

obligations under Buyer's ADR program rules during the time period such ADR Customer is in Seller's DRAM Resource.

- (b) Seller shall be responsible for (i) notification to ADR Customers in its DRAM Resource of each Bid awarded by the CAISO ("Award") for a PDR-~~or RDRR~~, and (ii) operation of the ADR Customers' ADR ~~equipment to respond~~control technology in response to an Award. During the time period that an ADR Customer is enrolled in a DRAM Resource, Buyer (or its agent) will not send notifications to such ADR Customer of Awards and will not operate ADR Customers' ADR ~~equipment control technology~~.
- (c) If Seller or its DRP enrolls ~~an ADR~~a Customer who has received ADR incentives or rebates in Seller's DRAM Resource, Seller shall provide Buyer (or its agent) with Notice within five (5) Business Days of such enrollment of the ADR Customer's enrollment along with the ADR Customer's name, service account address, SAID, location, the ADR agreement, and confirmation that the ADR Customer has unenrolled from all or any of Buyer's event-based demand response programs (other than ADR) prior to enrolling in Seller's DRAM Resource. Seller shall provide Buyer (or its agent) with Notice within fifteen (15) days after ~~an ADR~~such Customer leaves Seller's DRAM Resource.
- (d) ~~ADR~~-Customers in their first~~who have received ADR incentives within the past year of participation in ADR~~ who enroll in a DRAM Resource will be required to demonstrate performance through the DRAM Resource to qualify for additional ADR ~~technology~~ incentive payments ~~that future Commission decision(s) applicable to 2018 and 2019 may require~~as indicated in the statewide ADR Guidelines.
- ~~(e) Seller shall notify in writing all of its ADR Customers of the items set forth in this Section 6.6 prior to enrolling such ADR Customers in Seller's DRAM Resource, as applicable pursuant to Section 1.4.~~
- (e) ~~(f)~~ Buyer (or its agent) may communicate (i) with ~~the~~ Seller's ~~ADR~~-Customers who have received ADR incentives or rebates about the ~~ADR~~requirements for the Customer's participation in a DRAM Resource and ADR to participate in a demand response program, and (ii) with ~~the ADR~~Seller's Customers with respect to anything involving their ~~participation in ADR~~ incentive or rebate eligibility.
- (f) ~~(g)~~ Promptly following receipt of Buyer's Notice, Seller shall provide to Buyer (or its agent) all information necessary for Buyer to administer the ~~ADR~~-Customers' ~~participation in Buyer's~~ ADR incentives or rebates, including, but not limited to: (i) the information described in Section 6.6(c), (ii) the days in each Showing Month of Dispatch of the applicable PDR-~~or RDRR~~ in the DRAM Resource, (iii) all hours in such Showing Month, corresponding to the days in subsection (ii), when Seller dispatched or called on the ADR Customer to respond to an Award, and (iv) information on ADR Customers that Seller did not dispatch or call on to respond to an Award for such Showing Month. The ~~ADR~~-Customer's

participation in the Seller's DRAM Resource as described in this Section 6.6(ef) will be used in conjunction with the ADR Customer's participation in Buyer's demand response programs, to calculate the ~~ADR~~ Customer's actual performance ~~for its approved kW in the ADR and subsequent incentive payments.~~

- (g) ~~(h)~~ If Seller does not provide all the information Buyer needs to administer the ADR incentives for the Customer's ~~participation in Buyer's ADR~~, the ADR Customer will be in non-compliance with the requirements of the ADR program.
- (h) ~~(i)~~ Following the termination or expiration of this Agreement, Buyer (or its agent) may notify the ~~ADR~~ Customers in Seller's DRAM Resource that such have received ADR ~~Customers need~~ incentives or rebates of their commitment to participate in a utility demand response program, ~~if such ADR Customers are within the first for a total of three years of their commitment to ADR as of the date of such termination or expiration.~~
- ~~(j) — Seller agrees to and acknowledges the following with respect to Buyer's Customers in another Utility program, which are also included in Seller's DRAM Resource: When a Customer's participation in another Utility program is dependent upon Customer's inclusion in Seller's DRAM Resource, Seller shall provide to Buyer all information reasonably necessary or useful to establish and confirm the inclusion of such Customers in the Seller's DRAM Resource.~~

ARTICLE 7. REPRESENTATIONS, WARRANTIES AND COVENANTS

7.1. Representations and Warranties of Both Parties

On the Execution 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 Buyer, 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 and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (d) This Agreement constitutes its legally valid and binding obligation, enforceable against it in accordance with its terms;
- (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 Product under this Agreement in accordance with the terms of this Agreement.

7.2. Additional Seller Representations, Warranties and Covenants

- (a) On the Execution Date, Seller represents and warrants to Buyer that Seller has not used, granted, pledged, assigned, or otherwise committed any of the Monthly Quantity to meet the RAR, Local RAR and/or Flexible RAR, as applicable, or confer Resource Adequacy Benefits upon, any entity other than Buyer during the Delivery Period.
- (b) Seller covenants that throughout the Delivery Period:
 - (i) Seller will deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person;
 - (ii) Seller has been authorized by each Customer, to act as an aggregator on behalf of such Customer to participate as a PDR ~~or RDRR~~ in the DRAM Resource, if Seller is not also a Customer;
 - (iii) The DRP has been authorized by each Customer to act on behalf of such Customer to participate as a PDR ~~or RDRR~~ for the DRAM Resource, if Seller is not the DRP; and
 - (iv) Seller will not use, grant, pledge, assign, or otherwise commit any Product Monthly Quantity to meet the RAR, Local RAR, and/or Flexible RAR, as applicable, of, or confer Resource Adequacy Benefits of the Product upon, any entity other than Buyer during the Delivery Period;
 - (v) During each month of the Delivery Period, if any participating Customers in the DRAM Resource have a Prohibited Resource, Seller shall ensure that such Prohibited Resource is not used to reduce load during a Dispatch by any PDR ~~or RDRR~~ providing Product to Buyer during such month, as follows:

- A. For all Residential Customers, Seller shall include a provision in its contract forbidding the use of Prohibited Resources to reduce load during a Dispatch by any PDR ~~or RDRR~~ providing Product to Buyer. Any customer that does not accept the prohibition will not be eligible to participate in the Seller's DRAM Resource.
- B. ~~For all non-Residential Customers,~~ Seller shall require ~~that from~~ each ~~Customer execute~~ non-Residential Customers an attestation ~~(1) indicating whether it has~~ form attesting to one of the following conditions: (1) the customer does not have a Prohibited Resource on site; (2) indicating that if it the customer has a Prohibited Resource ~~it on site and~~ will not use the resource to reduce load during a Dispatch by any PDR ~~or RDRR~~ providing Product to Buyer; or, (3) if applicable, ~~certifying that~~ the Customer ~~may have to use~~ has a Prohibited Resource on site and may have to use the resource during Demand Response events for operational, health or safety reasons, ~~providing. For conditions (1) and (2) above, each attestation must provide the number of unit(s) of Prohibited Resources on site and the nameplate capacity of the Prohibited Resource (or, and agreeing if the Recruited Account has multiple Prohibited Resources, the sum of the nameplate capacity values from all Prohibited Resources on site) (the "Default Adjustment Value"). Customers must agree~~ to a default adjustment in which the amount of Product such Customer can provide is reduced by the ~~nameplate capacity of the Prohibited Resource (or, if the Customer has multiple Prohibited Resources, by the sum of the nameplate capacity values from all Prohibited Resources on the site)~~ Default Adjustment Value, regardless of whether the Prohibited Resource was actually used. Customers with multiple service accounts enrolled through Seller may submit one attestation form per attestation scenario.
- C. Seller shall collect and store all such Customer attestations and make them available upon request, to ~~the CPUC or to the Buyer, as directed by the CPUC,~~ a Verification Administrator or the CPUC. Seller shall also collect and store supporting documentation, such as nameplate capacities for each resource under each attestation scenario, and make them available upon request to the Verification Administrator or the CPUC.
- D. ~~C.~~ For non-Residential Customers, the attestation shall occur at the time of enrollment and may be provided with a wet signature, a click, ~~or~~ an electronic signature. Any non-Residential customer that does not complete this component of the enrollment process will not be eligible to participate in Seller's DRAM Resource.
- E. Seller shall include provisions in its contracts that Customers are subject to random annual audits (i) requiring compliance with verification requests and facility access for Site visits as deemed

necessary by the Verification Administrator; (ii) requiring the Recruited Account to provide the Verification Administrator with written operating manifest(s), date and time stamped photo(s) of the Prohibited Resource unit(s), load curtailment plan(s), single line diagram(s) permit copy(ies), or other information or documentation about their onsite Prohibited Resources; and (iii) allowing SCE or its contractor(s) to install monitoring equipment at the Sites for the purposes of verification of attestations.

E. ~~D.~~ Seller shall include additional and separate provisions near the beginning of its contracts with Customers explaining and implementing these restrictions specifying that Customer compliance will be subject to verification, indicating the consequences for noncompliance with the provision. All Contracts with non-Residential Customers shall indicate that the non-compliance consequences will be as set forth in this section. If the instance of non-compliance involves clerical or administrative errors, such as an inaccurate listing of a Customer name or the nameplate value of a Prohibited Resource in an attestation, or a failure to include a Customer's Prohibited Resource on an attestation, provided in all cases that such Prohibited Resource is not used in violation of the terms of this Agreement (collectively, 'Type One Non-Compliance'), Seller shall specify that Customers will have sixty days from receipt of notice to cure such Type-One Non-Compliance. If the instance of non-compliance involves either (a) the Customer ~~attested to the~~ "does not have" or "no attest to the use" ~~provisions of any Prohibited Resource(s) but is verified to have used using~~ a Prohibited Resource to reduce load during a demand response event; or (b), a Customer ~~intentionally~~ submits an invalid nameplate capacity value for the Prohibited Resource(s) that is lower than the actual capacity value on the nameplate (collectively 'Type Two Non-Compliance'), then Customer will be removed from Seller's DR program as follows. If there is an instance of (a) an uncured Type One Non-Compliance, or (b) a Type Two Non-Compliance, the consequences will be removal from Seller's DR program and ineligibility to enroll in any DR program subject to the prohibited resource requirement in D.16-09-056 for twelve calendar months from the removal date (for a single instance of noncompliance), or three years from the removal date (for two or more instances of noncompliance).

G. ~~E.~~ Seller shall provide such documentation as may be reasonably necessary for Buyer to verify the accuracy of the attestations referenced in subsections B(1)–(3) above and Seller's compliance with and enforcement of this Section 7.2(b)(v). For all non-Residential Customers, (a) Sellers will provide ~~default adjustment values~~ the Default Adjustment Values (DAVs) monthly (with Demonstrated Capacity information); and, (b) Sellers will ensure that bids in the

wholesale market reflect portfolio amounts prior to de-rating. Seller shall comply with any Prohibited Resource audit verification plan that is developed in accordance with D. 16-09-056 and approved by the CPUC (the Plan). ~~For Customer contracts executed with Seller prior to the CPUC's adoption of the Plan, installation of additional interval metering will not be required for verification purposes.~~

H. F. ~~On an annual basis.~~ Seller shall provide to Buyer the language on the prohibition included in its respective residential customer contracts. Seller will develop metrics, targets and record keeping systems to assess the effectiveness of its Customer outreach and notification efforts required under this Section 7.2(b)(v), and will provide such materials to the CPUC upon Buyer's request.

I. G. ~~Seller shall include provisions in its contracts with non-Residential Customers providing that Customers may adjust their DAV, if permitting updates to their attestations to (x) add, remove or modify an on-site Prohibited Resource; (ay) the Customer's change in DAV results from a change in the operational status or use of a Prohibited Resource associated with the Customer's Service Account to reduce load during any Dispatch; and/or (bz) Seller has verified this change in operational status~~ the Default Adjustment Value, but only if, in each case, the change is supported by documentation that confirms the operational change and can be verified by SCE or a Verification Administrator.

(vi) If any respective PDR ~~or RDRR~~ is a Joint Resource, Seller shall ensure that: (x) the use of the Joint Resource does not result in Buyer making payment in respect of Demonstrated Capacity for a type of Product in excess of the total capacity of the Joint Resource, whether to Seller or any other party, regardless of whether payment is made under this Agreement, another agreement in the DRAM ~~IV~~ Pilot Program, any other demand resource agreement or program, or any combination thereof; (y) the use of the Joint Resource does not result in Buyer making payment more than once in respect of capacity relating to a particular customer registered in the Joint Resource, regardless of whether payment is made under this Agreement, another agreement in the DRAM ~~IV~~ Pilot Program, any other demand resource agreement or program, or any combination thereof; and (z) Seller has the right to access and provide to Buyer the records and data regarding any DRAM Resource Customer that is not designated by Seller under Section 1.6(~~dg~~) as part of the amount to be used to show Demonstrated Capacity for a type of Product under this Agreement to permit Buyer to audit such Joint Resource under Section 1.6(~~gi~~) to the same extent Buyer may audit PDRs ~~or RDRRs~~ that are not Joint Resources.

ARTICLE 8. NOTICES

8.1. Notices

Notices, requests, statements or payments from one Party to the other Party shall be made to the addresses and persons specified in Section 8.2. All Notices, requests, statements or payments from one Party to the other Party shall be made in writing and may be delivered by hand delivery, first class United States mail, overnight courier service, e-mail or facsimile. Notice from one Party to the other Party by e-mail or facsimile (where confirmation of successful transmission is received) shall be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it shall be deemed received on the next Business Day). Notice from one Party to the other Party by hand delivery or overnight delivery shall be deemed to have been received when delivered. A Party may change its contact information by providing Notice of the same in accordance herewith.

8.2. Contact Information

For Buyer:

Billing Representative

[Name]

Phone:

Facsimile:

Email:

Contract Representative

[Name]

Phone:

Facsimile:

Email:

Supply Plan Contact

[Name]

Phone:

Facsimile:

Email:

Settlements

[Name]

Phone:

Facsimile:

Email:

Other Buyer Contact Information

Wire Transfer

BNK:

ABA:

Credit and Collections

Attn:

Phone:

ACCT: Facsimile:
Email:

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

[Name]
Phone:
Facsimile:
Email:

For Seller:

Billing Representative

Name]
Phone:
Facsimile:
Email:

Contract Representative

[Name]
Phone:
Facsimile:
Email:

Supply Plan Contact

[Name]
Phone:
Facsimile:
Email:

Other Seller Contact Information

ACH

BNK:

ABA:

ACCT:

Credit and Collections

Attn:

Phone:

Facsimile:

Email:

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

[Name]
Phone:
Facsimile:
Email:

The Parties acknowledge and agree that those persons set forth in this Section 8.2 are designated by each Party as their respective authorized representatives to act on their behalf for the purposes described therein.

ARTICLE 9. EVENTS OF DEFAULT; TERMINATION

9.1. 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; ~~provided that a single occurrence during the Delivery Period of Demonstrated Capacity for a type of Product being less than Product Monthly Quantity for such type of Product in a Showing Month shall not be a Seller Event of Default.~~
 - (iv) Such Party becomes Bankrupt; or
 - (v) A Merger Event occurs with respect to such Party.
- (b) With respect to Seller:
 - (i) The failure of Seller to satisfy the collateral requirements set forth in Article 5;
 - (ii) During the Term, Seller makes any material misrepresentation or omission in any report required to be made or furnished by Seller, the Seller's DRP or the Seller's SC pursuant to this Agreement;
 - (iii) During the Delivery Period, Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, to any party other than Buyer without Buyer's written consent; or
 - (iv) During the Term, the occurrence and continuation of a default, event of default or other similar condition or event (however described) in respect of Seller under one or more agreements or instruments relating to indebtedness for borrowed money (whether present or future, contingent or otherwise), which results in such indebtedness for borrowed money

(whether present or future, contingent or otherwise) becoming, or becoming capable at such time of being declared, immediately due and payable under such agreements or instruments, before it would otherwise have been due and payable, or a default by Seller in making one or more payments on the due date thereof in an aggregate amount of not less than **To be determined** under such agreements or instruments (after giving effect to any applicable notice requirement or grace period).

(v) During the Term, Seller fails to comply with the requirements of Section 7.2(b)(v), where such breach is not remedied within thirty (30) days of Notice of such breach by Buyer.

(vi) The aggregate Demonstrated Capacity for the DRAM Resource is less than fifty percent (50%) of the aggregate Qualifying Capacity for the DRAM Resource in any two (2) sequential Showing Months for which Demonstrated Capacity was calculated with reference to the results of a DC Dispatch pursuant to Section 1.6(a)(i) or a DC Test pursuant to Section 1.6(a)(ii) (excluding any intervening months with invoices based on MOO bids pursuant to Section 1.6(a)(iii)).

9.2. Early Termination

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

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

9.3. Termination Payment

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

- (b) 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.
- (c) 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 Party's calculation of the Termination Payment, provide to the other Party a detailed written explanation of the basis for such dispute. Any disputes as to the calculation of the Termination Payment which the Parties are unable to resolve may be submitted to dispute resolution as provided in Article 10.

9.4. Reserved

9.5. 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.

9.6. Rights and Obligations Surviving Termination or Expiration

The rights and obligations that are intended to survive a termination or expiration of this Agreement are all of those rights and obligations that this Agreement expressly provides survive any such termination or expiration and those that arise from a Party's covenants, agreements, representations, and warranties applicable to, or to be performed, at or during any time before or as a result of the termination or expiration of this Agreement, including:

- (a) A Party's obligation to provide information, including but not limited to Sections 3.3, 5.7, 6.2 and 6.4.
- (b) A Party's obligations with respect to invoices and payments pursuant to this Agreement;
- (c) The obligation of Seller to maintain Performance Assurance as set forth in Section 5.1;
- (d) The obligation of Buyer to return any Performance Assurance under Section 5.3;
- (e) The right to pursue remedies as set forth in Sections 9.2(d) and Article 10;

- (f) The obligations with respect to a Termination Payment as set forth in Section 9.3;
- (g) The dispute resolution provisions of Article 10;
- (h) The indemnity obligations expressly set forth in this Agreement;
- (i) The limitation of liabilities as set forth in Sections 3.5, 6.1 and Article 12; and
- (j) The obligation of confidentiality as set forth in Article 13.

ARTICLE 10. DISPUTE RESOLUTION

10.1. Dispute Resolution

Other than requests for provisional relief under Section ~~10.4~~10.5, 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 ~~10.2~~10.3 below, and if the matter is not resolved through mediation, then for final and binding arbitration under the procedures described in Section ~~10.3~~10.4 below.

The Parties waive any right to a jury and agree that there will be no interlocutory appellate relief (such as writs) available. Any Dispute resolution process pursuant to this Article 9 shall be commenced within one (1) year of the date of the occurrence of the facts giving rise to the Dispute, without regard to the date such facts are discovered; provided, if the facts giving rise to the Dispute were not reasonably capable of being discovered at the time of their occurrence, then such one (1) year period shall commence on the earliest date that such facts were reasonably capable of being discovered. If the Dispute resolution process pursuant to Article 10 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.

10.2. Negotiation

Except for disputes arising with respect to a Termination Payment, the Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement by prompt negotiations between each Party's Contract Representative, as identified on the Cover Sheet hereof, or such other person designated in writing as a representative of the Party ("Manager"). Either Manager may request a meeting (in person or telephonically) to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt such request, at a mutually agreed time and place. If the matter is not resolved within 15 Business Days of their first meeting ("Initial Negotiation End Date"), the Managers shall refer the matter to the designated senior officers of their respective companies, who shall have authority to settle the dispute ("Executive(s)"). Within five (5) Business Days of the Initial Negotiation End Date ("Referral Date"), each

Party shall provide one another written notice confirming the referral and identifying the name and title of the Executive who will represent the Party.

Within 5 Business Days of the Referral Date the Executives shall establish a mutually acceptable location and date, which date shall not be greater than 30 calendar days from the Referral Date, to meet. After the initial meeting date, the Executives shall meet, as often as they reasonably deem necessary to exchange the relevant information and to attempt to resolve the dispute.

All communication and writing exchanged between the Parties in connection with these negotiations shall be confidential and shall not be used or referred to in any subsequent binding adjudicatory process between the Parties.

If the matter is not resolved within 45 calendar days of the Referral Date, or if the Party receiving the written request to meet, pursuant to the first paragraph of this Section 10.2, refuses or will not meet within 10 Business Days, either Party may initiate mediation of the controversy or claim according to the terms of the following Section 10.3.

If a dispute exists with respect to the Termination Payment, and such dispute cannot be resolved by good faith negotiation of the Parties within 10 Business Days of the Non-Defaulting Party's receipt of the detailed basis for the explanation of the dispute then either Party may refer the matter directly to Arbitration, as set forth in Section 10.4 below.

10.3. ~~10.2.~~ Mediation

Either Party may initiate mediation by providing Notice to the other Party 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.

10.4. ~~10.3.~~ Arbitration

Either Party may initiate binding arbitration with respect to the matters first submitted to mediation by providing Notice in accordance with Article 7 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 ~~10.2~~10.3, 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 ~~10.2~~10.3 above, the Dispute resolution process shall be deemed complete and further resolution of such Dispute shall be barred, without regard to any other limitations period set forth by law or statute.

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

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

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

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

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

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

Absent the existence of such rules and procedures, the arbitration will be conducted in accordance with the California Arbitration Act, California Code of Civil Procedure

Section 1280 et seq. and California procedural law (including the Code of Civil Procedure, Civil Code, Evidence Code and Rules of Court, but excluding local rules).

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

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

- (a) Before discovery commences, the Parties shall exchange an initial disclosure of all documents and percipient witnesses which they intend to rely upon or use at any arbitration proceeding (except for documents and witnesses to be used solely for impeachment);
- (b) The initial disclosure will occur within thirty (30) days after the initial conference with the Arbitrator or at such time as the Arbitrator may order;
- (c) Discovery may commence at any time after the Parties' initial disclosure;
- (d) The Parties will not be permitted to propound any interrogatories or requests for admissions;
- (e) Discovery will be limited to twenty-five (25) document requests (with no subparts), three (3) lay witness depositions, and three (3) expert witness depositions (unless the Arbitrator holds otherwise following a showing by the Party seeking the additional documents or depositions that the documents or depositions are critical for a fair resolution of the Dispute or that a Party has improperly withheld documents);
- (f) Each Party is allowed a maximum of three (3) expert witnesses, excluding rebuttal experts;
- (g) Within sixty (60) days after the initial disclosure, or at such other time as the Arbitrator may order, the Parties shall exchange a list of all experts upon which they intend to rely at the arbitration proceeding;
- (h) Within thirty (30) days after the initial expert disclosure, the Parties may designate a maximum of two (2) rebuttal experts;
- (i) Unless the Parties agree otherwise, all direct testimony will be in form of affidavits or declarations under penalty of perjury; and
- (j) Each Party shall make available for cross examination at the arbitration hearing its witnesses whose direct testimony has been so submitted.

Subject to Article 11, the Arbitrator will have the authority to grant any form of equitable or legal relief a Party might recover in a court action. The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms of the Agreement, that money damages would not be a sufficient remedy for any breach of these provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to specific performance and injunctive or other equitable relief as a remedy for a breach of Article 13.

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.

10.5. ~~10.4.~~ 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 Article 13 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 10. The Parties further acknowledge and agree that the results of the arbitration may be rendered ineffectual without the provisional relief.

Such a request for provisional relief does not waive a Party's right to seek other remedies for the breach of the provisions specified above in accordance with Article 10, 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.

ARTICLE 11. INDEMNIFICATION

11.1. 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 11.1, Seller releases, and shall indemnify, defend and hold harmless Buyer, and Buyer'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 7 or any payment disputes resulting from the use of a Joint Resource;
 - (ii) Seller's failure to fulfill its obligations regarding Resource Adequacy Benefits as set forth in Article 3;
 - (iii) any violation of Applicable Law or the CAISO Tariff arising out of or in connection with Seller's performance of, or failure to perform this Agreement;
 - (iv) injury or death to persons, including Buyer employees, and physical damage to property, including Buyer property, where the damage arises out of, is related to, or is in connection with, Seller's obligations or performance under this Agreement.

This indemnity applies notwithstanding Buyer's active or passive negligence; *provided*, Buyer 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.

11.2. Indemnification Claims

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

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

- (a) Seller will have the right to control the defense and settlement of any claims in a manner not adverse to Buyer but cannot admit any liability or enter into any settlement without Buyer's approval.
- (b) Buyer may employ counsel at its own expense with respect to any claims or demands asserted or sought to be collected against it; *provided*, if counsel is employed due to a conflict of interest or because Seller does not assume control of the defense, Seller will bear the expense of this counsel.

ARTICLE 12. LIMITATION OF REMEDIES, LIABILITY, AND DAMAGES

EXCEPT AS SET FORTH HEREIN WITH RESPECT TO THE PRODUCT, 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 9.3, 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 11 (INDEMNITY), NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

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

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

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

ARTICLE 13.CONFIDENTIALITY

13.1. Confidentiality Obligation

Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's or the Party's Affiliates' officers, directors, employees, lenders, counsel, accountants, advisors, or Rating Agencies, who have a need to know such information and have agreed to keep such terms confidential) except (a) in order to comply with any Applicable Law, summons, subpoena, exchange rule, or accounting disclosure rule or standard, or to make any showing required by any applicable Governmental Body other than as set forth in Sections 13.1(e) and (f); (b) to the extent necessary for the enforcement of this Agreement; (c) as may be obtained from a non-confidential source that disclosed such information in a manner that did not violate its obligations to the non-disclosing Party in making such disclosure; (d) to the extent such information is or becomes generally available to the public prior to such disclosure by a Party; (e) when required to be released in connection with any regulatory proceeding (provided that the releasing Party makes reasonable efforts to obtain confidential treatment of the information being released); (f) with respect to Buyer, as may be furnished to its duly authorized Governmental Bodies, including without limitation the Commission and all divisions thereof, to Buyer's Procurement Review Group, a group of participants including members of the Commission and other governmental agencies and consumer groups established by the Commission in Commission decisions 02-08-071 and 03-06-071, and to Buyer's Cost Allocation Mechanism Group established by the CPUC in D.07-12-052, or (g) Seller may disclose the transfer of the Monthly Quantity under this Agreement to its SC in order for such SC to timely submit accurate Supply Plans. The existence of this Agreement is not subject to this confidentiality obligation; *provided*, neither Party shall make any public announcement relating to this Agreement unless required pursuant to subsection (a) or (e) of the foregoing sentence of this Article 13.

13.2. Obligation to Notify

In connection with discovery requests or orders pertaining confidential information in connection with this Agreement as referenced in Section 13.1(a) (“Disclosure Order”) each Party shall, to the extent practicable, use reasonable efforts to:

- (a) Notify the other Party before disclosing the Confidential Information; and
- (b) Prevent or limit such disclosure.

After using such reasonable efforts, the Disclosing Party will not be:

- (c) Prohibited from complying with a Disclosure Order; or
- (d) Liable to the other Party for monetary or other damages incurred in connection with the disclosure of the Confidential Information.

13.3. Remedies; Survival

The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. With respect to information provided in connection with this Agreement, this obligation shall survive for a period of three (3) years following the expiration or termination of this Agreement.

ARTICLE 14.FORCE MAJEURE

To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the “Claiming Party”) gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

ARTICLE 15.MISCELLANEOUS

15.1. 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 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 Applicable Law, tariff, rule, or regulation.
- (h) 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 Buyer and Seller are each “forward contract merchants” within the meaning of the Bankruptcy Code.

15.2. 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.

15.3. Amendment

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

15.4. Assignment

Neither Party shall assign this Agreement or its rights hereunder, as the case may be, without the prior written consent of the other Party, which consent may not be unreasonably withheld; *provided*, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof or thereof, as the case may be, in connection with any financing or other financial arrangements to any person or entity whose creditworthiness is equal to or higher than that of such Party, (ii) transfer or assign this Agreement to an Affiliate of such Party which Affiliate’s creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party and whose creditworthiness is equal to or higher than that of such Party; *provided*, in each such case, any such assignee shall agree in writing to be bound by the

terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

15.5. 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.

15.6. 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.

15.7. 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.

15.8. 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).

15.9. 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.

15.10. 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.

15.11. 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.

15.12. Mobile Sierra

Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to the FERC pursuant to the provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party, or the FERC acting *sua sponte* shall be the “public interest” standard of review set forth in *United States 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).

15.13. Performance Under this Agreement

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

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Execution Date.

**SOUTHERN CALIFORNIA EDISON
COMPANY**, a California corporation

[SELLER]

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

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

EXHIBIT A

DEFINITIONS

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

"ADR Guidelines" means the guidelines for Buyer's Automated Demand Response Program implemented pursuant to Decisions 12-04-045, 14-05-025, and 18-11-029, as modified or updated from time to time, including the updates to the guidelines that are submitted in the Tier Two advice letter process on September 1 of each year in compliance with Ordering Paragraph 8 of Decision 18-11-029.

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

"Agreement" has the meaning in the Preamble.

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

"Arbitrator" has the meaning set forth in Article 10.

"Audit Notice" has the meaning set forth in Section 1.6~~(e)~~.

"Automated Demand Response" or "ADR" is Buyer's demand response program offering Customers an incentive to install automated communication equipment and associated software that enhances their ability to reduce load during Buyer's demand response program events. For purposes ADR, Seller's participation in the CAISO Markets pursuant to this Agreement is a Buyer demand response program, pursuant to the September 24, 2015 disposition letter from Commission staff. The CPUC approved the ADR programs by Decision 12-04-045 and Decision 14-05-025.

"Automated Demand Response Customer" or "ADR Customer" is a Non-Residential Customer that has installed the ADR equipment under Buyer's ADR and received, at minimum, approval from Buyer that it has been approved for its first (60%) incentive payment.

"Availability Assessment Hours" or "AAH" has the meaning set forth in the CAISO Tariff.

"Award" has the meaning set forth in Section 6.6(a).

"Bankrupt" means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of

creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

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

“Big Creek/Ventura LCA Substations” means the following substations located in the CAISO area: ACTON SC, ANAVERDE, BIG CRK1, DEL SUR, FRAZPARK, GOLETA, GORMAN, GREATLKS, HELIJET, LANCSTR, LANPRI, LITTLERK, MOORPARK, NEENACH, OASIS SC, OSO, PALMDALE, PIUTE, PSTRIA, PURIFY, QUARTZHL, RECTOR, REDMAN, RITE AID, RITTER, ROCKAIR, ROSAMOND, S.CLARA, SAUGUS, SHUTTLE, SPRINGVL, TORTOISE, VESTAL, WESTPAC, and WILSONA.

“Bid” shall have the meaning in the CAISO Tariff.

“Bundled Service Customer” means a customer of Buyer as a utility distribution company who takes bundled services from Buyer as a utility distribution company including having all its power requirements purchased by Buyer.

“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.

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

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

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

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

“Capacity Baseline” means ~~the~~ CAISO baseline as applicable to the PDR(s) ~~or RDRR(s)~~ in the DRAM Resource, as specified in the CAISO Tariff and approved by the CPUC for retail settlement purposes in the DRAM, and as limited by the following: (i) a day matching customer load ten-in-ten baseline with a 20 percent (20%) cap; (ii) a weather matching baseline with a 40 percent (40%) cap; (iii) the use of control groups; and (iv) a five-in-ten baseline for residential customers, with a 40 percent (40%) cap, as utilized for the calculation of Qualifying Capacity and

Demonstrated Capacity, and for CAISO settlements, in accordance with Section 1.6 of this Agreement.

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

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

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

“Claiming Party” has the meaning set forth in Article 14.

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

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

“Contract Price” means the price for each type of Product as specified in Exhibit E for each Showing Month.

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

“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 both Parties, including without limitation terms and conditions related to cost recovery and cost allocation of amounts paid to Seller under the Agreement; (ii) does not contain conditions or modifications unacceptable to both Parties; and (iii) finds that any procurement pursuant to this Agreement satisfies the requirement to procure preferred resources under Commission Decision 13-02-015.

“CPUC Decisions” means Commission Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-031, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 09-12-053, 10-06-036, 10-12-038, 11-06-022, 11-10-003, 12-06-025, 13-02-006, 13-04-013, 13-06-024, 14-03-026, 14-06-050, 14-12-024, 15-02-007, 15-06-063, 19-07-009, 19-06-026 and any other existing or subsequent decisions, resolutions, or rulings related to resource adequacy, including, without limitation, the CPUC Filing Guide, in each case as may be amended from time to time by the CPUC.

“CPUC Filing Guide” is the 20172019 annual document issued by the Commission which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the Commission’s resource adequacy program.

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

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

“Customer Data Access Systems” has the meaning described in CPUC Decision 13-09-025.

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

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

“DC Dispatch” means a Dispatch of a PDR in the DRAM Resource in the CAISO market, in accordance with the CAISO Tariff, for a duration of (i) one (1) hour within the Availability Assessment Hours for all Showing Months except the Showing Month of August) or (ii) two (2) consecutive hours within the Availability Assessment Hours for the Showing Month of August; provided that, such two (2) consecutive hour requirement may be satisfied by a combination of a DC Dispatch and a DC Test.

“DC-QC Ratio” has the meaning set forth in Section 4.1.

“DC Test” means a capacity test of a PDR in the DRAM Resource for one hundred percent (100%) of such PDR’s Qualifying Capacity for the applicable Showing Month (where such Qualifying Capacity has been submitted in Seller’s Supply Plan for that Showing Month), with a duration of at least two (2) consecutive Availability Assessment Hours, conducted by the Seller’s SC during the applicable Showing Month, in accordance with the CAISO Tariff and D.14-06-050, Appendix B.

“Defaulting Party” has the meaning set forth in Section 9.1.

“Delivered Capacity Payment” has the meaning described in and is calculated pursuant to Section 4.1.

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

“Demand Response Provider” or “DRP” has the meaning in the CAISO Tariff.

“Demonstrated Capacity” has the meaning set forth in Section 1.6(a).

“Dispatch” means the act of reducing all or a portion of the electrical consumption of the PDR pursuant to a Dispatch Instruction.

“Dispatch Instruction” has the meaning in the CAISO Tariff.

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

“Distributed Energy Resource Aggregation” has the meaning in the CAISO Tariff.

“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.

“DRAM ~~IV~~ Pilot Program” means the program during ~~2019~~[Year] for the Product as described in CPUC D.14-12-024 and D.17-10-017.

“DRAM Resource” means the sum of the PDR(s) ~~or~~ RDRR(s) that Seller identifies pursuant to Section 1.4 that will provide Product to Buyer.

“DRAM Resource Customer” is a Bundled Service Customer and/or Unbundled Service Customer account at the Service Account Identification level that is included in the DRAM Resource.

“Early Termination Date” has the meaning set forth in Section 9.2(a).

“EFC” shall mean Effective Flexible Capacity as defined in the CAISO Tariff.

“Event of Default” has the meaning set forth in Section 9.1.

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

“Executive(s)” has the meaning set forth in Section 10.2.

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

“Financial Consolidation Requirement” has the meaning set forth in Section 5.7(a).

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

“Flexible Capacity” means any and all flexible resource adequacy attributes associated with the PDR(s) ~~or RDRRs~~ designated by Seller pursuant to Section 1.4, as such attributes may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction, that can be counted toward Flexible RAR, and which may be (i) exclusive of Local Capacity and (ii) be in Flexible Category 1 (base flexibility), 2 (peak flexibility) or 3 (super-peak flexibility) as described in the CAISO Tariff.

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

“Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under this Agreement, which event or circumstance was not anticipated as of the

Execution Date, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer's markets; (ii) Buyer's inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller's supply; (iv) Seller's ability to sell the Product at a greater price; (v) a failure of performance of any other entity that is not a Party, except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure event; or (vi) breakage or malfunction of equipment, except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure event.

~~“Full Dispatch” means a dispatch of a PDR or RDRR of the DRAM Resource in the CAISO market for 100% of the associated monthly capacity, as submitted in a Seller's Supply Plan for that Showing Month.~~

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

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

“IFRS” means the International Financial Reporting Standards.

“Initial Negotiation End Date” has the meaning set forth in Section 10.2.

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

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

“JAMS” has the meaning set forth in Article 10.

“Joint Resource” means respectively a PDR ~~or RDRR~~ which includes DRAM Resource Customers registered by the Seller (or its DRP) and other customers registered by another aggregator (or its DRP) who are not considered part of the respective PDR ~~or RDRR~~ for purposes of meeting Seller's obligations under this Agreement.

“LA Basin LCA Substations” means the following substations located in the CAISO area: ALMITOSW, AMERON, BANNING, BARRE, BOTTLE, CABAZON, CARODEAN, CENTER, CHEVMAIN, CHINO, CONCHO, DELAMO, DEVERS, EAGLOCK, EISENHOW, EL CASCO, EL NIDO, ELLIS, ETIWANDA, FARREL, GARNET, GOODRICH, GOULD, HI DESER, HINSON, IEEC-G1, IEEC-G2, INDIAN W, JOHANNA, LA FRESA,

LAGUBELL, LCIENEGA, LITEHIPE, LTHRNECK, LWIS ANM, MARASCHI, MESA CAL, MIRALOMA, OLINDA, PADUA, RIOHONDO, SANBRDNO, SANTA RO, SANTIAGO, SONG2XR1, SONG2XR2, SONG2XU1, SONG2XU2, SONG3XR1, SONG3XR2, SONG3XU1, SONG3XU2, TAMARISK, THORNHIL, VALLEY-S, VALLEYS, VIEJO66, VILLA PK, VSTA, WALNUT, WINTEC8, WINTECX1, WINTECX2, YUCCA, and ZANJA.

“LCA Customers” means a Customer that either (i) directly takes or receives electricity services from Buyer’s LCA or (ii) directly takes or receives electricity services from a lower voltage substation that electrically connects to Buyer’s LCA.

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

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

“Local Capacity” means any and all resource adequacy attributes or other locational attributes associated with the PDR(s) ~~or RDRRs~~ designated by Seller and comprised of LCA Customers pursuant to Section 1.4, from a Local Capacity Resource (as defined in CAISO Tariff) in Buyer’s Local Capacity Area, as applicable and as such attributes may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction, that can be counted toward Local RAR, which may be exclusive of any Flexible Capacity, as applicable to the Product.

“Local Capacity Area” or “LCA” means the areas where LCA Customers are electrically interconnected to any of the LA Basin LCA Substations and/or the Big Creek/Ventura LCA Substations.

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

“LSE” means load-serving entity.

[“Manager” has the meaning set forth in Section 10.2.](#)

“Mediator” has the meaning set forth in Section ~~10.2~~10.3.

“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.

“Monthly Quantity” means the aggregate amount of all Product Monthly Quantities set forth in Exhibit E that Seller has agreed to provide to Buyer from the DRAM Resource for each day of the respective Showing Months for the respective types of Product.

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

“Must-Offer Obligation” or “MOO” means Seller’s obligation to Bid or cause Seller’s SC to Bid the DRAM Resource into the CAISO Markets based on the type of Product and in accordance with the CAISO Tariff.

“NQC” shall mean Net Qualifying Capacity as defined in the CAISO Tariff.

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

“Non-Competitive Behavior” means bidding behavior providing clear evidence of market manipulation or collusion.

“Non-Defaulting Party” has the meaning set forth in Section 9.2.

“Notice” means notices, requests, statements or payments provided in accordance with Article 8.

[“Partial Dispatch” has the meaning set forth in Section 1.6\(a\).](#)

“Performance Assurance” has the meaning set forth in Section 5.1(a). Performance Assurance must be in the form of Cash or Letter of Credit. Any Cash received and held by Buyer after drawing on any Letter of Credit will constitute Performance Assurance in the form of Cash.

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

“Procurement Review Group” has the meaning set forth in Article 13.

“Product” means either System Capacity ~~(PDR or RDRR)~~, Local Capacity ~~(PDR or RDRR)~~ and/or Flexible Capacity ~~(PDR)~~. The particular type of Product sold by Seller to Buyer under this Agreement is specified in Table 1.1(b). Buyer and Seller will have separate contracts for separate products and will combine multiple awards of the same product into one contract at a weighted average price.

“Prohibited Resource” means a distributed generation technology using diesel, natural gas, gasoline, propane, or liquefied petroleum gas, in topping cycle Combined Heat and Power (CHP) or non-CHP configuration. The following resources are exempt: pressure reduction turbines and waste-heat-to-power bottoming cycle CHP, resources using renewable fuels (i.e., renewable gas, renewable diesel, and biodiesel) that have received certification from the California Air Resources Board, as well as energy storage and storage resources not coupled with renewable generation that meet the relevant greenhouse gas emissions standards adopted for the Self-Generation Incentive Program ~~fossil fueled resources~~.

“Proxy Demand Resource” or “PDR” has the meaning in the CAISO Tariff.

“Product Monthly Quantity” means the respective amount of each type of Product set forth in Exhibit E that Seller has agreed to provide to Buyer from the DRAM Resource for each day of the respective Showing Months.

“QC Implementation Guidelines” has the meaning set forth in Section 3.1(b).

“Qualifying Capacity” means the load reduction for each PDR in the DRAM Resource, calculated utilizing the Capacity Baseline, consistent with the QC Implementation Guidelines, the CPUC Decisions and the CAISO Tariff.

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

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

~~“Reliability Demand Response Resource” or “RDRR Referral Date”~~ has the meaning set forth in the CAISO Tariff Section 10.2.

“Resource Adequacy” and “Resource Adequacy Benefits” ~~has~~ have the ~~meaning~~ meanings set forth in the CPUC Decisions.

“Resource ID” has the meaning in the CAISO Tariff.

“Residential Customer” means a DRAM Resource Customer which is a Single Family or Multi-Family Dwelling customer on a Domestic rate, including RV Parks, Residential Hotels, and Mobile Home Parks and includes electric vehicle charging for customers on Domestic Rate if separately metered, as such capitalized terms are defined in Rule 1.

“Residential Customer Product” means Product that is comprised solely of Residential Customers and Small Commercial Customers; *provided* that the percentage of Residential Customers in the PDR(s) constituting the DRAM Resource is equal to or greater than ninety percent (90%). Where multiple PDRs, or portions thereof, are used to meet Seller’s Demonstrated Capacity obligations, the percentage requirements apply in the aggregate, based on the total number of PDR Customer service accounts in the DRAM Resource used to show Demonstrated Capacity.

“Revenue Quality Meter Data” means Interval Meter Data that has been validated, edited, and estimated in accordance with the Direct Access Standards for Metering and Meter Data as described in Rule 22.

“Rule 24” means Direct Participation Demand Response:
https://www.sce.com/NR/sc3/tm2/pdf/Rule_24.pdf.

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

“SAID” or “Service Account Identification” means a Buyer specific identifier or number for tracking energy service deliveries for a specific load through one or more meters at a customer premises or location as described in Rule 1.

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

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

“Settlement Amount” means the sum of the estimated Delivered Capacity Payments for all of the remaining ~~months~~ Showing Months of the original Delivery Period as in effect prior to such early termination, including the current ~~month~~ Showing Month if not invoiced pursuant to Section 4.2, as of the Early Termination Date, with such estimated Delivered Capacity Payments being based on the sum of the applicable Product Monthly Quantity times the applicable Contract Price for each type of Product.

“Shortfall Capacity” means the amount of capacity with respect to the Product Monthly Quantity for a type of Product for any portion of a Showing Month which was shown by Buyer in its Compliance Showing that CAISO determines requires outage replacement in accordance with Section 40.7 of the CAISO Tariff.

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

“Small Commercial Customer” means a DRAM Resource Customer which is a non-residential customers with monthly maximum demand of 20 kW or less, including agricultural/pumping customers (PA-1, PA-2, TOU-PA-2 rates) and TOU-EV3, service to electric charging facilities with monthly maximum demand of 20 kW or less. Excludes customers on rate schedules for fixed usage and unmetered service (Schedules LS-1, LS-2, OL-1, TC-1, Wi-Fi-1, and WTR).

“Successor” means any successor accounting practices to GAAP or IFRS.

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

“System Capacity” means system Resource Adequacy Benefits associated with the PDR(s) ~~or RDRs~~ designated by Seller pursuant to Section 1.4, as such attributes may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction, that can be counted toward RAR, which may be exclusive of any Local Capacity and Flexible Capacity as indicated on Table 1.1(b).

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

“Termination Payment” means the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement, which shall include the Settlement Amount, less any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date. If Buyer is the Non-Defaulting Party and reasonably expect to incur penalties, fines or costs from the CPUC, the CAISO, or any other Governmental Body, then Buyer may estimate the of those penalties or fines and include them in the Termination Payment amount.

“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.

“Unbundled Service Customer” means a retail customer of the Buyer acting as a utility distribution company, who takes and receives its electrical power requirements from a different Load Serving Entity that is not the Buyer, pursuant to CPUC Rule 22 Direct Access or Rule 23 Community Choice Service.

EXHIBIT B

Form of Letter of Credit

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT

Bank Reference Number: _____

Issuance Date:

~~Transaction Date:~~ _____

Issuing Bank:

[insert bank name and address]

Applicant:

[insert applicant name and address]

BENEFICIARY:

Southern California Edison Company
2244 Walnut Grove Avenue

~~Risk Control~~ GO# 1, Quad ~~1D~~2A

Rosemead, CA 91770

Attn: Manager of Risk Operations and Collateral Management

Available Amount: [insert amount and spell out]

Expiration Date: [insert date]

Ladies and Gentlemen:

_____ (the "Bank") hereby establishes this Irrevocable Nontransferable Standby Letter of Credit ("Letter of Credit") in favor of Southern California Edison Company, a California corporation (the "Beneficiary"), for the account of _____, a _____ corporation, also known as ID# _____ (the "Applicant"), for the amount ~~of XXX AND XX/100 Dollars (\$ _____)~~ stated above (the "Available Amount"), effective immediately ~~and expiring at 5:00 p.m., California time, on _____~~ (the "Expiration Date").

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

For the ~~purposes~~ purpose hereof, "Business Day" shall mean any day other than:

1. A Saturday or a Sunday.
2. A day on which ~~commercial banks are not authorized or required to close~~ banking institutions in the city of Los Angeles, California, are required or authorized by Law to remain closed, or
3. A day on which the payment system of the Federal Reserve System is not operational.

It is a condition of this Letter of Credit that the Expiration Date shall be automatically extended without amendment for one (1) year from the Expiration Date hereof or any future Expiration Date unless at least sixty (60) days prior to such Expiration Date, we send notice to you by certified mail or hand delivered courier, at the address stated below, that we elect not to extend this Letter of Credit for any such additional period.

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

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

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

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

Drawings may also be presented by facsimile transmission ("Fax") to fax number [insert number] under telephone pre-advice to [insert number] or alternatively to [insert number]; provided that such Fax presentation is received on or before the Expiration Date on this instrument in accordance with the terms and conditions of this Letter of Credit. It is understood that any such Fax presentation shall be considered the sole operative instrument of drawing. In the event of presentation by Fax, the original documents should not also be presented.

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

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

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

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

Banking charges shall be the sole responsibility of the Applicant.

This Letter of Credit sets forth in full our obligations and such obligations shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the attachment referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such attachment. Except in the case of an increase in the Available Amount or extension of the Expiration Date, this Letter of Credit may not be amended or modified without the Beneficiary's prior written consent.

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

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

AUTHORIZED SIGNATURE for ~~Issuer~~Bank

€

By _____

Name): [print name] _____

Title: [print title] _____

ATTACHMENT A

~~TO ISSUING BANK NAME~~

~~IRREVOCABLE NON TRANSFERABLE STANDBY LETTER OF CREDIT~~

No. _____

DRAWING CERTIFICATE

~~Bank~~

~~Bank Address~~

~~Subject: _____ Irrevocable Non transferable Standby Letter of Credit~~

~~_____ Reference Number _____~~

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

TO [ISSUING BANK NAME & ADDRESS]

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT

REFERENCE NUMBER: _____

DATE: _____

1. The *[insert Beneficiary]* is entitled to draw name (the "Beneficiary"), demands Issuing Bank Name (the "Bank") payment to the order of the Beneficiary the amount of U.S. \$ _____

(U.S. Dollars), drawn under the Letter of Credit ~~an amount equal to \$—~~referenced above (the ‘Letter of Credit’), 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/insert counterparty name/ or its successor (the ‘Counterparty’) and Beneficiary, dated as of [Date of Execution] (the ‘Agreement’) with respect to the Applicant/Counterparty has occurred and is continuing.

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

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

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

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

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

- ~~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 Certificate has been duly executed and delivered on behalf of the Beneficiary by its authorized representative as of this day of , .~~

Authorized Signature for Beneficiary:
~~CALIFORNIA EDISON COMPANY~~

~~SOUTHERN~~

[insert Beneficiary name]

By:

Name: [print name]

Title: [print title]

ATTACHMENT B

SIGHT DRAFT

[INSERT DATE]

TO:
[ISSUING BANK NAME & ADDRESS]

PAY AT SIGHT TO THE ORDER OF [INSERT BENEFICIARY NAME] (THE
'BENEFICIARY') THE AMOUNT OF USD [INSERT AMOUNT] DRAWN UNDER
[ISSUING BANK NAME] IRREVOCABLE NON-TRANSFERABLE STANDBY
LETTER OF CREDIT NUMBER [INSERT NUMBER] ISSUED ON [INSERT DATE].

FUNDS PAID PURSUANT TO THE PROVISIONS OF THE LETTER OF CREDIT
SHALL BE WIRE TRANSFERRED TO THE BENEFICIARY IN ACCORDANCE WITH
THE FOLLOWING INSTRUCTIONS:

[INSERT WIRING INSTRUCTION]

AUTHORIZED SIGNATURE

[INSERT BENEFICIARY NAME]

NAME: [PRINT NAME]

TITLE: [PRINT TITLE]

Form of Notice of Demonstrated Capacity

EXHIBIT C2 - Notice of Demonstrated Capacity (EFC)

For use with Flexible Capacity Product

Demand Response Auction Mechanism (DRAM)

Showing Month: _____
 Seller: _____
 Seller Contact Name: _____
 Seller Contact Phone: _____
 SOD: _____
 Local Capacity Area (LCA): _____ (mark "N/A" if not a Local Capacity product)

Total "Monthly Quantity" (MW): _____
 Total "Demonstrated Capacity" (MW): 0.00 MW
 Total "Residential Product" (MW): _____
 Therefore, in Delivered Capacity Payment formula, "B" = 0.00 MW and "D" = _____

PDRs in the DRAM Resource	CAISO Resource ID	Assigned EFC Category (MW)	Flexible Category (1, 2, or 3)	Capacity Test		Must Offer Obligation (MOO)		Dispatch Results ¹		Joint Resource Adjustment (MW)	Prohibited Resources Adjustment	Product Delivery		Local Capacity Product Delivery		
				Average hourly load reduction across two consecutive hours during showing month by Seller's SC during Showing Month	Average capacity amount Seller bid into CAISO during Showing Month	Raw Demonstrated Capacity	Locales of Assigned EFC or Row Demonstrated Capacity	Average hourly load reduction resulting from Dispatch during Showing Month	Raw Demonstrated Capacity			Locales of Assigned EFC or Row Demonstrated Capacity	Joint Resource? (Y/N/A)		MW Claimed (Y/N/A)	Net MW Claimed (MW)
		0.00 MW		0.00 MW	0.00 MW	0.00 MW	0.00 MW	0.00 MW	0.00 MW			0.00 MW	0	0	0	0
Demonstrated Capacity ==>																
IMPORTANT NOTES:																
1) "Monthly Quantity" is from the quantity & pricing table in Exhibit E.																
2) In case of a Joint Resource, report full PDR EFC here.																
3) If using a Joint Resource, report Service Account information (count) only for the portion used.																
4) Each separate resource must be bid in the CAISO market. Only include results during the CAISO Availability Assessment Hours (AAH).																
5) Show the calculated using the same PDR Capacity Baseline used for Month Ahead Supply Plan.																
6) Only include bids submitted in compliance with the CAISO AAH.																
7) Eligible Dispatch requires that the PDR provided load reduction in the same PDR Capacity Baseline used for Month Ahead Supply Plan and CAISO Settlement Baseline.																
8) Show the calculated using the same PDR Capacity Baseline used for Month Ahead Supply Plan and CAISO Settlement Baseline.																
9) For Joint PDRs, MW Claimed is a portion of MW Demonstrated.																
10) For PDRs that are not Joint Resources, MW Claimed is MW Demonstrated (Column F, H or J) adjustment, if any.																
11) Per proforma Section 7.2(b), provide the DAY adjustment, if any.																
12) Percent Residential Accounts																

The information provided by Seller in this Notice of Demonstrated Capacity is required by Section 18 of the DRAM Resource Purchase Agreement with Incent (DRAM RA).

1) Each separate resource must be bid in the CAISO market. Only include results during the CAISO Availability Assessment Hours (AAH).

2) Show the calculated using the same PDR Capacity Baseline used for Month Ahead Supply Plan.

3) Only include bids submitted in compliance with the CAISO AAH.

4) Eligible Dispatch requires that the PDR provided load reduction in the same PDR Capacity Baseline used for Month Ahead Supply Plan and CAISO Settlement Baseline.

5) For Joint PDRs, MW Claimed is a portion of MW Demonstrated.

6) Per proforma Section 7.2(b), provide the DAY adjustment, if any.

7) Percent Residential Accounts

**EXHIBIT E
PRODUCT MONTHLY QUANTITY
AND
CORRESPONDING CONTRACT PRICE**

Showing Month		
	Product [Insert]	2019[Year]
	Monthly Quantity (kW for each day of Showing Month)	Contract Price (\$/kW-month)
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		

[Parties to complete one table for each type of Product indicated in Table 1.1(b) and accepted bid information.]

EXHIBIT F
IMPLEMENTATION GUIDELINES FOR QUALIFYING CAPACITY
(D.19-07-009 Appendix A)

- A. Sellers should provide the following details to the Utility for demand response resources being offered, with the auction capacity bid submission no later than 15 calendar days before the year-ahead filings and monthly Supply Plans are due for the Seller:
1. Customer class (or percent of mix): Residential, Non-residential
 2. Nature of load being aggregated: such as, whole house, Air Conditioning load, storage, building load, pumps, Electric Vehicles, or other (describe)
 3. Dispatch method: automated via cloud control, or other (describe)
 4. Projected number of Service Accounts
 5. Projected aggregated load (if storage based, projected aggregated capacity)
 6. Projected percentage of load impact or reduction (if storage based, projected percentage of capacity delivered)
 7. Supporting historical performance data for A.6 (from a prior test or market dispatch for a demand response resource with similar characteristics as A.1, A.2, and A.3). Where historical data is not available, the Provider should reference suitable publicly available performance data that best represents the anticipated performance of the resource. Along with the supporting performance data, the following details for the resource associated with the supporting performance data should be provided to establish similar characteristics:
 - a. Customer class (or percentage mix): Residential, Non-residential
 - b. Nature of load being aggregated: such as, whole house, Air Conditioning load, storage, building load, pumps, Electric Vehicles, or other (describe)
 - c. Dispatch method: automated via cloud control, or other (describe)
 - d. Number of Service Accounts
 - e. Aggregated load (if storage based, aggregated capacity)
 - f. Percentage of load impact or reduction delivered (if storage based, percentage of capacity delivered.)
 8. Estimated Qualifying Capacity = A.5 x A.6
- B. Qualifying Capacity estimates should be provided for the resource adequacy measurement hours and are expected to align with the CAISO Availability Assessment Hours.
- C. The same baseline must be used for estimation of Qualifying Capacity at different stages of the contract.
- D. To the extent the projected percentage load impact for capacity delivered in A.6 deviates from the supporting data in A.7, the Provider should provide supplemental information to explain the reasonableness of the resulting "Estimated Qualifying Capacity" provided in A.8.

EXHIBIT F (Cont'd)

- E. To the extent the contract/ resource consists of heterogenous combination of load types (in terms of A.1 through A.3 characteristics), the Provider could subdivide the contract/resource and provide the above information for each component and apply a weighted average to estimate Qualifying Capacity in A.8.
- F. For auction bid submissions and the year-ahead resource adequacy filing, it is sufficient to provide the above information for the month with the highest megawatts. For monthly resource adequacy Supply Plan submissions, the above information should correspond to the actual delivery month.
- G. At the auction bid submissions and the year-ahead resource adequacy filing, it is sufficient to provide the above information at the contract level. For monthly resource adequacy Supply Plan submissions, the above information must be provided at the resource level.

EXHIBIT G
ESTIMATE OF QUALIFYING CAPACITY
(D.19-07-009 Appendix A)

1. Customer class (or percent of mix):
 - a. Residential
 - b. Non-residential
2. Nature of load being aggregated:
 - a. whole house
 - b. Air Conditioning load
 - c. storage, building load
 - d. pumps
 - e. Electric Vehicles
 - f. other (describe)
3. Dispatch method:
 - a. automated via cloud control
 - b. other (describe)
4. Projected number of Service Accounts
5. Projected aggregated load (if storage based, projected aggregated capacity)
6. Projected percentage of load impact or reduction (if storage based, projected percentage of capacity delivered) *
7. Estimated Qualifying Capacity = Item 5 x Item 6

* Attach supporting historical performance data for Item 6 (from a prior test or market dispatch for a demand response resource with similar characteristics as Items 1, 2 and 3). Where historical data is not available, Seller should reference suitable publicly available performance data that best represents the anticipated performance of the resource. Along with the supporting performance data, the following details for the resource associated with the supporting performance data should be provided to establish similar characteristics:

- a. Customer class (or percentage mix): Residential, Non-residential
- b. Nature of load being aggregated: such as, whole house, Air Conditioning load, storage, building load, pumps, Electric Vehicles, or other (describe)
- c. Dispatch method: automated via cloud control, or other (describe)
- d. Number of Service Accounts
- e. Aggregated load (if storage based, aggregated capacity)
- f. Percentage of load impact or reduction delivered (if storage based, percentage of capacity delivered.)

Document comparison by Workshare 10.0 on Friday, August 9, 2019 9:56:36 AM

Input:	
Document 1 ID	file://C:\Users\needhacs\Desktop\Attachment J [Public] SCE DRAM 2019 Pro Forma Purchase Agreement (original).docx
Description	Attachment J [Public] SCE DRAM 2019 Pro Forma Purchase Agreement (original)
Document 2 ID	file://C:\Users\needhacs\Desktop\SCE DRAM 2020 Pro Forma Purchase Agreement (8-9-19 clean).docx
Description	SCE DRAM 2020 Pro Forma Purchase Agreement (8-9-19 clean)
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	

Padding cell	
--------------	--

Statistics:	
	Count
Insertions	497
Deletions	381
Moved from	8
Moved to	8
Style change	0
Format changed	0
Total changes	894

Attachment C

**Letter to CPUC requesting correction
of obvious errors in D.19-07-009,
pursuant to Rule 16.5**

August 9, 2019

Alice Stebbins, Executive Director
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: Decision (D.) 19-07-009; Request of Southern California Edison Company, Pursuant to Rule 16.5, Correction of Obvious Errors

Dear Executive Director Stebbins:

Pursuant to Rule 16.5¹ of the Commission's Rules of Practice and Procedure, Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E) (collectively, the IOUs) request the correction of obvious errors in D.19-07-009 (the Decision).² Olivine, Inc., the California Efficiency + Demand Management Council, CPower, Inc., Enel X North America, Inc., and OhmConnect, Inc. also indicated their support for the corrections of these obvious errors contained within this notice.³

On July 12, 2019, the Commission issued its *Decision Addressing Auction Mechanism, Baselines, and Auto Demand Response for Battery Storage*, in A.17-01-012 *et al* (the Decision). The Decision, D.19-07-009, includes obvious errors that are revealed by versions of the red-lined Revised Proposed Decision which were not carried through from the Decision's dicta to the final issued version, and specifically, Appendix A, Implementation Guidelines for Qualifying Capacity and Appendix B, Implementation Guidelines for Demonstrated Capacity Invoicing. Pursuant to Rule 16.5, SCE also provides corrections to other obvious errors within the Ordering Paragraphs and dicta.

Obvious Errors in Appendix A

Ordering Paragraph 7 requires Demand Response Providers (DRPs) to provide estimates of Qualifying Capacity for resources by "complying with the guidance provided in Appendix A."

¹ Rule 16.5 provides that correction of obvious errors and omissions may be requested by letter to the Executive Director. *See also* Res. A-4661 (authorizing the Executive Director "to sign on behalf of the Commission, orders involving the correction of typographical and clerical errors, and other obvious, inadvertent errors and omissions in the decisions and orders of the Commission.").

² Pursuant to Rule 1.8(d), PG&E and SDG&E have authorized SCE to submit this Rule 16.5 letter on their behalf.

³ By signing on to this letter, these parties agree only that there are corrections to obvious errors between the dicta of the Decision and the final orders or the Appendices. However, that agreement is limited in that manner, and parties reserve the right to seek clarification or modification of the Decision's orders, even as revised, by a formal petition for modification.

It is clear the Decision intends to have DRPs follow Appendix A and yet, not all of the guidance provided within the Decision has been carried through to Appendix A.

First, on page 53 of the Decision, the Commission indicates:

We agree that additional time may be needed by the Utilities for review and analysis in light of the new Qualifying Capacity supporting data submission requirements described in this decision. Accordingly, we require Auction Mechanism Sellers to submit their Qualifying Capacity estimates and supporting data 10 business days before the year-ahead filing and monthly Supply Plans are due for the Sellers.⁴

To be consistent with the intent and direction provided within the Decision, SCE recommends that Appendix A be corrected as follows:

- A. Sellers should provide details to the Utility for demand response resources being offered, with the auction capacity bid submission, **and** no later than ~~15 calendar~~ **10 business days** before the year-ahead filings and monthly Supply Plans are due for the Seller.

Second, on page 54 of the Decision, the Commission indicates:

Based on party comments on the proposed decision, we provide additional clarifications to the guidelines in Appendix A and summarize them here.

- the Sellers must include the breakdown of the “active & registered number of Service Accounts” within the total projected service account numbers in their Qualifying Capacity submissions to the Utilities.

To be consistent with the intent and direction provided within the Decision, SCE recommends that Appendix A be corrected as follows:

- A.4. Total Projected number of Service Accounts with a breakdown of “active and registered” and “forecasted (not yet active and registered)” Service Accounts
- A.7.d. Number of Service Accounts

And **third**, within Appendix A, and specifically in Section G, the Commission recognized that *resource level* information would not be available during the solicitation stage of the Auction and the Year-Ahead Filing of Sellers’ Supply Plans: “at the auction bid submissions and the year-ahead resource adequacy filing, it is sufficient to provide the above information at the *contract level*.” (emphasis added). Section G further reveals the Commission’s understanding that DRPs would only have *resource level* information available at the *monthly* resource adequacy Supply Plan submission.

The DRAM parties participating in the Commission-directed workshops discussed Appendix A extensively on July 24, 2019, and all parties determined that correction was warranted to Section C

⁴ D.19-07-009, p. 53.

in order to align with what was operationally feasible for DRPs and consistent with the intent and guidance provided on page 54 of the Decision and Section G.

Specifically, all parties agreed that baseline methodologies can only be applied at the *resource level*, so requiring the use of specific baseline methodologies at bid submission and year-ahead filings, which may be done at a contract level, is an obvious error. This agreement of the needed correction is also supported by the CAISO Tariff,⁵ which describes the FERC approved methodologies for calculating Customer Load Baselines and Demand Response Energy Measurements.

In addition, item 6 of Appendix B of the Decision requires the baseline method used for energy settlement at the CAISO to be the same as the baseline method used to invoice Demonstrated Capacity. For clarity, that requirement that the same baseline method be used for energy settlement at the CAISO and to invoice Demonstrated Capacity should be repeated in Appendix A to ensure the Decision is consistent. Therefore, SCE recommends the following corrections:

- C. **The same baseline must be used for estimation of Qualifying Capacity for the monthly supply plan submission, the energy settlement at the CAISO, at different stages of the contract and invoicing of Demonstrated Capacity for the applicable month.**

Obvious Errors in Appendix B

Beginning with the 2019 Demand Response Auction Mechanism solicitation, Ordering Paragraph 11 requires the DRPs to “establish Demonstrated Capacity on monthly invoices by following the guidelines in Appendix B of this decision.”

On page 66 of the Decision, the Commission noted:

Accordingly, we require, for each resource ID, Demonstrated Capacity invoices based on market dispatches or capacity test events in 50 percent of the contracted months (rounded downward in case of a contract involving an odd number of months)

Rounding downward would result in less than 50 percent of the contracted months when a contract involves an odd number of months and therefore, to be consistent with the intent and direction provided within the Decision, SCE recommends that Appendix B be corrected as follows:

1. **Demonstrated Capacity invoice for an Auction Mechanism resource for at least 50 percent of the contracted months (rounded downward in case of a contract involving an odd number of months) during the contract term must be based on a capacity test or market dispatch. In the event of an odd number of months in the contract term, the 50 percent minimum requirement may be rounded downward.**

⁵ Attachment A, Energy Storage and Distributed Energy Resources Enhancements Phase 2, Section 4.13.4.

In Section 3.7.3 “Calculating Demonstrated Capacity on Invoices,” the Decision states:

Accordingly, we add the requirements that the August dispatch must involve a full resource dispatch for at least two consecutive hours, with the invoiced capacity reflecting the average performance over the two hours.⁶

During the DRAM Workshop on July 24, 2019, participants discussed the requirements of Appendix B and a desire to have Appendix B reflect the guidance within the Decision. To be consistent with the intent and direction provided at page 67 of the Decision, SCE recommends the following correction be made in Appendix B as follows.

3. The current order of Demonstrated Capacity on invoices is maintained as follows:
1) If there is a full market one-hour dispatch of a resource in a month, **except for August where a 2-hour dispatch is required**, the results must be used for demonstrated capacity; 2) If there is a two-hour test of a resources in a month, the results must be used for demonstrated capacity; and 3) Only if there is no dispatch or test of a resource in a month can the bidding detail for a resource under the Must-Offer-Obligation be used to demonstrate capacity.

In Section 3.7.4 of the Decision, the Commission noted “the final immediate critical improvement for Step One is to establish invoice deadlines.”⁷ With a goal to “improve visibility of performance and, therefore, reliability of the resources,”⁸ the Commission determined:

Once Seller receives 95 percent of Revenue Quality Meter Data for a resource’s dispatch event, the due date for Demonstrated Capacity invoice is no later than 30 days after receiving the meter data.⁹

Ordering Paragraph 10 further provides a payment structure that indicates that submission of an invoice with Demonstrated Capacity of **less than** 50 percent of Qualifying Capacity results in a zero payment (“forfeiture”) to the Seller. Ordering Paragraph 10 also provides that submission of an invoice with Demonstrated Capacity equal to **exactly** 50 percent of Qualifying Capacity results in a reduced payment (“de-rate”) for such Demonstrated Capacity.¹⁰

During the DRAM Workshop on July 24, 2019, participants discussed invoice deadlines and consequences for failure to submit invoices. The parties agreed that the intent of the Decision was to treat failure to invoice as submission of an invoice that would result in forfeiture, because it is not prudent or fair to require the IOUs to pay for un-invoiced (and likely un-delivered) product.

To be consistent with the intent and direction provided within the Decision, and the mutual agreement and understanding of the DRAM workshop participants, SCE recommends that the obvious error in Appendix B be corrected as follows:

⁶ *Id.* p. 67.

⁷ D.19-07-009, p. 69.

⁸ *Id.* p. 70

⁹ *Id.* p. 71

¹⁰ *Id.* p. 110

8. Failure to invoice Demonstrated Capacity if the Utility has provided the 95 percent Revenue Quality Meter Data for a showing month will be treated as the Provider having submitted a dispatch-based invoice with Demonstrated Capacity that is **less than 50 percent less than of** the Qualifying Capacity applicable to the showing month.

Obvious Errors in Ordering Paragraphs

In Section 3.7 of the Decision, the Commission directs four critical improvements to be adopted for the 2019 solicitation, including:

- Penalties shall be imposed for Demonstrated Capacity shortfalls for a delivery month relative to the Qualifying Capacity on the monthly resource adequacy Supply Plan; the Utility is permitted to default a Provider contract if aggregate Demonstrated Capacity falls below 50 percent for two months in a row;¹¹

Page 63 of the Decision similarly states:

Accordingly, beginning with the 2019 solicitation, Utilities are permitted (but not obligated to) put a Provider's contract in default when, for two sequential months (after excluding any intervening months with invoices based on Must Offer Obligation), the Provider has invoiced aggregated Demonstrated Capacity that is 50 percent or less than the aggregated Qualifying Capacity applicable to the showing months, provided the deficiency is not demonstrably the result of the actions or inactions of either the Utility or the CAISO.

To be consistent with the intent and direction provided within the Decision, and the mutual agreement and understanding of the DRAM workshop participants, SCE recommends the inadvertent omission of language describing the event of default for sequential failures to perform be added to Ordering Paragraph 6 to correct an obvious oversight. Specifically:

6. . . . b) Imposing a penalty structure for shortfalls in Demonstrated Capacity as further explained in Ordering Paragraph 10, **and a permitted (but not obligated) event of default for two sequential months (excluding any intervening months with invoices based on Must Offer Obligation) in which Demonstrated Capacity is less than 50 percent of Qualifying Capacity; . . .**

Obvious Errors Within the Decision Dicta

For the reasons discussed above in connection with Appendix A, Section C, page 54 of the Decision should also be corrected as follows:

The baseline utilized for estimation of Qualifying Capacity must be consistent **at different stages (solicitation, year-ahead filing, and between the monthly supply plan, the energy settlement at the CAISO, and the invoicing of Demonstrated Capacity.)**

¹¹ D.19-07-099, p. 39.

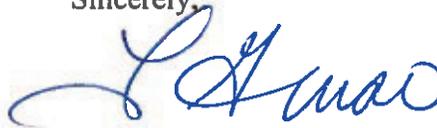
In addition, page 79 of the Decision should be corrected to address the following obvious errors which appear to be typos:

However, as we discuss below, costs and benefits are not clear. Hence, we delay implementation to the mid-cycle review in ~~2021~~ 2020, where we can complete the record. This decision also establishes a working group to discuss and recommend future options for retail demand response baseline methods. A working group report with recommendations shall be included in the Utilities' 2023-~~2028~~ 2027 demand response portfolio application. We discuss these directives in detail below.

SCE, on behalf of the IOUs, is submitting this Rule 16.5 letter in advance of the required Advice Letter submission due August 12, 2019.¹² SCE is seeking expedited approval and issuance of a Notice of Correction because the IOUs' Tier Two Advice Letter with Contract Improvements and Request for Offer Guidelines includes the above corrections.

Thank you for timely considering this request to correct obvious errors in D.19-07-009.

Sincerely,



Laura Genao
Managing Director,
SCE State Regulatory Affairs

Cc: Service List A.17-01-012, *et al.* (via electronic mail)
ALJ Kelly Hymes (via electronic mail)
ALJ Nilgun Atamturk (via electronic mail)

¹² D.19-07-009, p. 108, OP 4.

**PG&E Gas and Electric
Advice Submittal List
General Order 96-B, Section IV**

AT&T	Downey & Brand	Pioneer Community Energy
Albion Power Company	East Bay Community Energy	Praxair
Alcantar & Kahl LLP	Ellison Schneider & Harris LLP	
	Energy Management Service	
Alta Power Group, LLC	Engineers and Scientists of California	Redwood Coast Energy Authority
Anderson & Poole	Evaluation + Strategy for Social Innovation	Regulatory & Cogeneration Service, Inc.
	GenOn Energy, Inc.	SCD Energy Solutions
Atlas ReFuel	Goodin, MacBride, Squeri, Schlotz & Ritchie	
BART	Green Charge Networks	SCE
	Green Power Institute	SDG&E and SoCalGas
Barkovich & Yap, Inc.	Hanna & Morton	
P.C. CalCom Solar	ICF	SPURR
California Cotton Ginners & Growers Assn	International Power Technology	San Francisco Water Power and Sewer
California Energy Commission	Intestate Gas Services, Inc.	Seattle City Light
California Public Utilities Commission	Kelly Group	Sempra Utilities
California State Association of Counties	Ken Bohn Consulting	Southern California Edison Company
Calpine	Keyes & Fox LLP	Southern California Gas Company
	Leviton Manufacturing Co., Inc. Linde	Spark Energy
Cameron-Daniel, P.C.	Los Angeles County Integrated Waste Management Task Force	Sun Light & Power
Casner, Steve	Los Angeles Dept of Water & Power	Sunshine Design
Cenergy Power	MRW & Associates	Tecogen, Inc.
Center for Biological Diversity	Manatt Phelps Phillips	TerraVerde Renewable Partners
City of Palo Alto	Marin Energy Authority	Tiger Natural Gas, Inc.
	McKenzie & Associates	
City of San Jose	Modesto Irrigation District	TransCanada
Clean Power Research	Morgan Stanley	Troutman Sanders LLP
Coast Economic Consulting	NLine Energy, Inc.	Utility Cost Management
Commercial Energy	NRG Solar	Utility Power Solutions
County of Tehama - Department of Public Works		Utility Specialists
Crossborder Energy	Office of Ratepayer Advocates	
Crown Road Energy, LLC	OnGrid Solar	Verizon
Davis Wright Tremaine LLP	Pacific Gas and Electric Company	Water and Energy Consulting Wellhead Electric Company
Day Carter Murphy	Peninsula Clean Energy	Western Manufactured Housing Communities Association (WMA)
		Yep Energy
Dept of General Services		
Don Pickett & Associates, Inc.		
Douglass & Liddell		