

PUBLIC UTILITIES COMMISSION

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March 30, 2021

Advice Letter 5950-E & 5950-E-A

Erik Jacobson
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SUBJECT: Supplemental: San Diego Gas & Electric Company, Pacific Gas and Electric Company, and Southern California Edison Company's Supplemental Advice Letter for Demand Response Auction Mechanism Pilot Technical Refinements for 2022.

Dear Mr. Jacobson:

Advice Letter 5950-E & 5950-E-A is effective as of October 15, 2020, per resolution E-5110 Ordering Paragraphs.

Sincerely,

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

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



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September 15, 2020

Advice Letter 5950-E
(Pacific Gas and Electric Company ID U 39 E)

Advice Letter 4293-E
(Southern California Edison Company ID U 338 E)

Advice Letter 3608-E
(San Diego Gas & Electric Company ID U 902 E)

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SUBJECT: San Diego Gas & Electric Company, Pacific Gas and Electric Company, and Southern California Edison Company's Demand Response Auction Mechanism Pilot for 2022

PURPOSE

In compliance with Ordering Paragraph (OP) 29 of Decision (D.) 19-12-040, San Diego Gas & Electric Company (SDG&E) hereby submits this advice letter on behalf of Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), and itself (collectively, the Investor Owned Utilities or IOUs). The IOUs are seeking approval of the 2022 Demand Response Auction Mechanism (DRAM) Request for Offers (RFO) Pilot with an auction in 2021.

CONTENTS

- I. Background
- II. IOU Responses to DRAM Refinements Working Group Report
- III. Solicitation Protocols and Valuation Criteria
- IV. Modifications to the DRAM Contract
- V. Contract Variations Between IOUs
- VI. IOU Cost Effectiveness Proposal
- VII. Budget Authorization
- VIII. Timeline

DISCUSSION

I. Background

On September 25, 2013, the California Public Utilities Commission (Commission or CPUC) issued Order Instituting Rulemaking (R.) 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, 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 the 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 expanded 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 purchase agreement. 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 of 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 Modification (PFM) filed by Converge, Inc., CPower, EnerNOC, Inc., and EnergyHub (collectively, the “Joint DR Parties”) and OhmConnect,

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 demonstrating 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.

the Commission determined that business opportunities for demand response providers (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 was 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 was to 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 of 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 (ALJ) 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 ALJ 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 adopted 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 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

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 evaluation and recommendations 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.

The Energy Division's evaluation of the DRAM pilots was issued on 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.

The Commission issued D.19-07-009 on July 12, 2019, authorizing a two-step process with 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 improvements for the 2020 DRAM,⁸ and it authorized a working group to be convened to discuss open issues, including Refinements to Appendix A and B Guidelines on qualifying capacity and demonstrated capacity, respectively. The advice letter was subsequently approved via disposition on September 26, 2019, and the IOUs launched the 2020 DRAM RFO on October 11, 2019.

On December 23, 2019, the Commission issued D.19-12-040, which adopted certain recommendations to improve reliability and performance from a stakeholder working group report as well as other revised recommendations to the report. These refinements apply to 2021 through 2023 DRAM deliveries and addressed the remaining technical requirements and policies; in addition, D.19-12-040 also authorized an annual schedule for refinements of the DRAM.

On January 31, 2020 the IOUs submitted a joint advice letter⁹ for the 2021 DRAM Pilot with an auction in 2020.

As required by OP 29, the Energy Division led workshops on June 30, 2020, July 15, 2020 and August 3, 2020 to discuss refinements for the 2022 DRAM RFO. Final party proposals were due to the Energy Division on August 24, 2020, and the Energy Division compiled the proposals and

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. SCE submitted the advice letter addressing the associated contract improvements and RFO guidelines on behalf of the IOUs on August 12, 2019, under SCE Advice 4054-E, PG&E Advice 5615-E, and SDG&E Advice 3418-E ("Advice 5615-E et al"). The IOUs submitted a supplement to this advice letter on September 17, 2019, addressing parties' responses to the advice letter and providing edits where reasonable ("Advice 5615-E-A et al").

⁹ SDG&E AL 3503-E, PG&E AL 5746-E, SCE 4152-E ("Advice 5746-E et al"). This Joint advice letter was approved by the Commission on May 11, 2020 with an effective date of May 4, 2020.

distributed the report to the working group on September 1, 2020, for inclusion in this advice letter. The IOUs submit this advice letter to address all contract improvements and RFO guidelines.

II. IOU Responses to DRAM Refinements Working Group Report

Solicitation Modifications:

During the DRAM 2021 procurement, the IOUs adopted a prorated long-run avoided cost of generation (LRAC) to shape the annual value into twelve monthly values using the same confidential RA price forecast used in bid valuation. The IOUs agree that the prorated LRAC was an effective price screen for both annual and sub-annual bids in DRAM 2021. The IOUs also agree that the prorated LRAC methodology, alongside the existing bid valuation process, should protect ratepayers from costs associated with the obligation to sign non-competitive DRAM contracts.

Most importantly, the IOUs agree that adding additional complexity to the LRAC calculation reduces transparency for market participants. Both IOUs and DRPs have repeatedly called for increased transparency. ED's proposal, under which a "net LRAC" (calculated by deducting the LRAC from the short-term IOU-specific and confidential RA benefit) would be used as a screening floor, would introduce complexity and reduce transparency by conflating the LRAC price screen and the bid valuation process. For these reasons, and to allow time for a full evaluation of the prorated price screen used for DRAM 2021, the IOUs request that consideration of the LRAC modifications proposed by Energy Division be delayed until after the 2021 DRAM and evaluation of the application of the LRAC in that process.

Contract Modifications:

- PG&E's proposal on the consistent use of defined terms (including capitalization of defined terms) throughout the pro forma contract
 - o The IOUs agree to adopt these modifications as described below in this advice letter.
- PG&E's proposal on the use of qualifying capacity (QC) and net qualifying capacity (NQC) in demonstrated capacity (DC) invoice templates
 - o The IOUs agree to adopt these modifications as described below in this advice letter.
 - o PG&E also seeks to add clarity that the DC for each resource should be capped by the lower of its QC and NQC, in order to properly implement D.19-07-009, which states that one resource's overperformance should not compensate for underperformance by another resource.¹⁰
- PG&E's proposal on incorporation of subscription ID in the Data Issues template
 - o Energy Division's revised template incorporates this field and other modifications proposed by SCE and SDG&E. The IOUs updated the template in Exhibit D of the pro forma contract.
- PG&E's proposal on QC Estimate enhancements
 - o The IOUs agree to adopt these modifications as described below in this advice letter.
- CAISO's proposal on DRAM Must Offer Obligation (MOO)
 - o According to CAISO, under the CAISO tariff, the Must Offer Obligation, or MOO, requires a 24-hour, 7-days a week access to energy for most resources. However, that is not what is contemplated in DRAM, as demonstrated by CPUC

¹⁰ D.19-07-009, p. 61, Finding of Fact (FOF) 61, Conclusion of Law (COL) 20-21.

decisions which make clear that DRAM hours are considered specific Availability Assessment Hours, or AAH (see e.g., D.19-07-009, Appendices A and B.). The IOUs do not adopt CAISO's DRAM MOO proposal but agree to ensure the use of the MOO and AAH terms are accurate throughout the pro forma contract.

- PG&E's proposal to modify the penalty structure for shortfalls between contracted quantity (CQ) and QC
 - o The IOUs agree to adopt part of PG&E's proposal to more closely tie the Seller's performance obligations to the Monthly Contracted Quantity for each Showing Month. Specifically, the IOUs agree to (a) modify the incentive payment in Section 4.1 to be based on the ratio between the Demonstrated Capacity and the Monthly Contracted Quantity, (b) eliminate the tolerance band, and (c) update the Seller performance-related event of default in Section 9.1, consistent with the updates to Section 4.1.
- PG&E's proposal to modify the DC invoice based on average versus best performance
 - o The IOUs agree to adopt these modifications and accompanying clarifications as described below in this advice letter.
- ED's proposal to restrict customer movement in resource IDs across months
 - o The IOUs agree to adopt this proposal as described below in this advice letter. The IOUs extend the current exemptions that allow customer movements within a month to this proposal as well.
- ED's proposal to prohibit sharing resource IDs between contracts
 - o The IOUs agree to adopt this proposal by removing the Joint Resource¹¹ provisions in the pro forma contract and providing that each PDR should consist entirely of DRAM Resource Customers registered by the Seller (or its DRP).
- ED's proposal on resource ID fragmentation
 - o The IOUs agree to adopt this proposal with a modification that would allow for one resource per SubLAP to be sized below 1 MW. This modification is intended to minimize the impact on any customers that would otherwise be unable to participate in DRAM due to not being able to meet the minimum resource size requirement.
- ED's proposal on concurrent dispatch requirements for all dispatches
 - o The IOUs do not adopt this proposal as there is no concurrent dispatch requirement in the DRAM Agreement or D.19-07-009, which states: "Where multiple resource IDs within an Auction Mechanism contract are dispatched concurrently in a particular delivery month, the aggregate performance of the concurrently dispatched resource IDs may be utilized for the purpose of Demonstrated Capacity invoicing and compared with the sum of Qualifying Capacity on the monthly Supply Plan of those resource IDs. For Local resource adequacy, we clarify that the aggregation of concurrently dispatched resource IDs is only allowed for resources within the same SubLAP."¹² Further, in D.19-07-009, Appx. B, Implementation Guidelines for DC Invoicing, Item 2, states, "August dispatch must involve a full resource dispatch." If the Commission seeks to make concurrent dispatch a requirement, it should clarify and make such a

¹¹ Per the 2021 DRAM Agreement, 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 [the DRAM] Agreement.

¹² D.19-07-009, p. 61.

requirement explicit. Overall, the IOUs believe requiring concurrent dispatches in all contracted months may not align with grid needs.

- ED's proposal on DRAM resource limitation to LSE's customers
 - o The IOUs do not adopt this proposal. Stakeholders to the first iteration of the DRAM Agreement agreed to limit the contract to only customers within each IOU's territory to ensure protections for DRAM Sellers for any penalties imposed upon them by the CPUC or CAISO for an IOU's failure to provide information necessary for delivering the capacity under contract.¹³ The DRAM Agreement has been structured to impose a liability on the Buyer for its failure to provide such information and requires a Seller to aggregate only customers from the IOU's service territory. The Energy Division's proposal to allow customers of any LSE to comprise a resource does not address this liability.¹⁴ In particular, it would not be appropriate for an IOU to be liable for the provision of information where it is not the Meter Data Management Agent (MDMA) or Meter Service Provider (MSP), as such liability could not be sufficiently mitigated and therefore results in significant risk to the IOU from an entity that is not a party to this Agreement. The IOUs believe it would be a significant modification to the DRAM Agreement to eliminate this liability and modify all of the applicable sections to implement this proposal.¹⁵
- ED's proposal on the Required Energy Dispatch penalty threshold
 - o The IOUs do not adopt this proposal. As the Undelivered Energy Penalty is only assessed once at the end of the Term, the IOUs do not believe it would be administratively difficult to implement the penalty, and therefore, a penalty threshold is not necessary. The IOUs recommend that any refinements to the Minimum Energy Dispatch Requirement be held until after it has been tested during the 2021 DRAM RFO Term.

QC Assessment Modifications:

- PG&E's proposal on QC assessment refinements
 - o The IOUs agree to adopt these modifications as described below in this advice letter.

Council's Proposal:

The IOUs appreciate the hard work the DRPs and the Council put into their customer movement, or customer data transfer, proposal in the 2020 DRAM Refinement Working Group Report. However, because the proposal would require the IOUs to implement IT systems and process enhancements and possibly necessitate revisions to Rule 24/32, we note these are changes that cannot be completed in the near-term if they were needed. The IOUs believe this advice letter is not the appropriate forum for discussion and resolution. Rather, the intent of this

¹³ The IOUs may only provide such information upon the customer's authorization to release their information to the Seller. See Electric Rule 24 for PG&E and SCE and Electric Rule 32 for SDG&E for additional information.

¹⁴ The IOUs assume the Energy Division's proposal is limited to the System and Flexible with System RA products of the DRAM Agreement, as the Local RA product requires customers to be located in a specific Local Capacity Area, which would require the customer to be within the Buyer's service territory.

¹⁵ This includes, but is not limited to, Sections 1.4(a)(ii), 6.2, and Exhibit A, and references to Rule 24/32, as applicable.

Working Group process and this advice letter is to develop technical refinements for the 2022 DRAM RFO. Also, until the Commission makes the determination that DRAM is an official, permanent mechanism based in Demand Response, the changes suggested by the DRPs are not appropriate for this informal advice letter process.

The IOUs suggest a separate public discussion process to resolve the Council's proposal. Some of the technology and systemic data processing changes suggested for the IOUs by the DRPs and Council are extensive and will be expensive and time-consuming for IOUs to implement. However, it is also not clear or quantified to what extent the issue is impacting DRAM Sellers, and whether informal resolution of issues using the existing Rule 24/32 processes may be sufficient, especially when considering the costs versus benefits this proposal may have, if any, for ratepayers. In addition, the proposal is complicated by existing tariffs that would need to be modified to implement certain aspects of the Council's proposal if such changes are found to be warranted. For instance, a customer's de-enrollment from programs like the Base Interruptible Program (BIP) and the Capacity Bidding Program (CBP) may be dependent on their aggregator (which may be a different entity from the DRAM Seller) removing the customer from their aggregation before the IOUs may process the de-registration of the customer location from the CAISO, and certain schedules that limit de-enrollment to certain timeframes.

Other aspects of the Council's proposal have already been implemented or are unnecessary, such as the "standard data requirements for newly-enrolled customers." The Council suggests that there should be a standardized set of data fields "used by the IOUs when providing the data of a newly-enrolled customer. These data include Customer, DR Program Participation, Billing, and Interval Data."¹⁶ These data items are all part of the existing Rule 24/32 data sets and the way the data delivery has been designed is to allow a DRP to request any part or all of the Rule 24/32 data sets as soon as they have received customer authorization for the release. In addition, the standardized data issues intake form was deployed in May, as required by D.19-12-040, to address any missing or inaccurate data needs.

III. Solicitation Protocols and Valuation Criteria

The IOUs propose to follow the same protocols, procedures, use of an Independent Evaluator (IE), and valuation processes as used for the 2021 DRAM pilot approved via disposition on May 11, 2020, with the addition of a QC estimate guidance document for bidders.

D.19-07-009, as modified by D.19-09-041 and D.19-12-040, requires DRPs to provide estimates of qualifying capacity (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 IOUs believe an additional guidance document, as described below, supports improved clarity and consistency in a bidder's development of their QC estimate and the IOU's assessment.

The IOUs will provide the following additional guidance to bidders:

All capitalized terms not defined herein shall have the meaning set forth in the DRAM RFO Protocols and Purchase Agreement.

¹⁶ Attachment A, p. 24.

1. Bidder must provide all applicable information requested in the form per Offer, in accordance with D.19-07-009, as modified by D.19-09-041, and D.19-12-040.
 - At minimum, one row shall be filled out for each product type. For instance, all System Capacity - Residential Customer Product Offers may be combined for the purposes of the QC Assessment, but may not be combined with all System Capacity - Non-residential Customer Product Offers. Note that a Non-residential Customer Product offer may include residential customers.
 - Bidders may also elect to provide their QC Assessment estimates for the same product type per Offer, and/or by Offer customer class or technology segment.
 - Additional rows may be added to this template, but columns and formulas should not be modified.
 - Values should reflect the estimated QC for the month with the greatest megawatts (MWs).
 - Bidder must provide all applicable information requested in the form per Offer, in accordance with D.19-07-009, as modified by D.19-09-041, and D.19-12-040.
2. [IOU Name] may reach out to a Bidder to ask clarifying questions.
3. Customer Class:
Definition: Based on the Customer Class Indicator provided in the Rule 24/32¹⁷ data set.
4. Load Types(s) and Dispatch Method:
 - List all applicable options that expect to be utilized to support the Bidder's DR response, and if "other" is selected, provide a description in the corresponding Optional Notes column.
5. Registered and Forecasted Service Accounts
Definitions:
 - Registered Service Accounts refers to the service agreements that have been registered in the CAISO Demand Response Registration System (DRRS) as of the due date of your applicable QC assessment with an active status.
 - Forecasted Service Accounts refers to any service agreements that have not yet been registered in the CAISO DRRS or are not active, but the Bidder expects to need to register in order to meet the Estimated QC.
 - Total Projected Service Accounts should be calculated as a sum of the Registered Service Accounts and Forecasted Service Accounts.
Guidance:

If the Bidder lists a significant ratio of Forecasted Service Accounts, Bidder should utilize the notes field to indicate:

 - the percentage of total estimated QC (in MW) attributed to the Active and Registered Service Accounts, and
 - the percentage of total estimated QC (in MW) that have been enrolled in the

¹⁷ The applicable rule for PG&E and SCE is Electric Rule 24 (Rule 24) and the applicable rule for SDG&E is Electric Rule 32 (Rule 32).

Seller's DR program. Include the capacity associated to customers that are firmly committed to provide DR capacity, but may not yet be registered or active in the CAISO DRRS.

6. Projected Load

Definitions:

- Estimates of the projected aggregated load of Active and Registered Service Accounts and Forecasted Service Accounts during the Availability Assessment Hours (AAH) for the applicable Month with the highest MWs.
- If storage based, provide the projected aggregated capacity.
- Total Projected Load should be calculated as a sum of the Projected Load of Registered Customers and Projected Load of Forecasted Customers.

Guidance:

- If the bid includes Registered Customers, this forecasted load should be calculated based on each customer's average historical customer meter data during the AAH in the associated month in prior year(s), adjusted for more recent shifts in load.
- Provide any descriptions of the calculation methodology used to support the projected aggregated load forecast.

7. Per-customer Impact

Definitions:

- Weighted average load impact or reduction with respect to the Projected Aggregated Load during the RA measurement hours and the CAISO AAH and relative to a baseline.
- If storage based, provide the projected percentage of capacity delivered.

Guidance:

- If this value differs significantly from the historical data, then the Bidder should explain why it expects the load reduction to change.
- If the baseline method is expected to be changing from that used for historical performance, please include this here.

8. Total Projected Load Impact (kW)

Definitions:

Should be calculated as follows for each customer type:

$$\begin{aligned} &(\#Registered\ Service\ Accounts * Per-customer\ Impact\ of\ Registered\ SAs\ (kW)) \\ &+ (\#Forecasted\ Service\ Accounts \\ &\quad * Per-customer\ Impact\ of\ Forecasted\ SAs\ (kW)) \end{aligned}$$

9. Historical Performance

Where historical data is not available, the Bidder 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 (see definitions and guidance above):

Guidance:

- Feel free to use multiple rows or a separate tab to provide historical event data for each event if summarizing the results into one row is not a helpful (i.e., to demonstrate improving performance over time) and provide any explanations or calculations on how the historical performance was assessed.
- If the historical performance does not support the estimated Qualifying Capacity, please provide an explanation demonstrating why the estimated Qualifying Capacity is reasonable and likely to be delivered.

10. Estimated Qualifying Capacity (MW)

Definitions: Should be calculated as follows:

$$\frac{(Total\ Load\ Impact\ (kW) from\ Residential\ Customers + Total\ Load\ Impact\ (kW) from\ NonResidential\ Customers)}{1000}$$

The IOUs will assess each offer's QC estimate to determine the offer's viability by evaluating whether the offer provides reasonable assurances that it is capable of delivering the associated capacity. The assessment will be based on the following criteria, as outlined in Attachment 2 of D.19-12-040:

- Load reduction per customer, based on customer and load type and dispatch method
- Historical performance
- Number of existing and forecasted customers

Each IOU will utilize its own assessment process, including scoring methodologies and benchmarks, but will broadly categorize offers based on whether or not the offer(s) appears to be reasonable. Such assessments will be made using the bidder's supporting documentation and historical performance, as outlined in Attachment 2 of D.19-12-040, as well as the bidder's prior performance in the IOU's DR programs, publicly available load impact reports, and information available through the IOU's Rule 24/32 systems.

The IOUs will factor the qualifying capacity assessment results into offer selection pursuant to D.19-12-040, OP 20, such that such these results may alter the offer's position in the bid stack or the offer may be rejected.¹⁸

IV. Modifications to the DRAM Pro Forma Contract

- Sections 1.1(a), 1.6(j), and 11.1(a)(i) are modified to implement the prohibition of sharing resource IDs, and the following Sections have been deleted: 1.4(a)(iii), 1.6(h), 4.2(g), 4.2(h), and 7.2(b)(vi), as well as the Exhibit A definition and Exhibit C references to Joint Resource.
- Section 1.6(a), Exhibit A, and Exhibit C are modified to implement PG&E's proposal to demonstrate capacity using the average performance of all dispatches or tests in a Showing Month.

¹⁸ D.19-12-040, OP 20 also states, "The Utilities shall consult with the Commission's Energy Division and seek approval for instances when bids are being rejected under the criteria."

- New Section 1.6(b)(iv) is added and Exhibit C is modified to clarify the relationship between the NQC, QC, and DC, and implements PG&E's proposal on the use of QC and NQC in DC invoice templates.
- Section 3.1(a)(ii) is modified to implement PG&E's proposal to refine the QC estimate process and allow estimates that exceed the Supply Plan value.
- Section 3.4(a) is modified to clarify that the bidding requirements must be in compliance with the Must-Offer Obligation during the Availability Assessment Hours per the IOUs' response to the CAISO's proposal.
- Section 3.4(d) is modified to implement the Energy Division's proposal to prohibit customer movements across Showing Months, with the exception of specific conditions identified in that Section, including adding or removing customers or modifying the resource to meet CAISO requirements (i.e., less than 10 MW to avoid telemetry requirements, more than 100 kW for the minimum PDR size requirement, or LSE changes, if required to by the CAISO tariff).
- New Section 3.4(e) is added to implement the IOU's response to the Energy Division's proposal for resources to have a minimum size of 1 MW at all times, with the exception of one PDR in each SubLAP, which may be below 1 MW.
- Sections 4.1, 4.2(a), and 9.1(b)(vi) are modified to implement the IOUs' response to PG&E's proposal to modify the penalty structure for shortfalls between CQ and QC.
- Section 5.3(a) is modified to limit the number of times a Seller may request a return of the applicable portion of its performance assurance, and to allow the Buyer more time to process such requests.
- Exhibit C is modified to also implement PG&E's proposals on the consistent use of defined terms (including capitalization of defined terms) in the pro forma contract
- Exhibit D is modified to use the most current version of the Final DRAM Template published on July 21, 2020.
- Exhibit E is modified to implement PG&E's proposal on the consistent use of defined terms (including capitalization of defined terms) in the pro forma contract and to use the most current version of the Final DRAM Template published on July 21, 2020.
- Exhibit G is modified to use the most current version of the Final DRAM Template published on July 21, 2020.
- Exhibit H is modified to implement PG&E's proposal on the consistent use of defined terms (including capitalization of defined terms) in the pro forma contract and to use the most current version of the Final DRAM Template published on July 21, 2020.
- Other minor modifications:
 - Acronyms are spelled out and defined terms are used more consistently.
 - The dates have been updated from 2021 to 2022.

V. Contract Variations Between IOUs

The attached pro forma purchase agreement reflects the SDG&E version of the contract. PG&E and SCE will update the pro forma with their company names and other IOU-specific items and definitions after Commission approval of this advice letter, including modification of the local capacity areas and other IOU-specific references in the pro forma.¹⁹ In addition, the following variations will be applied per IOU:

¹⁹ This includes, but is not limited to, Table 1.1(b), certain definitions in Exhibit A, and exhibits providing information about IOU-specific substations.

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 access and consolidation provisions that are consistent with the 2021 DRAM purchase agreement.

Letter of Credit

The IOUs note that Exhibit I of the attached pro forma purchase agreement includes the letter of credit that SDG&E will utilize for the RFO. PG&E and SCE will utilize their own forms, which will be substantially similar to their respective forms utilized for the 2021 DRAM RFO.

VI. IOU Cost Effectiveness Proposal

First, the IOUs are tasked with proposing a methodology for measuring the cost-effectiveness of the DRAM resources. This would appear to be a pure policy issue, or at least an issue with strong policy drivers. However, the IOUs are precluded from addressing policy issues within this advice letter.²⁰ The IOUs note though that there is a long history of Commission decisions outlining the policy that should apply to how the Commission measures the cost effectiveness of the resources such as those in DRAM. We therefore rely on the policy that has been set thus far regarding the cost effectiveness of distributed energy resources as the guardrails that provide the space for us to apply some cost-effectiveness methodology to the DRAM. The IOUs start with the following:

From D.16-06-007, page 5:

“...all Commission proceedings focused on the approval, evaluation, or other purpose of a distributed energy resource shall use the adopted avoided cost calculator, as specified in this decision. We clarify that this applies to all Commission proceedings that currently, or will likely in the future, estimate the avoided costs of a distributed energy resource.”

From OP 1h of that same Decision:

“A single avoided cost model should apply to all distributed energy resource proceedings (including but not limited to the proceedings listed in footnote 6 of this decision, and their successors).”

Footnote 6, referenced above, states (emphasis in bold font added):

“Similar to the Order Instituting Rulemaking 14-10-003, this decision is noticed in the following proceedings: Alternative Fueled Vehicles (R.13-11-007), **Demand Response (R.13-09-011)**, Distributed Generation (R.12-11-005), Energy Efficiency (R.13-11-005), Energy Storage (R.10-12-007), Smart Grid (R.08-12-009), Water-Energy Nexus (R.13 12 011), Residential Rate Reform (R.12-06-013), Energy Savings Assistance Program (A.14-11-002), Net Energy Metering (R.14-07-002), and Distributed Resource Planning (R.14-08-013).”

²⁰ D.19-12-040, page 78.

Also, it is worth observing the following from D.19-05-019 OPs 1 & 2 in the Integrated Distributed Energy Resources (IDER) OIR:

1. Beginning on July 1, 2019, the Total Resource Cost test shall be considered the primary test for all Commission activities, including filings and submissions, requiring cost-effectiveness analysis of distributed energy resources, except where expressly prohibited by statute or Commission decision.
2. Beginning on July 1, 2019, all Commission activities, including filings and submissions, requiring cost-effectiveness analysis of distributed energy resources, except where expressly prohibited by statute or Commission decision, shall also review and consider the results of the Program Administrator Cost [PAC] test and the Ratepayer Impact Measure [RIM] test. Determinations shall include a discussion of the other tests.

The Integrated Resource Planning (IRP) proceeding has as its core focus determining how the IOUs plan resources in an integrated manner, by its very definition and title. The purpose is to align valuation where and whenever possible so that ratepayers obtain the best value for meeting their energy needs through a variety of resource types. The IOUs propose that should the DRAM transition to a permanent mechanism, then the Commission should consider using the avoided cost calculator (ACC), and applying the Total Resource Cost (TRC) test and the DR protocols as approved in D.15-11-042 or subsequent decision updating the DR cost-effectiveness protocols.²¹ Applying cost-effectiveness to DRAM would be a strong good faith attempt to meet the policy guidelines provided by the Commission in how distributed energy resources should be valued across varying value types, which is applicable in this instance.

The Loading Order, which puts (cost-effective) energy efficiency and demand response at the top, is meant to reduce load first, and then meet remaining energy needs through generation. DRAM, as a supply resource, functions more similar to a generation procurement product than a DR Loading Order resource. Under its current construct, DRAM is a capacity procurement mechanism and should compete head-to-head in an all source or local capacity resource solicitation under the Least Cost-Best Fit valuation, which all procurement products are valued under. However, fundamental to such procurements is that the procurement meets a specific need, while the DRAM pilot has required the IOUs to exhaust an administratively set budget not tied to a specific need.

Below is a cost-effectiveness proposal for the DRAM pilot. Applying the DR cost-effectiveness test to DRAM will be complicated, since the availability and amount of DRP costs are unknown, and other considerations, such as the applicability of costs incurred by the IOUs to serve the DRAM, as well as the IOUs' system costs for their respective Rule 24/32 activity, which have been incurred almost exclusively to serve DRAM customers and DRAM DRPs, should be considered in a TRC test. The IOUs attempt below to outline a simplified use or application of the TRC test using the current Avoided Cost Calculator (ACC) as possible, in order to align with the Commission's policies outlined above. But the IOUs recognize that the challenges are great, and applying the TRC, however it is done, may not yield reliable or comparable results between DRAM resources themselves, or when compared to IOU DR programs. That statement is also true for any other cost-effectiveness methodology the IOUs might have otherwise proposed,

²¹ 2016 DR Cost Effectiveness Protocols, updated July 2016, pp. 6-7.

even when the policy has been set by previous decisions. The DRAM does not fit squarely into a category that can be easily measured for cost-effectiveness.

The IOUs agree on the following proposal in using the TRC test to evaluate DRAM resources:

1. The ACC and DR protocols should be used in a manner that resembles as close as possible how they are applied to other DR resources, including the IOUs' DR own programs. The ACC should be used, and the DR protocols, for arriving at a TRC score. The DR protocols also make sense to use rather than the ACC alone, since the adjustment factors (some, as discussed below, and not all), which apply to differentiate different DR programs with various designs, can apply as well to the DRAM. If the DR protocol factors increase the avoided cost, the DRPs should be able to also reap that benefit. Similarly, if the factors reduce the avoided cost, the DRPs should also experience the reduction.

2. Confidentiality concerns by DRPs on sharing their costs can be maintained adequately. The IOUs recommend that a neutral third party be contracted to perform the cost effectiveness evaluations of DRPs' DRAM resources. Funding is needed for this effort and it is believed that the previously approved funding for the 2022 DRAM RFO effort would be a viable source. Using a portion of those funds would presumably reduce the capacity contracted unless another source is approved by the Commission.

3. Factors that do not apply to DRAM sellers should not be applied, or somehow made to be fit when they will not work. But every reasonable effort should be made for the factors to be applied appropriately.

4. How the DR Protocols should and could be applied by a neutral third-party evaluator: DRPs or the evaluator should use the Demand Response Reporting Tool²². The Inputs tab should be populated with data from the DR Output tab of the most recently updated Avoided Cost Calculator. Load impact forecasts used in the analysis should be vetted by the DRMEC. The DRP should calculate values for Factor A and E as described in the Demand Response Cost Effectiveness Protocols and provide workpapers showing their calculations. Factors B and C should also be included in their analysis using the values indicated in the Protocols. The remaining factors (D, F and G) can be omitted from the analysis as they do not appear to be applicable. If the program forecast extends beyond one year, the DRP will need to enter a discount rate for net present value calculations on the Inputs tab of the Reporting Tool.

The DRP or evaluator will enter their load impact forecast, using the Load Impact Protocols to forecast their loads, factor values, administrative costs and incentive costs into the Reporting Tool. If the DRP's costs cannot be divided into administrative and incentives, then the TRC cannot be estimated; however, the DRP can estimate the PAC test using combined costs.

Certain elements of the Protocols and the Reporting Tool may not apply to DRPs' analyses. These include:

- The requirement that load impact forecasts be either integrated into the wholesale energy, market or embedded in the CEC's unmanaged/base case load forecasts, as they would need to have been exclusively integrated into the ISO market in this case.

²² <https://www.cpuc.ca.gov/General.aspx?id=7023>

- Inclusion of net bill/revenue reductions,
- Estimated participant costs,
- Cost of enabling equipment,
- and
- RIM or PCT tests.

The data necessary for this cost effectiveness analysis should be required of all Sellers with executed contracts. To ensure compliance, the IOUs recommend adding contract provisions indicating the timing of deliverables and requiring coordination with the evaluator.

The IOUs believe there ought to be some form of an audit process so that there are spot audits done by the evaluator to verify load impacts, costs and benefits to ensure the DRPs are applying the protocols appropriately for LIPs and that there is verification on costs. It is also our view that the Reporting Tool and the Protocols should be reviewed and updated prior to the next Demand Response program cycle. As part of that process, the IOUs suggest these tools be expanded to include specific direction for DRPs in DRAM.

VII. Budget Authorization

Per OPs 2 and 3 of D.19-07-009, the Commission authorized the following budgets for the 2022 DRAM pilot, to be recovered through the following methods:

Utility	Authorized 2022 DRAM Budget	Recovery Method
PG&E	\$6 million	Demand Response Auction Mechanism subaccount in the Demand Response Expenditure Balancing Account
SCE	\$6 million	Base Revenue Requirement Balancing Account
SDG&E	\$2 million	Advanced Metering and Demand Response Memorandum Account

The IOUs will apply this budget to incentive and administration payments to occur in 2021 and 2022, including the ability the administer and prepare for the 2022 DRAM pilot and contract an independent evaluation consultant to administer the cost effectiveness tests.

VIII. Timeline

The IOUs will launch the 2022 DRAM RFO following all necessary approvals from the Commission. The following schedule is based on the RFO launch date in Table 7 of D.19-12-040 and previous RFO timelines. Such timelines are non-binding and subject to modification, and are based on the assumption of timely Commission action and approval of this Tier 2 advice letter.

Action	Date
IOUs Submit Supplemental Tier 2 Advice Letters for 2022 DRAM	September 15, 2020
Protests Due	October 5, 2020
Replies to Protests Due (If Protested)	October 12, 2020
Commission Approval of Tier 2 Advice Letter	December 21, 2020
IOUs Launch 2021 DRAM RFO	February 1, 2021

Bidder's Conference Webinar	February 11, 2021
Deadline for RFO Bid Submissions	March 2, 2021
Request to Cure	March 11, 2021
Cure Period Ends	March 18, 2021
IOUs Notify Shortlisted Bidders of Selection	April 21, 2021
Deadline for Bidders to Sign Contracts	April 30, 2021
IOUs Submit Tier 1 Advice Letters with Executed Contracts	May 31, 2021

EFFECTIVE DATE

SDG&E believes this Advice Letter is subject to Energy Division disposition and should be classified as Tier 2 (effective after staff approval) pursuant to GO 96-B. Therefore, SDG&E respectfully requests that this compliance submittal become effective on October 15, 2020 30 days from the date submitted.

PROTEST

Anyone may protest this Advice Letter to the California Public Utilities Commission. The protest must state the grounds upon which it is based, including such items as financial and service impact, and should be submitted expeditiously. The protest must be made in writing and must be received no later than October 5, 2020, which is 20 days of the date this Advice Letter was submitted with the Commission. There is no restriction on who may submit a protest. The address for mailing or delivering a protest to the Commission is:

CPUC Energy Division
Attention: Tariff Unit
505 Van Ness Avenue
San Francisco, CA 94102

Copies of the protest should also be sent via e-mail to the attention of the Energy Division at EDTariffUnit@cpuc.ca.gov. A copy of the protest should also be sent via e-mail to the addresses shown below on the same date it is mailed or delivered to the Commission:

Greg Anderson
Regulatory Tariff Manager
San Diego Gas & Electric Company
E-mail: GAnderson@sdge.com
SDGETariffs@sdge.com

Erik Jacobson
Director, Regulatory Relations
c/o Megan Lawson
Pacific Gas and Electric Company
77 Beale Street, Mail Code B1 3U
P.O. Box 770000
San Francisco, California 94177
Facsimile: (415) 973-3582
E-mail: PGETariffs@pge.com

Gary A. Stern, Ph.D.
Managing Director, State Regulatory Operations
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c/o Karyn Gansecki
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601 Van Ness Avenue, Suite 2030
San Francisco, California 94102
Facsimile: (415) 929-5544
E-mail: Karyn.Gansecki@sce.com

ATTACHMENTS

This advice letter contains the following attachments:

- Attachment A - DRAM Refinements Working Group Report
- Attachment B - 2022 DRAM Purchase Agreement (clean version)
- Attachment C - 2022 DRAM Purchase Agreement (redline compared to 2021 DRAM Purchase Agreement)

AUTHORIZATION

This Advice Letter is submitted by SDG&E on behalf of, and with the authorization from SCE and PG&E.

NOTICE

A copy of this filing has been served on the utilities and interested parties shown on the attached list, including interested parties in A.17-01-012 et al., by either providing them a copy electronically or by mailing them a copy hereof properly stamped and addressed.

Address changes should be directed to SDG&E Tariffs by e-mail at SDGETariffs@sdge.com.

/s/ Clay Faber

CLAY FABER
Director – Regulatory Affairs



ADVICE LETTER SUMMARY

ENERGY UTILITY



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

Company name/CPUC Utility No.: San Diego Gas & Electric Company (U902- E) - Joint Filing

Utility type:

☒ ELC ☐ GAS ☐ WATER
☐ PLC ☐ HEAT

Contact Person: Brittany Malowney

Phone #: (858) 637-3714

E-mail: bmalowney@sdge.com

E-mail Disposition Notice to: bmalowney@sdge.com

EXPLANATION OF UTILITY TYPE

ELC = Electric GAS = Gas WATER = Water
PLC = Pipeline HEAT = Heat

(Date Submitted / Received Stamp by CPUC)

Advice Letter (AL) #: 3608-E

Tier Designation: 2

Subject of AL: : San Diego Gas & Electric Company, Pacific Gas and Electric Company, and Southern California Edison Company's Demand Response Auction Mechanism Pilot for 2022

Keywords (choose from CPUC listing): Demand Response, Compliance

AL Type: ☐ Monthly ☐ Quarterly ☒ Annual ☐ One-Time ☐ Other:

If AL submitted in compliance with a Commission order, indicate relevant Decision/Resolution #: D.19-12-040

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

Summarize differences between the AL and the prior withdrawn or rejected AL: N/A

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: 10/15/20

No. of tariff sheets: 0

Estimated system annual revenue effect (%): N/A

Estimated system average rate effect (%): N/A

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: N/A

Service affected and changes proposed¹: N/A

Pending advice letters that revise the same tariff sheets: N/A

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: Greg Anderson
Title: Regulatory Tariff Manager
Utility Name: San Diego Gas & Electric Company
Address: 8330 Century Park Court; CP 31D 92123
City: San Diego State: California
Telephone (xxx) xxx-xxxx: (858) 654-1717
Facsimile (xxx) xxx-xxxx:
Email: GAnderson@Sdge.com

Name: SDG&E Tariff Department
Title:
Utility Name: San Diego Gas & Electric Company
Address: 8330 Century Park Court; CP 31D 92123
City: San Diego State: California
Telephone (xxx) xxx-xxxx:
Facsimile (xxx) xxx-xxxx:
Email: SDGETariffs@Sdge.com

Clear Form

General Order No. 96-B
ADVICE LETTER SUBMITTAL MAILING LIST

cc: (w/enclosures)

Public Utilities Commission

Office of Ratepayer Advocates (ORA)

R. Pocta

Energy Division

M. Ghadessi

M. Salinas

L. Tan

R. Ciupagea

Tariff Unit

CA Energy Commission

B. Penning

B. Helft

Advantage Energy

C. Farrell

Alcantar & Kahl LLP

M. Cade

K. Harteloo

AT&T

Regulatory

Barkovich & Yap, Inc.

B. Barkovich

Braun & Blasing, P.C.

S. Blasing

D. Griffiths

CA Dept. of General Services

H. Nanjo

California Energy Markets

General

California Farm Bureau Federation

K. Mills

California Wind Energy

N. Rader

City of Poway

Poway City Hall

City of San Diego

L. Azar

J. Cha

D. Heard

F. Ortlieb

H. Werner

M. Rahman

Clean Energy Renewable Fuels, LLC

P. DeVille

Clean Power Research

T. Schmid

G. Novotny

Davis Wright Tremaine LLP

J. Pau

Douglass & Liddell

D. Douglass

D. Liddell

Ellison Schneider Harris & Donlan LLP

E. Janssen

C. Kappel

Energy Policy Initiatives Center (USD)

S. Anders

Energy Regulatory Solutions Consultants

L. Medina

Energy Strategies, Inc.

K. Campbell

EQ Research

General

Goodin, MacBride, Squeri, & Day LLP

B. Cragg

J. Squeri

Green Charge

K. Lucas

Hanna and Morton LLP

N. Pedersen

JBS Energy

J. Nahigian

Keyes & Fox, LLP

B. Elder

Manatt, Phelps & Phillips LLP

D. Huard

R. Keen

McKenna, Long & Aldridge LLP

J. Leslie

Morrison & Foerster LLP

P. Hanschen

MRW & Associates LLC

General

NLine Energy

M. Swindle

NRG Energy

D. Fellman

Pacific Gas & Electric Co.

M. Lawson

M. Huffman

Tariff Unit

RTO Advisors

S. Mara

SCD Energy Solutions

P. Muller

Shute, Mihaly & Weinberger LLP

O. Armi

Solar Turbines

C. Frank

SPURR

M. Rochman

Southern California Edison Co.

K. Gansecki

TerraVerde Renewable Partners LLC

F. Lee

TURN

M. Hawiger

UCAN

D. Kelly

US Dept. of the Navy

K. Davoodi

US General Services Administration

D. Bogni

Valley Center Municipal Water Distr

G. Broomell

Western Manufactured Housing
Communities Association

S. Dey

Interested Parties in:

A.17-01-012 et al.

Attachment A

DRAM Refinements Working Group Report

**Report of the 2020 Demand Response
Auction Mechanism Refinement
Working Group
(D.19-07-009)**

September 1, 2020

Table of Contents

Background.....	3
Adjusted Long Run Avoided Cost of Capacity (Net LRAC) (Energy Division).....	3
Use of Defined Terms and Capitalization in Contract Exhibits (by PG&E)	5
Use of QC vs NQC in DC Invoice Templates (by PG&E)	5
Inclusion of Subscription ID in Data Template (by PG&E)	6
QC Estimate Enhancements (by PG&E)	6
Penalty Structure – Shortfalls Between CQ and QC (by PG&E)	8
Customer Movement Across Different Months and Sharing of Resource IDs between Contracts (by PG&E, SDG&E, SCE)	9
Cost Effectiveness Tool Development (by PG&E)	13
DRAM Must Offer Obligation (by California ISO).....	18
Modification on Customer Data Transfer Process (by Council).....	21
Attachment A	A-0
Attachment B	B-0

Background

In D.14-12-024, the California Public Utilities Commission (Commission or CPUC) established the pilot Demand Response Auction Mechanism (DRAM) as a Demand Response (DR) procurement mechanism. Since 2015 the Commission has also authorized the investor-owned utilities (IOUs) to conduct annual auctions procuring DR capacity from third-party demand response providers (DRPs), with the contracted DR resources to be aggregated and bid into the California Independent System Operator (CAISO) wholesale market by the DRPs.

D. 19-07-009 approved the extension of the DRAM pilot for an additional four years, through 2023 deliveries, and implemented a number of improvements to the DRAM beginning with the 2019 solicitation.¹ D.19-07-009 also established a two-step process by which improvements for DRAM solicitations beyond 2019 would be proposed. This report outlines the 2020 DRAM Refinement Working Group (WG) participants'² proposals.

The WG report will be included in the IOUs' September 15, 2020 Advice Letter (AL) filing. Parties will have the opportunity to respond to these WG proposals, indicating their support or opposition including the supporting rationale for their position in their comments to the AL.

Adjusted Long Run Avoided Cost of Capacity (Net LRAC) (Energy Division)

Background

D.16-09-056 established a capacity bid price (August Bid Price Cap) to encourage competitive bidding behavior in DRAM.³ Pursuant to the first DRAM evaluation and based on Staff recommendations⁴ the Commission eliminated the August bid price cap and warranted further discussion of the proposed Net Market Value cap (based on an adjusted Long Run Avoided Cost of Capacity) or another replacement for the Aug bid price capacity cap.⁵

¹ D.19-07-009, Ordering Paragraph 6, p.108-109.

² DRAM WG participants include: PG&E; SCE; SDG&E; CAISO; California Energy Commission (CEC); Public Advocates Office of the California Public Utilities Commission (Cal Advocates); Olivine, Inc.; CPower; EnelX North America Inc.; Ohmconnect, Inc.; Leapfrog Power, Inc; California Efficiency + Demand Management Council (Council); Nexant, Inc.; Stem; California Energy Storage Association (CESA); NRG; Nest; Merrimack Energy Group and the Commission's Energy Division Staff who also facilitated the workshop discussions.

³ D.16-09-056 at 74 and 90

⁴ <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M254/K771/254771618.PDF> at 94

⁵ D.19-07-009 at 96 and OP.13 at 110

Problem Statement

Currently the IOUs use the Long-Run Avoided Cost of generation capacity (LRAC) as a cap /screening criterion for the DRAM capacity bid prices during DRAM solicitations.

While the Commission has required that the DRAM offers be evaluated, ranked and selected based on their Net Market Value (NMV) the offer screening criterion (LRAC) is driven by the weighted average price of the offer, rather than its net benefit. Such a criterion could be regarded as creating an inconsistent standard for offer evaluation, additionally it could potentially result in excluding offers with higher Net Market Values over others with lower NMVs simply because the offer's weighted average price was higher than the LRAC. A hypothetical⁶ numerical example is shown below.

		Month 1	Month 2
a	DRAM RA Benefits	\$25	\$45
b	LRAC	\$50	\$50
c	Offer # 1 Price	\$50	\$40
d	Offer # 1 Volume (kW)	120	20
e	Offer # 2 Price	\$60	\$50
f	Offer # 2 Volume (kW)	20	120
$g = (a*d - c*d)$	Monthly Market Value Offer #1	(\$3,000)	\$100
$h = (a*f - e*f)$	Monthly Market Value Offer #2	(\$700)	(\$600)

	Wt. Avg. Price (\$/kW-y)	NMV (\$/kW-y)	Status
Offer 1	\$97	(\$41)	Awarded
Offer 2	\$103	(\$19)	Excluded
Criterion = LRAC	\$100		

If we use LRAC as the screening cap against the weighted average price of the offer (as is the case today) Offer #2 will be removed from consideration while Offer #1 will be considered for an award. This result appears sub-optimal since Offer #2 has a higher NMV (almost twice as much net benefits) over Offer #1.

Proposal

Energy Division Staff proposes that instead of using the LRAC as a screening *cap* against the offer price, the IOUs use an adjusted LRAC (Net LRAC), as the screening *floor*, against the Net Market Value of the offer. The Net LRAC would be calculated by deducting the Long-Run Avoided Cost from the short-term IOU specific Resource Adequacy (RA) benefit. The short-term

⁶ Same exercise was done using 2021 DRAM data however to preserve IOUs and DRPs data confidentially we are using illustrative numbers for the purposes of this proposal.

IOU specific RA benefit is also used for calculating the NMV of the offers as well as prorating LRAC for partial year offers.

	Wt. Avg. Price (\$/kW-y)	NMV (\$/kW-y)	Status
Offer 1	\$97	(\$41)	Excluded
Offer 2	\$103	(\$19)	Awarded
Criterion = Net LRAC		(\$30)	

In the above example if we use the Net LRAC as the screening criterion, the offer with the higher NMV (Offer #2) will be given an award while Offer #1 with the lower NMV would be excluded. This is a more efficient outcome.

Use of Defined Terms and Capitalization in Contract Exhibits (by PG&E)

Background

The IOUs utilized the D.19-07-009 and D.19-12-040 attachments as exhibits to the 2020 and 2021 DRAM contracts.

Problem Statement

PG&E recommends that the use of defined terms and capitalization is not just a best practice, but it supports clarity in contract administration.

Proposal and Discussion

See Attachment A for PG&E's Proposed Modifications to DRAM Exhibits for the edits PG&E proposes. The edits generally seek to (a) minimize duplicative content that is otherwise defined in the body of the contract, (b) use defined terms (i.e., Buyer instead of IOU, Seller instead of DRP, etc.), (c) add clarity in contract administration.

Please note that these edits have not yet been reviewed by PG&E's legal team, but the edits are representative of the types of changes PG&E seeks to make to clarify the use of defined terms.

Use of QC vs NQC in DC Invoice Templates (by PG&E)

Background

The 2021 DRAM contract demonstrated capacity templates still state that the DC that is capped by the NQC.

Problem Statement

PG&E recommends that Demonstrated Capacity section should say “Lesser of Assigned QC or Raw Demonstrated Capacity” instead of NQC (in Capacity Test, Must Offer Obligation, and Dispatch Results columns). Similar edits should be considered for EFC in Exhibit C-2. In addition, the exhibit should be updated so that it is easier to fill out correctly and uses the correct defined terms. Allowing the DC for each resource ID to exceed the QC allows for overperformance in one resource to compensate for underperformance in another resource, which is not supported by D.19-07-009 (p. 61, FOF 71, COL 20-21).

Proposal and Discussion

See Attachment A for PG&E’s Proposed Modifications redlines:

Inclusion of Subscription ID in Data Template (by PG&E)

Background

PG&E began using the Data Issues Reporting Template on May 11, 2020, and has gained experience in utilizing the template to resolve data issues.

Problem Statement

PG&E has needed to request additional information as a follow-up question to the Template submissions to request the “Subscription ID”⁷ in order to research the data issues identified.

Proposal and Discussion

PG&E recommends adding a Subscription ID field in the next iteration of the updates to these template to help accelerate the troubleshooting process.

QC Estimate Enhancements (by PG&E)

Background

PG&E has gained experience in assessing 2020 DRAM Sellers’ QC estimates ordered in D.19-07-009, as modified by D.19-09-041, and D.19-12-040 and has identified refinements.

⁷ Subscription ID is defined as an identifier that the PG&E Share My Data (SMD) system associates to a specific data sharing authorization

Problem Statement

PG&E believes the QC estimate process can be further clarified and improved with the proposals described in the following section.

Proposal and Discussion

PG&E recommends the following refinements:

- Permit the QC estimate calculated by the required formulas to exceed the QC in the Supply Plan (i.e., a Seller should be permitted to have 5 MW of DR resource to support a 4 MW QC)
 - Require both the QC_{Estimate} and the QC_{Supply Plan} to be submitted in the QC Estimate template.
- Clarify that the QC may not exceed the NQC, and better define the relationship between the sum of the QCs and the Supply Plan.
 - Modify contract language and exhibits
- Inconsistencies between QC estimate methods using the percentage of aggregated load vs. per service account load reduction
 - If both methodologies should be permitted, this should be clearly and consistently stated
 - If one methodology is preferable over the other, this should be clearly and consistently stated
- Percentage of aggregated load versus per service account load reduction
 - Which QC estimate method provides sufficient support of current QC estimate?
 - Percentage of aggregated load⁸
 - Estimated QC = (Projected Aggregated Load) * (Projected Percentage Load Impact)
 - Example: 100 kW = 1,000 kW * 10%
 - Per service account load reduction⁹
 - Estimated QC = (Number of SAs) * (Per-customer Impact)
 - Example: 100 kW = 10 SAs * 10 kW/SA

⁸ D.19-07-009 Appendix A, as modified by D.19-09-041 and 2020 DRAM RFO Pro Forma Exhibit F

⁹ DRAM Templates provided by the Energy Division per D.19-07-009 Ordering Paragraph 8 indicate per service account load reduction (embedded formula in column O, AC, AG)

- What if the data provided under one methodology is well supported by the historical data, but not the data under the other method?
- Develop a guidance document explicitly stating the information that should be presented in the QC tabs of the DRAM Templates, including examples of QC Estimates that illustrate the changes to the DRAM Templates dated 7-21-20.

Penalty Structure – Shortfalls Between CQ and QC (by PG&E)

Background

D.19-12-040 Background:

- OP 21, permits the Energy Division to explore and develop options for a penalty structure for Demonstrated Capacity in the DRAM, as part of the Auction Mechanism refinement process approved in D.19-07-009.
- Attachment 3/Appendix B, item 11, permits the payment structure to be revised, including the addition of stricter penalties.

Problem Statement

- DRAM penalty structure today is based on capacity shortfalls between the QC (i.e., the sum of Supply Plan QCs) and Demonstrated Capacity (DC)
- PG&E proposes to include a penalty for capacity shortfalls between Contracted Quantity and QC to ensure Sellers are penalized for failing to provide contracted capacity
- PG&E believes bidders may be more conservative and realistic in the amount of capacity offered if such penalties are implemented
- The current lack of penalties results in a significant gap that allows Sellers to reduce capacities without penalty, which shifts risk to IOUs to replace, often on very short notice, capacity that was committed in the year-ahead RA showing and allocated to other LSEs

Proposal and Discussion

PG&E proposes to modify the Delivered Capacity Payment Structure in Section 4.1:

- Maintains the existing payment structure of assessing a ratio of the DC to the amount of committed capacity
- Replaces QC with Contracted Quantity and modifies payment bands

2020 DRAM Refinement Working Group

- Example: if a Bidder is awarded a 50 MW contract, but each month reduces to 10 MW at the time of the Supply Plan submission, and ultimately delivers 9.1 MW, the Seller is paid for 10 MW and would not be terminated, allowing the same Bidder to repeat this practice each year.

Current 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

Proposed DC Payment Values		
Band	DC- CQ Ratio	Value for B
Pro-rated	> 85.00% to 100.00%	Demonstrated Capacity (kW)
De-rated	50.00% to 85.00%	Demonstrated Capacity (kW) * 50%
Forfeiture	< 50.00%	0

Customer Movement Across Different Months and Sharing of Resource IDs between Contracts (by PG&E, SDG&E, SCE)

Background

Customer movement and Resource ID sharing was most recently discussed during the July 15th DRAM Working Group. We seek to understand how moving customers and sharing Resource IDs improves reliability of the DRAM resources and provides a benefit to customers.

Problem Statement

The performance of DRAM resources and concern over the possibility or risk of double counting (and thereby double incenting) either customers or their loads has been discussed in multiple workshops. Over the years, additional test or dispatch requirements have been added to the

DRAM agreement in order to more closely validate or evaluate resource performance. However, parties have looked upon customer shifting as perhaps being a bit suspect; i.e., difficult to verify at best, or at worst, as an opportunity to potentially inflate testing or dispatch results but not improve the actual reliability of the resources, if certain controls cannot be put in place to prevent this scenario.

Proposal and Discussion

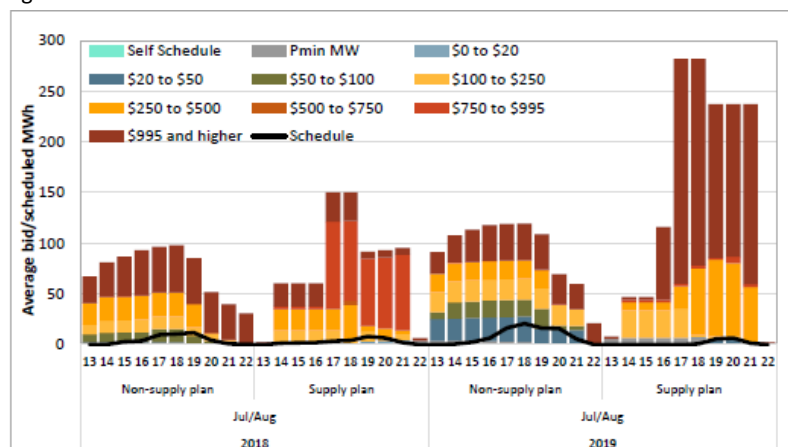
During the July 15th DRAM Working Group meeting, Energy Division raised the questions:

- A) Should the CPUC also consider restricting customer movement across different months?
- B) Should Sharing of Resource IDs between contracts be allowed?

- Customer Movement Across Different month:

We would like to discuss what are the benefits of shifting customers. Do the benefits outweigh the risk of inflated capacity tests or double counting of customers?

Figure 1:



As seen in the Figure 1 above, DRAM resources, which are identified as the “supply plan” resources often bid at or near the \$1,000 MWh price cap in the day-ahead market.¹⁰ We found that even during the recent CAISO Stage 3 emergency (August 2020), some DRAM resources

¹⁰ CAISO, Department of Market Monitoring. “2019 Annual Report on Market Issues & Performance”, June 2020, page 54. <http://www.caiso.com/Documents/2019AnnualReportonMarketIssuesandPerformance.pdf>

were not getting dispatched in the day-ahead market. As a result, DRAM resources may be more likely to fulfill their DRAM contract dispatch obligations through seller-initiated tests. In recent workshops, DRPs have indicated that some of their customers are higher performing or are more inclined to be dispatched. This is understandable, but the purpose of increased testing or dispatch obligations is to make sure that the entire resource is reliable, not just some of the more engaged or singularly reliable customers. Having better performing customers test or dispatch more often, while the poorer performers provide Must Offer Obligation (MOO) load shed, does not demonstrate that the entire resource is reliable.

Additionally, DRAM contracts provide monthly RA value and need to be able to deliver the entire portfolio regardless of market or day-ahead pricing conditions each month. Any DRAM portfolio will have stronger performing customers and weaker performing customers; the intent is to have balance such that the aggregation is able to perform as a whole. Performance should be met by having a realistic portfolio of customers to meet the monthly RA obligations, not by moving high performers to resources that will be tested.

Enforcement of DRAM performance has also been discussed and is problematic. We agree that DRAM resources are required to comply with FERC and CAISO obligations, and that FERC and CAISO should monitor the performance of resources in the market. However, solely relying on FERC and CAISO to monitor each dispatch or day-ahead offer may not be practical as they have many obligations outside of the DRAM. Additionally, the timing of such enforcement may occur after multiple supply plans and showing months. For DRAM, this is meaningful as the contracts are shorter term, effectively the RA would be shown in supply plans and paid for with customer funds, in advance of meaningful enforcement.

Figure 2:

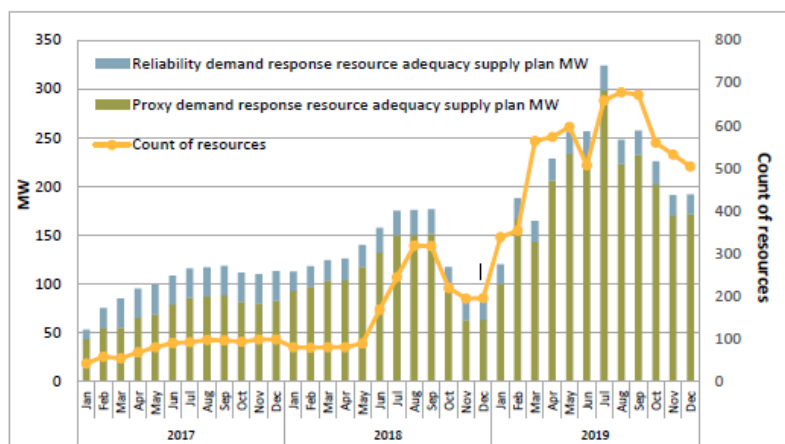


Figure 2 above demonstrates the monthly supply plan MW capacity of DRAM resources. Figure 2 also shows the number of resources for each month.¹¹ In 2018 the trend to increase resources relative to MW capacity began. By the end of 2019 the average DRAM resource was below 1MW. As a result, nearly all DRAM resources are not subject to CAISO Resource Adequacy Availability Incentive Mechanism (RAAIM) penalties. We also understand uninstructed energy imbalance charges are minimal. Because of this increased creation of resources, DRAM contracts have largely avoided the CAISO penalties that encourage capacity to actually be available, without an external party able to verify for the sake of their own rules, the IOU's are left to monitor DRAM resource availability. But we believe that the reliability of DRAM resources should not be dependent on prompt enforcement from CAISO and FERC. Additionally, IOU audit rights may also not result in penalties or future compliance. In our discussion, DRPs mentioned that if a DRP was not compliant with the FERC rules, there would be bigger problems than simply double counting. However, that still does not solve the problem being discussed here.

- Sharing of Resource IDs between contracts

Resource ID sharing was created to allow for two sellers to meet the minimum requirements of a Proxy Demand Resource (PDR). This is occurring very infrequently. A Resource ID that is shared by more than one contract is very challenging to administer and audit if needed. With the additional complications of QC assessment process, supply plans, invoices, minimum energy

¹¹ CAISO, Department of Market Monitoring. "2019 Annual Report on Market Issues & Performance", June 2020, page 52. <http://www.caiso.com/Documents/2019AnnualReportonMarketIssuesandPerformance.pdf>

dispatch requirements and the sharp increase in the number of DRAM resources, the IOUs believe it is reasonable to eliminate the joint resource clauses that allow for Resource IDs to be shared across contracts.

Cost Effectiveness Tool Development (by PG&E)

Background

Decision 19-12-040 on Cost Effectiveness:

OP 16 The Director of the Commission's Energy Division is authorized to work with stakeholders [...] to explore and develop alternate tools to measure the cost-effectiveness of the [DRAM] resources, as part of the Auction Mechanism refinement process approved in Decision 19-07-009. An initial measurement tool shall be ready for testing in the 2022 Auction Mechanism.

- Pg. 43: We find it prudent to begin to consider how to measure cost-effectiveness during the pilot phase so that, if the Commission adopts the Auction Mechanism on a permanent basis, we will have an appropriate measurement tool ready to implement.
- FOF 65. In D.16-09-056 and D.19-07-009, the Commission determined that Auction Mechanism resources are required to be cost-effective.
- FOF 66. The Commission has not adopted the Auction Mechanism as a permanent mechanism at this time.
- FOF 67. The four-year limited continuation of the Auction Mechanism is in the pilot phase and exempted from the cost-effectiveness requirement during the continuation.
- FOF 68. There are complexities in measuring the cost-effectiveness of Auction Mechanism resources.
- FOF 69. It is prudent to collect data to measure cost-effectiveness during the pilot phase of the Auction Mechanism.
- FOF 70. A competitive procurement mechanism should result in the market determining what constitutes a competitive price.
- FOF 71. A competitively priced resource may not be a cost-effective resource.
- FOF 72. Because we do not consider the Auction Mechanism to be a traditional procurement mechanism, we cannot rely on it alone to measure the cost effectiveness of the resources.
- FOF 73. The Auction Mechanism should be aligned with Integrated Resource Planning.
- FOF 74. Neither the Auction Mechanism nor the Integrated Resource Planning are at a point where alignment is appropriate.
- FOF 75. The cost-effectiveness protocols factors A, B, C, D, E, F, and G are currently used in measuring demand response cost-effectiveness and have been well-documented over the past two demand response budget applications.

- FOF 76. The cost-effectiveness protocols factors A, B, C, D, E, F, and G are not a suitable measurement of cost-effectiveness due to inaccessible data and uncertainty regarding valuation distortion. It is prudent to explore methods to measure the cost-effectiveness of the Auction Mechanism resources.
- FOF 77. It is reasonable for the Energy Division to explore and develop for testing alternative tools to measure the cost-effectiveness of the Auction Mechanism resources.

Problem Statement

An initial cost effectiveness measurement tool should be proposed and tested for the 2022 DRAM to be compliant with OP 16 of D.19-12-040.

Proposal and Discussion

Overarching Questions Discussed:

Stakeholders discussed several fundamental questions during the August 3 workshop that drive the direction of how cost effectiveness should be implemented for DRAM. These questions are summarized below with a few options that were discussed:

- At what level of granularity should cost effectiveness be assessed?
 - Each offer
 - Each contract (i.e., per Seller, if multiple offers are accepted of the same product type)
 - Each RFO (i.e., all contracts across all Sellers)
 - Each DRAM budget approval (i.e., all DRAM RFOs approved in an application proceeding)
- When should the cost effectiveness analysis be assessed?
 - During the solicitation and included in the advice letter seeking CPUC approval of executed contracts
 - During the application proceeding approving the DRAM budgets, prior to the solicitations
- Who should perform the cost effectiveness analysis?
 - DRAM Seller
 - IOU
 - Energy Division
- How should it be used?
 - To ensure only cost effective bids are procured, which could be used as an alternative to a set budget that must be exhausted

- To inform solicitation and contract parameters or price caps for future DRAM RFOs

Testing DRAM Cost Effectiveness Approaches

- Determine a premium to apply to the Benefits side of the equation
 - How many MW would have been procured if DRAM RA is perceived to have a specific premium relative to other RA, presuming only positive net market value offers may be selected?
 - Each IOU runs analyses of various premiums and how such premiums would have impacted offer selection.
- Explore use of CE adjustment factors as a qualitative criteria
 - Ask bidders to provide information about the A-G (but not D) factors associated with the parameters under which their DRAM resources will operate.
 - The IOUs will incorporate the factors into the valuation of DRAM bids as qualitative criteria.
- IOUs evaluate cost effectiveness of executed contracts with a simplified CE analysis
 - Understand how DRAM compares to IOU DR programs and other resources and allow consideration of all incentive, administrative, and system costs and influence future solicitation and contract design or bids and performance when compared to other resources.
 - D16-06-007 requires a single avoided cost model to be applied to all DER proceedings, and D.19-05-019 requires the TRC test as the primary test (and requires including PAC and RIM tests) of DERs, except where expressly prohibited by statute or Commission decision

Discussion: Determining a Premium

- How many increments should be assessed and who and what determines the specific values?
- Is the premium variable and based on the value of each product or is there the same premium applied to all offers regardless of product?
- Is there also value in reverse engineering what premium would have led to fully utilizing each IOU's budget?
- Applying a DRAM premium can be quite distortionary and arbitrary, but is it more or less distortionary than other distortions utilized in the DRAM solicitation today (i.e., applying a price screen based on the long-run avoided cost for a one-year contract, requiring procurement to exhaust an administratively set budget)
- How might such a premium affect bidding if it were utilized under a permanent mechanism?

- How would the results be shared with stakeholders given the confidentiality of this information? Is there a way to sufficiently aggregate it?

Components of DR CE

- Modeled Assumptions of avoided costs (benefits) in the Avoided Cost Calculator (ACC), include:
 - Avoided generation capacity
 - Avoided generation energy
 - Avoided ancillary services
 - Avoided emissions (including a GHG adder)
 - Avoided transmission and distribution
- Inputs (program specific)
 - Load impacts (MW)
 - Energy savings (MWh)
 - Adjustment factors (A through G)
 - A = Availability
 - B = Notification
 - C = Trigger Conditions
 - D = “Right Time/Place/Certainty/Availability”
 - E = LMP Prices
 - F = Flexibility
 - G = Geography
 - Administrative costs
 - Incentive costs
 - Net bill/revenue reductions
 - Amortized equipment costs and amortization periods
 - CAISO market participation revenues
- A-G Factors Explained
 - A – availability factor: the A Factor is intended to represent the portion of capacity value that can be captured by the demand response program based on the daily and monthly availability of the program, and the frequency and duration of calls permitted)
 - B – notification time factor: the B Factor is an adjustment based on notification times and determines how often the additional information available for shorter notification times would have resulted in different decisions about event calls
 - C – trigger factor: the C Factor adjusts for triggers or conditions that permit the load serving entity to dispatch a demand response program

2020 DRAM Refinement Working Group

- D – avoided transmission and distribution costs factor: the D Factor adjusts for transmission and distribution avoided costs
- E – energy factor: the E Factor adjusts for energy to reflect the correlation between electricity prices and the times when demand response events are expected to occur
- F – flexibility factor: the F Factor adjusts for flexibility and its created to provide additional value for flexible resources
- G – optional geographic factor: the G Factor addresses the ability to be called in a constrained area. D.15-11-042 at Section 3.2.2.

Discussion: CE Factors as Qualitative Criteria

- How should the CE Factors be translated into qualitative criteria?
 - Adjustment to costs as other qualitative criteria is applied today or as an adjustment to benefits?
 - Should it function as a multiplier (unadjusted or adjusted) or should thresholds be determined and applied?
- Does offer selection mimic today's process of procuring until the authorized budget is exhausted?
- Should there be a minimum CE factor score?
- What information would be helpful for bidders to assign their programs A-G factors?
- Should any factors be excluded that are not applicable to DRAM (i.e., D factor)?
- How would such qualitative criteria be enforced? Could a bidder offer to be available 24/7 to get a high A-factor and then change their mind during the contract term? Do there need to be contract parameters holding Sellers to what was offered?
- Could this proposal be an alternative to a minimum energy dispatch requirement?
- How might such qualitative criteria affect bidding if it were utilized under a permanent mechanism?
- How would the results be shared with stakeholders given the confidentiality of this information? Is there a way to sufficiently aggregate it?

Discussion: Simplified CE Analysis

- What level of granularity is applicable? A portfolio of all executed contracts or an analysis for each contract?
- How should systems costs be considered?
- Assuming bidders provide their A-G factors for Test 2, what other information is necessary to complete the TRC, PAC, and RIM tests?
- IOU DR program CE analysis is typically performed prior to budget approval, but how should the results lead to a cost effective portfolio of DRAM executed offers?

- How does this timing impact the RFO schedule?
- Would it result in any executed contracts being rejected after the fact?
- Would DRAM contract terms need to be aligned to the 5-year application cycle or would this analysis be conducted for each RFO each year and submitted with the advice letter seeking approval of executed contracts?
- How should the results of this analysis impact DRAM solicitation and product design?
- Should there be an ex-post analysis, and if so, how should it be used?
- What context, adjustments, simplifications, or caveats should accompany such analysis for it to be reasonably compared to an IOU DR program?
- How might such an analysis affect bidding if it were utilized under a permanent mechanism?
- How would the results be shared with stakeholders given the confidentiality of this information? Is there a way to sufficiently aggregate it?

DRAM Must Offer Obligation (by California ISO)

Background

Resource adequacy (RA) resources must abide by the CAISO's tariff provisions, including all applicable provisions in section 40— *Resource Adequacy Demonstration For All SCs In The CAISO BAA*. All resources that sell RA capacity must abide by the CAISO's must offer obligation. The CAISO relies on the must offer obligation to ensure sufficient supply is offered into the day-ahead and real-time market to meet the CAISO's daily operational needs. Demand response resources on supply plans are required to bid into the CAISO markets according to CAISO tariff sections 40.6.1 and 40.6.2. In general, resource adequacy (RA) resources are required to bid their shown RA capacity into the CAISO's day-ahead and real-time market during all hours of the day the resource is not on outage. The CAISO tariff allows RA capacity from shown demand response resources to bid in the hours specified within the LSE's DR program as established and approved by the local regulatory authority. The DR program hours and availability express the physical capability and limitations of the participating DR RA resources in a DR program as approved by the LRA. Thus, the Commission, as an LRA, must explicitly define the use and availability of its sanctioned DR programs, including the DRAM pilot program. This requirement is necessary so that LSEs, third-party aggregators, program participants, and the CAISO are all on notice and clear about a DR program's offer obligations. The issue here is the current DRAM pilot program does not appear to have an express offer obligation approved by the CPUC, which

means the current offer obligation of the DRAM pilot program is 24x7 to be in compliance with the CAISO tariff.

Problem Statement

RA resources must comply with the CAISO tariff and bid into the market 24x7 unless, in the case of demand response, deemed otherwise by the LRA. During the June 30th working group call, stakeholders indicated an understanding that DRAM resources should only offer during the availability assessment hours, which are currently 4pm to 9pm. The CAISO is unaware of any Commission directive that sets this specific must offer obligation for DRAM resources. Without this expressed obligation by the LRA, the offer obligation is 24x7.

Proposal and Discussion

Per the CAISO tariff, the default must offer obligation for RA resources is 24x7. If DRAM resources cannot meet this must offer obligation, the Commission has the right to sanction an alternative offer obligation. Any alternative offer obligation should assure RA resources are required to offer in a sufficient number of hours for a sufficient duration to support the stability and reliability of the system. To avoid Resource Adequacy Availability Incentive Mechanism (RAAIM) charges, resources must bid, or provide substitute capacity when on outage, during the availability assessment hours, currently 4pm to 9pm. Although these are typically the hours of greatest need, the CAISO has also observed tight supply hours beyond the availability assessment hours. In its Resource Adequacy Enhancements initiative, the CAISO performed an analysis to identify what hours the supply cushion was the tightest. The supply cushion represents how much RA supply is available compared to load and operating reserves. The tightest 20% supply cushion hours by hour in peak (May through September) and off-peak (October through April) months are shown in Table 1 below. As expected, the majority of hours fall within the evening ramp periods HE 17-21 (roughly 58% of observations). In off-peak months, there is also a cluster of tight supply cushion hours during the morning ramp period HE 6-9. However, there are tight supply cushion hours that fall outside of these two ramping periods, which demonstrates the need for RA resources to be available at all times. The Commission should weigh these factors and DR's availability when setting the DRAM MOO to ensure ratepayers are getting appropriate value for their investment in DR and the system is sufficiently benefiting from these RA resources.

Table 1: Distribution of 20% Tightest Supply Cushion Hours by Operating Hour

HE	2018 Peak Months		2018-2019 Off-Peak Months		2019 Peak Months		2019-2020 Off-Peak Months	
	# of Obs.	% of Obs.	# of Obs.	% of Obs.	# of Obs.	% of Obs.	# of Obs.	% of Obs.
1	4	0.54	6	0.59	18	2.45	13	1.27
2	0	0.00	2	0.20	8	1.09	2	0.20
3	0	0.00	1	0.10	4	0.54	2	0.20
4	0	0.00	1	0.10	4	0.54	1	0.10
5	0	0.00	3	0.29	7	0.95	4	0.39
6	2	0.27	12	1.18	16	2.18	20	1.96
7	4	0.54	66	6.48	19	2.59	65	6.36
8	1	0.14	51	5.01	8	1.09	46	4.50
9	0	0.00	10	0.98	5	0.68	14	1.37
10	0	0.00	5	0.49	4	0.54	7	0.68
11	0	0.00	1	0.10	3	0.41	4	0.39
12	1	0.14	0	0.00	4	0.54	1	0.10
13	6	0.82	0	0.00	7	0.95	1	0.10
14	14	1.90	3	0.29	9	1.09	2	0.20
15	23	3.13	5	0.49	13	1.77	6	0.59
16	30	4.08	11	1.08	22	2.99	15	1.47
17	38	5.17	42	4.13	27	3.67	60	5.87
18	60	8.16	102	10.02	44	5.99	116	11.35
19	93	12.65	150	14.73	82	11.16	141	13.80
20	124	16.87	169	16.60	115	15.65	146	14.29
21	126	17.14	161	15.82	117	15.92	140	13.70
22	109	14.83	126	12.38	103	14.01	121	11.84
23	72	9.80	74	7.27	66	8.98	69	6.65
24	28	3.81	17	1.67	31	4.22	27	2.64
Total	735	100.0	1018	100.0	735	100.0	1022	100.0

In other forums, the CAISO has advocated for an ELCC methodology to quantify the qualifying capacity of demand response resources, and has proposed aligning the must offer obligation such that resources with variable load reduction capability or energy limitations can bid without the resources being subject to RAIM penalties. Under this proposal, resources would bid their full capability in every hour, which would vary over the course of the day. This ELCC proposal is only prudent if variability and availability is taken into consideration in the CPUC's qualifying capacity valuation process. The must offer obligation for resource adequacy resources must be aligned with the counting rules. It is not appropriate to treat variable output demand response as a fixed capacity resource for RA counting purposes while tacitly providing flexibility under the must offer obligation to bid as available. Sanctioning such bidding behavior raises troubling tariff compliance concerns. Counting rules and must offer obligations must be aligned to ensure all RA resource are valued based on their actual use- and availability-limitations in compliance

with the CAISO tariff. Adopting an ELCC counting methodology and the associated variable must offer obligations, as the CAISO has proposed, is an alternative RA counting and capacity valuing approach that addresses these concerns.

Until a Commission revises the capacity counting methodology, the DRAM pilot's must offer obligation is 24 X 7 in accordance with the CAISO tariff, unless the Commission establishes an alternative. The CAISO supports an alternative based on what these resources are physically capable of providing as required by recent Commission Decision 20-06-031, at minimum.

Modification on Customer Data Transfer Process (by Council)

Background

At the July 15 DRAM working group, the California Efficiency + Demand Management Council (Council) proposed that clear timelines and operational requirements are needed for PG&E, SCE, and SDG&E to move customers from their own DR programs when they choose to enroll with a DRAM Seller. Parties expressed interest in a separate technical discussion which the Council convened on July 31. The following is a summary of the discussion:¹²

Define timeframe for IOUs to move customers

- Third-party DR providers (DRPs)¹³ and customers need certainty of the date when a customer de-enrollment from an IOU DR program will occur and when that customer can begin participating in a DRAM resource (which is separate from the de-enrollment date if the customer is registered in the CAISO's Demand Response Registration System (DRRS)). This applies to customers moving from and to IOU DR programs. Managing customer expectations with clear dates up front is more important to DRPs and customers than the speed of this process. Telling a customer that de-enrollment will occur on their next billing cycle is not specific enough. DRPs would like to see functionality in the IOUs' systems (with a specified implementation date) in which a customer is provided a specific date when its de-enrollment will occur when it requests de-enrollment and have this shared with the DRP. The IOUs need to have the capability for forward dating in order to provide a specific de-enrollment date. This may require a change to Rule 24/32 and could not be implemented in time for 2021 DRAM delivery.

¹² This summary was developed by the Council and all parties were given an opportunity to make corrections. Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE) provided edits, all of which were adopted. In instances where both IOUs proposed edits for the same language, the Council selected what it deemed to best reflect the discussion.

¹³ Throughout this proposal, "DRP" refers to third-party DRPs.

SCE and SDG&E are in the middle of updating their customer billing systems and do not expect to be finished until late spring in 2021 so no technical changes can be made before then.

- DR customers do not always know they are already in an IOU DR program, especially residential customers; this contributes to customer confusion regarding lead times in de-enrolling them.
- DRPs agree that IOUs need to be able to forward date customer de-enrollments and also know in advance if there are any other enrollment issues that need to be addressed before the enrollment date. There have been instances in which an IOU was notified 30-45 days in advance of a de-enrollment but there was another 3+ week delay after the de-enrollment date to make the customer meter eligible. If there is not an ability to forward date, troubleshooting cannot occur until the customer comes off. It might be easier for the IOUs if they know the steps that DRPs take for a customer to be de-enrolled and then enrolled in the DRAM resource so that the IOUs can more easily troubleshoot problems with de-enrollments.
- The timeframe for customers to be de-enrolled from an IOU DR program is dependent on the program in question. For instance, BIP allows de-enrollment once per year. For CBP, nominated customers must wait until the end of the operating month or the month that they were nominated in. If a customer is participating in critical peak pricing, then de-enrollment occurs after the next scheduled read date. If a customer is participating in a market-integrated program, once the customer is de-enrolled from the IOU DR program, the IOU must also de-register the entire CAISO Resource ID, end date the customer, then re-register the Resource ID.

Forward dating customer movements

- Initially, Rule 24/32 involved very few instances of future dating of CAISO DRRS location state dates by third-party DRPs, but IOUs have seen a significant increase in this practice since 2018. PG&E does not have an automated system that allows for future dating the Rule 24 customer participation flags in its billing system to match the CAISO DRRS location state dates. PG&E has implemented a manual process to set location start dates when the future start dates become the present date, but this manual practice is not scalable. SCE and SDG&E do not have an automatic or manual future dating capability. Ideally, any automated future dating system will need to mirror what is in the CAISO's DRRS because a customer may have a known future de-enrollment date from an IOU DR program but they have not yet been removed from the associated resource in the DRRS.
- Olivine asked whether the IOUs' DR enrollment systems already possess the ability for forward dating but those components are not functioning properly.

- The IOUs provide public information on the de-enrollment process with varying amounts of detail.

Define timeframe and process for resolving problems

- DRPs would like a standard, reasonable timeframe for the IOUs to resolve customer de-enrollment problems; proposed three to five business days.
- DRPs would like a better communication protocol between the IOUs and DRPs; when errors occur with IOU systems, it can take up to three weeks or more to get them resolved.
- IOUs agreed to go back and see what time frame they can accommodate. IT resources constraints exist for all IOUs and SCE and SDG&E are in the process of updating their systems with go-live expected in April 2021.
- The IOUs asked for the DRPs to provide process maps for de-enrolling customers from IOU DR programs and enrolling customers onto their own resources, and indicate where most of the problems occur in the IOU systems. Also asked for DRPs' highest priority issues.

Separate from the July 31 technical discussion, the Council provides a chart as Appendix B that highlights typical "pain points" that the DRPs experience with customer de-enrollments.

Problem Statement

Some customers experience delays when attempting to de-enroll from IOU DR programs in order to enroll in DRAM resources. These delays have resulted in DRAM Sellers being unable to deliver as much DRAM capacity in some months as they would otherwise be capable of delivering. In addition, IOUs are unable to provide certainty regarding the timeframe for completion of the de-enrollment process which has had significant negative customer satisfaction impacts.

Proposal and Discussion

The Commission should direct the IOUs to develop uniform capabilities and standards to provide a consistent level of automation and transparency for customer de-enrollments and enrollments. Specific features include:

- **Forward Dating Customer Movements:**

A customer should be able to submit a de-enrollment request to the IOU with a specified future de-enrollment date such that the customer will be removed from the IOU DR program on that date, subject to 1) the customer's billing cycle, 2) DR program tariff

provisions regarding allowed de-enrollment frequency (e.g. participants in the Base Interruptible Program can only de-enroll in November of each year, effective in January of the following year), 3) the time needed for the customer to be removed from the CAISO's Demand Response Registration System (DRRS), and 4) any nominations made by the customer's DRP for the customer to be available for dispatch in a given month. A key component of this capability is the IOUs being able to enter a future de-enrollment date into its billing system and, if the customer's preferred de-enrollment date is not possible due to the above four factors, the IOU's billing system should possess the internal logic to calculate the earliest feasible de-enrollment date. Enabling customers to submit a future de-enrollment date has the benefit of providing the IOU with advance notice of the customer's intentions which in turn helps to eliminate any de-enrollment delays that could occur.

- **Transparency on Customer De-enrollment Timeline:**

Once a customer submits a de-enrollment request, the customer, and its existing (if already enrolled with a DRP) and new DRP should receive a confirmation from the IOU with the expected de-enrollment date, taking into account the four factors mentioned above. Currently, the IOUs provide general but inconsistent de-enrollment guidelines to DRPs regarding the process and approximate timeframe for de-enrollments. The Council has combined each IOUs' de-enrollment information into a single document and has attached it as Attachment B. This transparency is essential to the DRP for managing customer expectations and avoiding instances in which a customer becomes frustrated which could leave an unjustifiably negative impression regarding DR participation. Furthermore, firm de-enrollment dates are necessary for informing a DRP's operations so that they can effectively manage their resources.

- **Tracking & Ticketing System for Issues:**

The IOUs should have a system through which DRPs can bring to their attention when a customer de-enrollment is experiencing problems. This system would provide a confirmation to the DRP that its request has been received, a tracking system to show the status of its resolution, the associated root issue, and the timeframe for resolution. There should be a reasonable limit on the resolution timeframe - the Council proposes five business days. Like the Transparency on Customer De-enrollment Timeline proposal, this level of transparency and certainty is needed for DRPs to manage customer expectations and to allow them to make any necessary adjustments with regard to resource balancing while an issue is being addressed by the IOU.

- **Standard Data Requirements for Newly-enrolled Customers:**

There should be a standardized set of data fields used by the IOUs when providing the data of a newly-enrolled customer. These data include Customer, DR Program Participation, Billing, and Interval Data. Currently, there are some differences in the type of data the IOUs

2020 DRAM Refinement Working Group

provide to DRPs as part of the authorization process, so some standardization across the IOUs is necessary to ensure that the DRPs are receiving all of the data they need. In some instances, data are missing or inaccurate and there is no system for tracking the resolution of these missing data once the IOU is notified by the DRP. Ideally, a tracking system would be accessible by the DRPs, provide the status of the issue, and an estimated resolution date. The Council recommends a standardized resolution date of 5-10 business days; when the IOU cannot meet the 5-10 business day standard, they should notify the DRP that more time is needed and provide an estimated timeframe.

Attachment A

EXHIBIT E
MINIMUM ENERGY DISPATCH REQUIREMENTS
(D.19-12-040 Attachment 1, Appendix C)

Below are the approved Requirements for Minimum Energy Dispatch Requirements – DRAM Sellers must use the most current version of the Final DRAM Templates, “Required Energy Quantity – A/B” (originally published March 13, 2020), as represented by the template diagram at the end of this Exhibit E for Seller’s submission pursuant to Section 1.7(b).

1. DRAM Resources must deliver a “Required Energy Quantity” (“REQ”) equal to 30 megawatt hours (MWh) per megawatt (MW) of Average Qualifying Capacity (“AQC”). The AQC shall be assessed as a total sum of the individual PDRs in the DRAM Resource.
2. The REQ shall be delivered during the Term and during the Availability Assessment Hours.
3. Seller shall submit documentation to the Buyer showing CAISO settlements for the Delivered Energy Quantity (“DEQ”), along with the calculation of AQC, at the time of the Seller’s last Demonstrated Capacity invoice submission or when Seller has received sufficient Revenue Quality Meter Data, whichever is earlier. The DEQ shall be assessed as a total sum of the individual PDRs in the DRAM Resource. To protect the confidentiality of market related data, Sellers may omit price and revenue data.
4. If the REQ is not delivered by the end of the Term, Seller will be assessed an Undelivered Energy Penalty (“UEP”) based on the calculation set forth in Section 1.7(c) of the Agreement.

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2020 DRAM Refinement Working Group

REQUIRED ENERGY QUANTITY TEMPLATE - A

Last Update: 3/13/2020

Demand Response Provider (DRP) Name	Investor Owned Utility (IOU)	Contract ID	Required Energy Quantity (MWh)	Delivered Energy (MWh)	Undelivered Energy (MWh)	Undelivered Energy Penalty (\$)	Monthly Quantity (MW)												Average of 3 Highest Monthly QC (MW)
			0	From REQ-B		$(\$10,000 * T9) * (1 - (E9/D9))$	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sept	Oct	Nov	Dec	

REQUIRED ENERGY QUANTITY TEMPLATE - B

Last Update: 3/13/2020

Demand Response Provider (DRP) Name	Investor Owned Utility (IOU)	Contract ID	CAISO Resource ID	Delivered Energy (MWh)											Baseline Methodology
				Date	Time	Event Type (Market Award, Capacity Test, None)	Day Ahead Market Bid Quantity (MW)	DAM Quantity Scheduled/Awarded (MW)	Real Time Market Bid Quantity (MW)	RTM Quantity Scheduled/Awarded (MW)	Expected Energy Quantity (MWh)	Delivered Energy Quantity (MWh)	Metered Load (RQMD) (MW)	Baseline Quantity (MW)	

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

Below are the approved Guidelines for Qualifying Capacity – DRAM Sellers must use the most current versions of the Final DRAM Templates, “QC Supporting Data-Monthly” and “QC Monthly-Historical Data” (originally published March 13, 2020), as represented by the template diagram at the end of this Exhibit G, for Seller’s submission pursuant to Section 3.1(a)(ii).

- A. Seller shall provide the following details to the Buyer for DRAM Resources by the deadline specified in Section 3.1(a)(ii):
1. Customer class (or percent of mix): Residential Customer, non-Residential Customer
 2. Nature of load being aggregated: such as, whole house, air conditioning load, storage, building load, pumps, electric vehicles, or other (Seller shall provide a description)
 3. Dispatch method: automated via cloud control, or other (Seller shall provide a description)
 4. Projected number of SAIDs, including a breakdown of the active and registered number of SAIDs within the total projected service account numbers. Active and Registered SAIDs shall be defined as SAIDs that have been registered in the CAISO Demand Response Registration System (DRRS) as of the date of this submission with an active status.
 5. Projected aggregated load (if storage based, projected aggregated capacity) {See PG&E presentation topic on this item.}
 6. Projected percentage of load impact or reduction (if storage based, projected percentage of capacity delivered) {See PG&E presentation topic on this item.}
 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 Seller should reference suitable publicly available performance data that best represents the anticipated performance of the DRAM Resource. Along with the supporting performance data, the following details for the DRAM Resource associated with the supporting performance data should be provided to establish similar characteristics:
 - a. Customer class (or percentage mix): Residential Customer, non-Residential Customer
 - b. Nature of load being aggregated: such as, whole house, air conditioning load, storage, building load, pumps, electric vehicles, or other (Seller shall provide a description)
 - c. Dispatch method: automated via cloud control, or other (Seller shall provide a description)
 - d. Number of SAIDs

Deleted: In case of a conflict between the language of this Exhibit and the language of the main body of the Agreement, the language of the main body of the Agreement shall take precedence. Use of capital letters in the text below does not necessarily mean the term is defined, and failure to use capital letters herein for a term defined within the Agreement shall mean that the definition found in Exhibit A shall apply.

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2020 DRAM Refinement Working Group

- 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 the CAISO Availability Assessment Hours.
- C. The same baseline must be used for estimation of Qualifying Capacity at different stages of the Agreement.
- D. To the extent the projected percentage load impact for capacity delivered in A.6 deviates from the supporting data in A.7, the Seller should provide supplemental information to explain the reasonableness of the resulting “Estimated Qualifying Capacity” provided in A.8.
- E. To the extent the DRAM Resource consists of heterogenous combination of load types (in terms of A.1 through A.3 characteristics), the Seller shall 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 the Seller’s submission prior to Buyer’s Compliance Showing deadline each year, it is sufficient to provide the information required by this Exhibit for the Showing Month with the highest megawatts. For the Seller’s submission prior to Buyer’s Compliance Showing deadline for each Showing Month, the information required by this Exhibit shall correspond to the applicable Showing Month.
- G. At the Seller’s submission prior to Buyer’s Compliance Showing deadline each year, it is sufficient to provide the information required by this Exhibit at the aggregate DRAM Resource Level. For the Seller’s submission prior to Buyer’s Compliance Showing deadline for each Showing Month, the information required by this Exhibit must be provided at the PDR level.

{PG&E notes that a modification to Section 3.1(a)(ii) is also necessary: 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, as set forth with more specificity in Exhibit G (the “QC Implementation Guidelines”), including [...] }

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Instructions:

Provide the supporting historical data for each CAISO Resource ID's projected load impact from the "QC Supporting Data-Monthly" tab.

Supporting historical performance data must be from a prior test or market dispatch for a DR resource with similar characteristics as the customer class, nature of load being aggregated, and dispatch method. Where historical data is not available, Seller should reference suitable publicly available performance data that best represents the anticipated performance of the resource.

[illegible]

TOTAL:

EXHIBIT H

MILESTONE SCHEDULE AND FORM OF PROGRESS REPORT

From the Effective Date of this Agreement and continuing until the commencement of the Delivery Period, Seller shall provide a monthly Progress Report containing, at a minimum, the information listed below, as applicable. In accordance with Section 3.3(b), the report must be sent via e-mail in the form of a single Adobe Acrobat file or facsimile to Buyer, on the tenth (10th) calendar day of each month, or within five (5) calendar days after Buyer's request.

1. An executive summary;
2. An updated Milestone Schedule
3. Chart showing schedule, percent completion, and percent change from previous report of major items and activities;
4. Forecast activities for next month; and
5. Potential issues affecting the DRAM Resource.

A list of milestones and completion dates for the DRAM Resource ("Milestone Schedule") is as follows. DRAM Sellers must use the most current version of the Final DRAM Template, "Milestone Progress" originally published March 13, 2020), [as represented by the template diagram below](#).



STATE OF CALIFORNIA
PUBLIC UTILITIES COMMISSION

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DRAM SELLER MILESTONE PROGRESS TEMPLATE

Last Update:

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Seller Info	Name of Seller	
	Rule 24/32 DRP ID	
	Contract Term Start Date	
	Seller Contact Name	
	Seller Email addresses	

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Submission Date	Milestone
CAISO Registration Milestones:	
Deadline for achievement of each Milestone is forty-five (45) calendar days prior to first Supply Plan submission	
	Seller or its Scheduling Coordinator registers as a CAISO Demand Response Provider, including execution of a DR Provider Agreement.

2020 DRAM Refinement Working Group

	Seller has become or has contracted with a Scheduling Coordinator or CAISO DR Provider and has identified the name of the Scheduling Coordinator
	Seller or its Scheduling Coordinator has completed other CAISO requirements, including executing a Meter Service Agreement (MSA SC) and obtaining DR Registration System (DRRS) access.
	Seller or Scheduling Coordinator has registered a resource pursuant to Section 4.13 of the CAISO tariff and applicable CAISO BPM and received Net Qualifying Capacity (NQC) approval from the CAISO
	Seller has attested to having reviewed the CAISO's Demand Response User Guide
<u>Buyer Data Systems Integration Milestones:</u>	
Deadline for achievement of each Milestone is forty-five (45) calendar days prior to first Supply Plan submission	
	Seller has completed <u>Buyer</u> Onboarding Process for Rule 24/32
	Seller has completed registration with Buyer's data sharing platform and completed all connectivity requirements
	Seller has obtained a Click-Through authorization and/or submitted a Customer Information Service Request DR Provider form for processing
	Seller has utilized Buyer's Application Programming Interface to obtain the full Rule 24/32 data set for a customer authorization
<u>California Public Utilities Commission (CPUC) Registration Milestones:</u>	
Deadline for achievement of each Milestone is forty-five (45) calendar days prior to first Supply Plan submission	
	Seller has executed the Demand Response Provider Service Agreement with Buyer.
	Seller has executed and notarized the <u>CPUC</u> Demand Response Service Provider Registration Application Form
	Seller has paid the \$100 fee
	If Seller includes <u>Residential Customers</u> or small commercial customers in its aggregation, Seller has received approval for the customer letter and posted the bond
	Seller has obtained a <u>CPUC</u> registration certificate or registration has been published on the <u>CPUC's</u> website
<u>Resource Adequacy Milestones:</u>	
Deadline for achievement of each Milestone is set forth in Exhibit F, "Implementation Guidelines for Qualifying Capacity"	
	Prior to first month of meeting Qualifying Capacity requirements, Seller has had phone call with Buyer to discuss resource creation and progress
	Seller has submitted Qualifying Capacity information in a timely manner

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EXHIBIT C1 and C2

Notice of Demonstrated Capacity

2020 DRAM Refinement Working Group

EXHIBIT C1 - Notice of Demonstrated Capacity (QC)

Demand Response Auction Mechanism (DRAM)

For use with System and Local Capacity Product

Showing Month: _____
 Seller: _____
 Seller Contact Name: _____
 Seller Contact Phone: _____
 SCID: _____
 Local Capacity Area (LCA): _____

Total "Qualifying Capacity" (MW): _____
Total "Demonstrated Capacity" (MW): 0.00 MW

Residential Product (Yes / No): _____

Therefore: in Delivered Capacity Payment formula, "B" = 0.00 MW

PDRs in the DQ&M Resource			--- "Demonstrated Capacity" (MW) ---								Joint Resource Adjustment		Prohibited Resources Adjustment		Residential Product Delivery			Local Capacity Product Delivery	
PDR Resource Name	CAISO Resource ID	Assigned QC (MW)	For each PDR Resource (row), choose <u>one</u> demonstration method (column) to establish monthly Demonstrated Capacity										Complete for all resources		Complete for all resources		Residential Product This section is only required if delivering Residential Customer Product	Local Capacity Product This section is only required if delivering Local Capacity Product	
			DC Test		Must Offer Obligation (MOO)		DC Dispatch		MW Claimed		Adjusted MW Claimed		Residential Product	Local Capacity Product					
			Maximum hourly load reduction during DC Test conducted by Seller's SC during Showing Month		Average amount of capacity Seller bid into CAISO Markets during Showing Month		Maximum hourly load reduction from DC Dispatch during Showing Month		Specify the MW portion used to meet the contract obligation		Specify the MW portion used to meet the contract obligation								
			Raw Demonstrated Capacity	Lesser of Assigned QC or Raw Demonstrated Capacity	Raw Demonstrated Capacity	Lesser of Assigned QC or Raw Demonstrated Capacity	Raw Demonstrated Capacity	Lesser of Assigned QC or Raw Demonstrated Capacity	Raw Demonstrated Capacity	Lesser of Assigned QC or Raw Demonstrated Capacity	Joint Resource (Yes/No)	MW Claimed	Default Adjustment Value (MW)	Net MW Claimed	Total Service Accounts	Residential Customer Accounts	Small Business Customer Service Accounts	Total Service Accounts	Customer Service within service LOA
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The information provided by Seller in this Notice of Demonstrated Capacity is required by Section 1.6 of the DRAM Resource Purchase Agreement with <insert IOU name>

EXHIBIT C2 - Notice of Demonstrated Capacity (EFC)

Demand Response Auction Mechanism (DRAM)

For use with Flexible Capacity Product:

Showing Month: _____
 Seller: _____
 Seller Contact Name: _____
 Seller Contact Phone: _____
 SCD: _____
 Local Capacity Area (LCA): _____

Total "Qualifying Capacity" (MW) _____
 of "Demonstrated Capacity" (MW) 0.00

Total "Demonstrated Capacity" (MW): 0.00 MW
Residential Product (Yes / No):

Therefore: in Delivered Capacity Payment formula, "B" = 0.00 MW

Local Capacity Area (LCA): _____ (mark "N/A" if not a Local Capacity Product)

[illegible]

The information provided by Seller in this Notice of Demonstrated Capacity is required by Section 1.6 of the DRAM Resource Purchase Agreement with ~~insert IOU names~~.

² A combination of a market dispatch and test could be used to satisfy the August two consecutive hour requirement if the CAISO market dispatch does not cover the two consecutive hours.

Attachment B

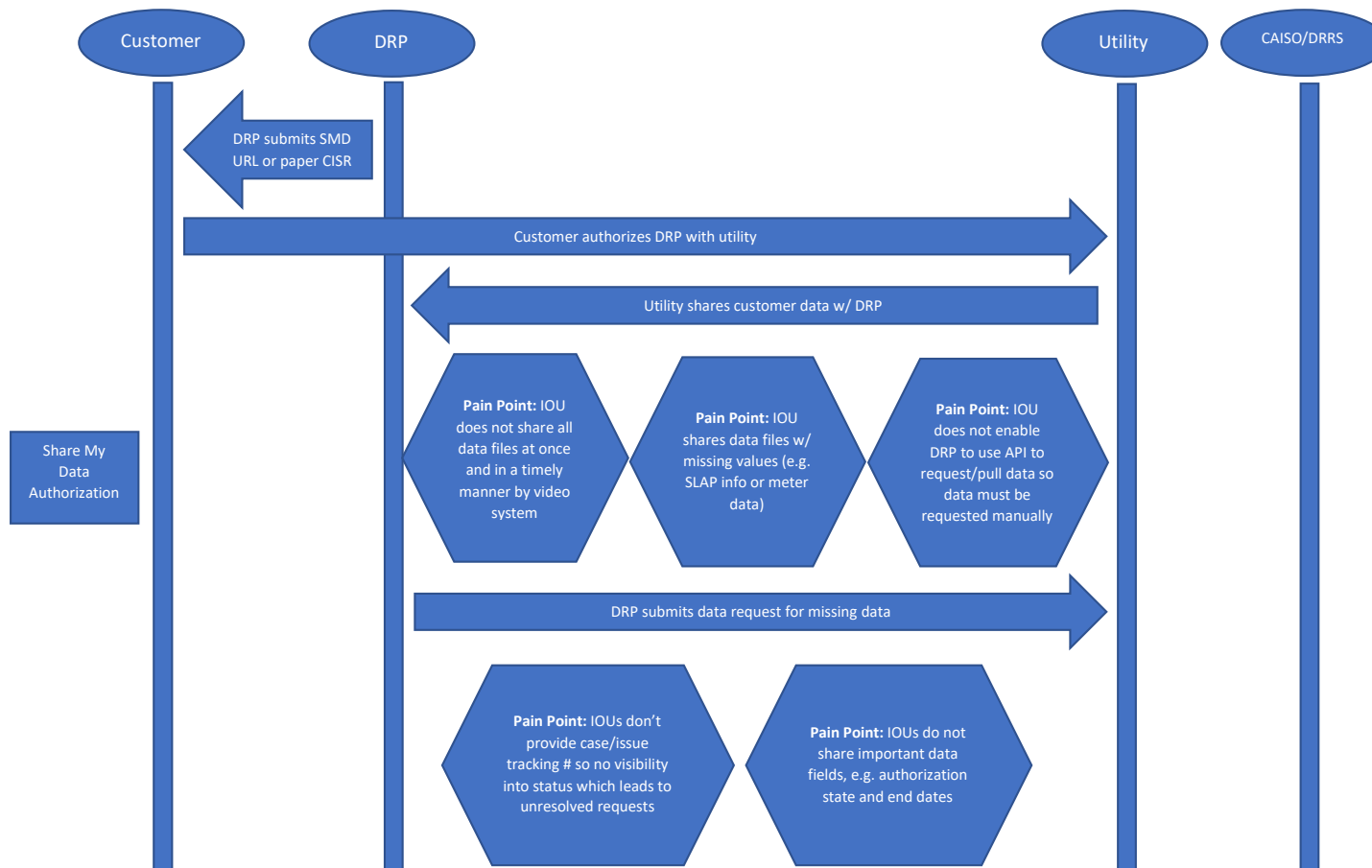
Table 1: Summary of IOU De-Enrollment Guidelines

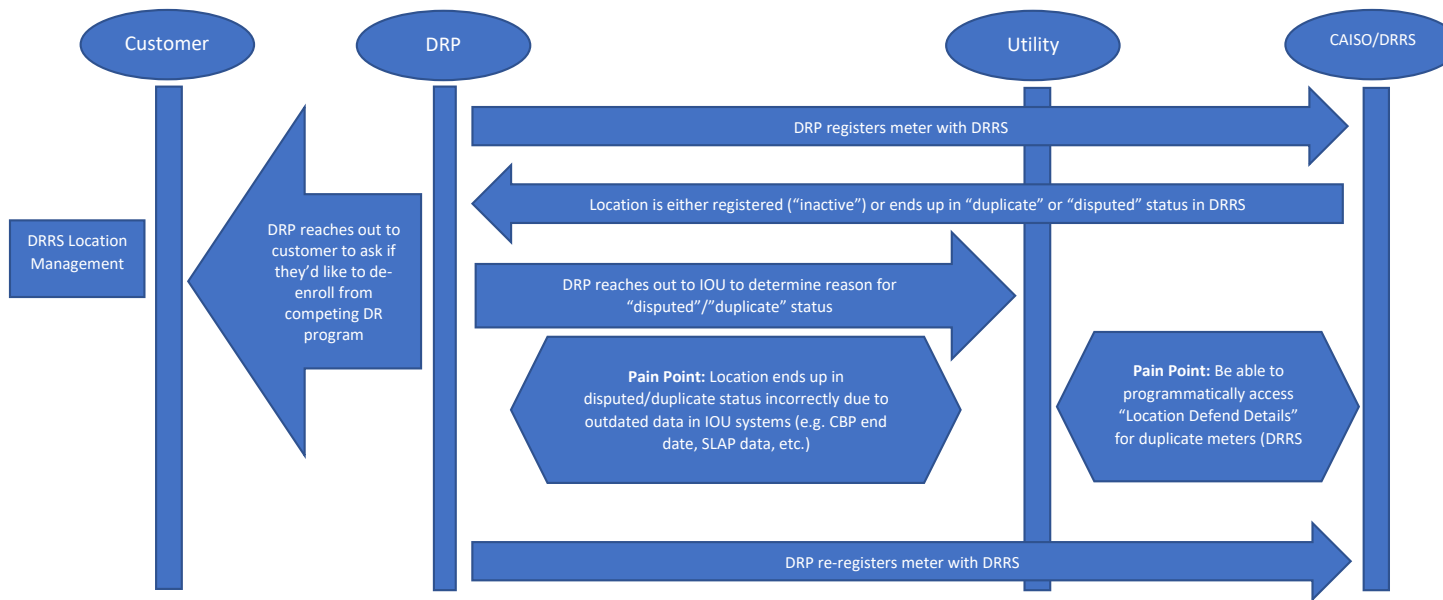
DR Program	PG&E				SCE	SDG&E
BIP (PG&E and SDG&E) BIP/API (SCE)	30-day written notice for direct-enrolled customers or a signed "Delete" form for Aggregator enrolled customers during the month of November. The de-enrollment will be effective January of the following year.				Customer notifies SCE of program opt out during Nov. 1 – Dec. 1. Customer SA available for DRAM registration at next scheduled read date (NSRD). BCD Account Manager notifies customer of de-enrollment from program.	Opt-out requests are accepted once per year during the month of November, such change will become effective the following program month.
CBP	Effective start date for the de-enrollment from CBP depends on whether the customer has been nominated by their CBP aggregator to participate in either the current or future months(s).				SA available for DRAM registration the first day of the next operating month if Aggregator Remove Form received by 15th of month. Otherwise, first day of the next following operating month (e.g. if form is received after May 15, then SA available July 1). No outbound De-enrollment confirmation.	Each Participant must remain in the program for a minimum of 12 calendar months.
	Date Form Submitted to PG&E	Was customer nominated to participate in CBP for same month delete form submitted?	Was customer nominated to participate in CBP for month following month in which delete form was submitted?	Effective state date of customer's CBP de-enrollment		
	May 18	No	No	By May 31		
	May 18	Yes	No	June 1		
	May 18	No	Yes	July 1		
	May 18	Yes	Yes	July 1		
Peak Generation (SDG&E only)	N/A				N/A	10 business days from the appropriate disenrollment request, subject to DR program rules.
Peak Shift (SDG&E only)	N/A				N/A	*Next read date* plus logic rules 14 days. SDG&E will automatically process disenrollment from date when location is created in DRRS

2020 DRAM Refinement Working Group

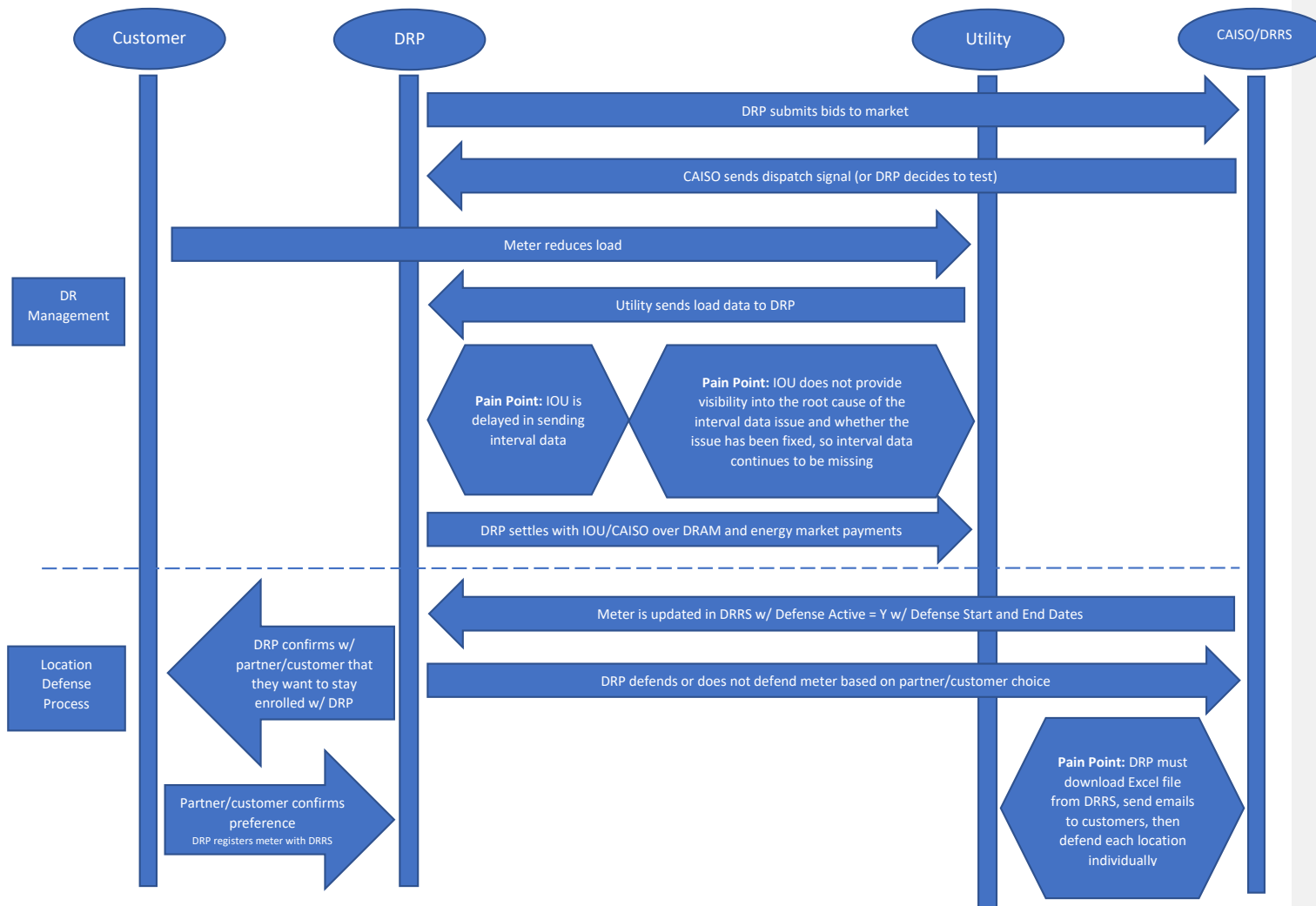
			with appropriate start date (14 days after customer's next meter read date).
<p>Peak Day Pricing & SmartRate (PG&E)</p> <p>Critical Peak Pricing (SCE and SDG&E)</p>	<p>Customers may opt out of their participation at any time. Customers may be de-enrolled automatically if there is a change in their eligibility for participation. A customer's de-enrollment will be generally made effective on the next business day after the request is made.</p>	<p>Customers automatically de-enrolled from the program upon a non-Utility DRP Resource Registration with the CAISO, pursuant to Rule 24, C.2.d. Customer SA available for DRAM registration at NSRD. No outbound de-enrollment confirmation. Customer's bill will indicate rate change to Otherwise Applicable Tariff (OAT).</p>	<p>*Next read date* plus logic rules 14 days. SDG&E will automatically process disenrollment from rate when location is created in DRRS with appropriate start date (14 days after customer's next meter read date).</p>
<p>SmartAC (PG&E)</p> <p>PTR-DLC (SCE)</p> <p>AC Saver (SDG&E)</p>	<p>Customers may unenroll at any time. De-enrollments will typically become effective approximately 48 hours after the de-enrollment request is received.</p>	<p>SA available for DRAM registration three business days after de-enrollment. No outbound De-enrollment confirmation.</p>	<p>10 business days from the appropriate disenrollment request, subject to DR program rules.</p>
<p>Small Commercial Technology Deployment (SDG&E only)</p>	<p>N/A</p>	<p>N/A</p>	<p>10 business days from the appropriate disenrollment request, subject to DR program rules.</p>

Diagram of Typical "Pain Points" in Customer De-enrollment Process





2020 DRAM Refinement Working Group



Attachment B

2022 DRAM Purchase Agreement

2022 DRAM RFO PRO FORMA

**DEMAND RESPONSE AUCTION MECHANISM RESOURCE PURCHASE
AGREEMENT**

between

[NAME OF SELLER]

and

SAN DIEGO GAS AND ELECTRIC COMPANY

**DEMAND RESPONSE AUCTION MECHANISM RESOURCE PURCHASE AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS AND ELECTRIC 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.....	3
1.5. Monthly Contracted Quantity and Corresponding Contract Price.....	4
1.6. Demonstrated Capacity	4
1.7. Minimum Energy Dispatch Requirements	8
ARTICLE 2. CPUC APPROVAL	9
2.1. Obtaining CPUC Approval.....	9
2.2. CPUC Approval Termination Right	9
ARTICLE 3. SELLER OBLIGATIONS	10
3.1. Delivery of Product	10
3.2. Resource Adequacy Benefits	11
3.3. Provision of Information	11
3.4. Seller's Obligations	12
3.5. Indemnities for Failure to Perform.	13
ARTICLE 4. PAYMENT AND BILLING.....	14
4.1. Delivered Capacity Payment.....	14
4.2. Invoice and Payment Process.....	14
4.3. Allocation of Other CAISO Payments and Costs	15

DEMAND RESPONSE RESOURCE PURCHASE AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS AND ELECTRIC COMPANY

Table Of Contents (Continued)

ARTICLE 5. CREDIT AND COLLATERAL	16
5.1. Seller's Credit and Collateral Requirements	16
5.2. Grant of Security Interest/Remedies.....	16
5.3. Reduction and Substitution of Performance Assurance	17
5.4. Administration of Performance Assurance	18
5.5. Exercise of Rights against Performance Assurance	20
5.6. Financial Information.....	21
5.7. Access to Financial Information	21
5.8. Uniform Commercial Code Waiver	24
ARTICLE 6. SPECIAL TERMS AND CONDITIONS	24
6.1. Limitation of Liability	24
6.2. Buyer Provision of Information.....	24
6.3. Changes in Applicable Laws	25
6.4. DBE Reporting.....	25
6.5. Governmental Charges.....	25
6.6. Customers in Buyer Automated Demand Response Program	26
ARTICLE 7. REPRESENTATIONS, WARRANTIES AND COVENANTS	27
7.1. Representations and Warranties of Both Parties	27
7.2. Additional Seller Representations, Warranties and Covenants.....	28
ARTICLE 8. NOTICES.....	32
8.1. Notices	32
8.2. Contact Information	32

DEMAND RESPONSE RESOURCE PURCHASE AGREEMENT
BETWEEN
***[SELLER]* AND SAN DIEGO GAS AND ELECTRIC COMPANY**

Table Of Contents (Continued)

ARTICLE 9. EVENTS OF DEFAULT; TERMINATION	34
9.1. Events of Default	34
9.2. Early Termination	35
9.3. Termination Payment.....	36
9.4. Reserved.....	36
9.5. Suspension of Performance.....	36
9.6. Rights and Obligations Surviving Termination or Expiration.....	37
ARTICLE 10. DISPUTE RESOLUTION	37
10.1. Dispute Resolution	37
10.2. Negotiation.....	38
10.3. Mediation	39
10.4. Arbitration.....	39
10.5. Provisional Relief	42
ARTICLE 11. INDEMNIFICATION.....	42
11.1. Seller’s Indemnification Obligations.....	42
11.2. Indemnification Claims	43
ARTICLE 12. LIMITATION OF REMEDIES, LIABILITY, AND DAMAGES	43
ARTICLE 13. CONFIDENTIALITY.....	44
13.1. Confidentiality and Privacy Obligations	44
13.2. Obligation to Notify	45
13.3. Remedies; Survival	45

**DEMAND RESPONSE RESOURCE PURCHASE AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS AND ELECTRIC COMPANY**

Table Of Contents (Continued)

ARTICLE 14. FORCE MAJEURE	46
ARTICLE 15. MISCELLANEOUS	46
15.1. General.....	46
15.2. Governing Law and Venue	46
15.3. Amendment	47
15.4. Assignment.....	47
15.5. Successors and Assigns	48
15.6. Waiver	48
15.7. No Agency	48
15.8. No Third-Party Beneficiaries.....	48
15.9. Entire Agreement.....	48
15.10. Severability	48
15.11. Multiple Originals.....	49
15.12. Mobile Sierra.....	49
15.13. Performance Under this Agreement	49

**DEMAND RESPONSE RESOURCE PURCHASE AGREEMENT
BETWEEN**

[SELLER] AND SAN DIEGO GAS AND ELECTRIC COMPANY

Table Of Exhibits

EXHIBIT

EXHIBIT A DEFINITIONS

EXHIBIT B MONTHLY CONTRACTED QUANTITY AND CORRESPONDING
CONTRACT PRICE

EXHIBIT C FORM OF NOTICE OF DEMONSTRATED CAPACITY

EXHIBIT D COMMUNICATION PROTOCOLS FOR DATA ISSUES

EXHIBIT E MINIMUM ENERGY DISPATCH REQUIREMENTS

EXHIBIT F FORM OF NOTICE OF SHOWING MONTH SUPPLY PLAN

EXHIBIT G IMPLEMENTATION GUIDELINES FOR QUALIFYING CAPACITY

EXHIBIT H MILESTONE SCHEDULE AND FORM OF PROGRESS REPORT

EXHIBIT I FORM OF LETTER OF CREDIT

DEMAND RESPONSE RESOURCE PURCHASE AGREEMENT
BY AND BETWEEN
[NAME OF SELLER]
AND
SAN DIEGO GAS AND ELECTRIC COMPANY

PREAMBLE

This Demand Response Resource Purchase Agreement, together with its exhibits (the “Agreement”) is entered into by and between **SAN DIEGO GAS AND ELECTRIC COMPANY**, a California corporation (“Buyer”), and **[Aggregator or Demand Response Provider]**, a **[Seller’s business registration]** (“Seller”), as of the latest signature date hereof (“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 Monthly Contracted Quantity, as indicated in Exhibit B, subject to and in accordance with the terms and conditions of this Agreement. The Product shall be a Proxy Demand Resource (PDR) consisting entirely of DRAM Resource Customers registered by the Seller (or its DRP).

(b) The Product is:

Table 1.1(b)

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

Product Selected	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	SDG&E
<input type="checkbox"/>	Product D1-2: Flexible Capacity (Flexible Category 1) with Local and System Capacity	SDG&E
<input type="checkbox"/>		
<input type="checkbox"/>		

(c) Seller to indicate whether the Product is:

_____ a Residential Customer Product; or

_____ not a Residential Customer Product

{SDG&E 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, subject to the survival provisions of Section 9.6.

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) calendar days following CPUC Approval, and (b) *TBD* and shall continue in full force and effect until *TBD* 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.

{SDG&E Comment: Dates will be based on Seller’s bid that was selected by SDG&E in the RFO. Currently that would be no earlier than January 2022 and no later than December 2022.}

1.4. Seller’s Designation of the DRAM Resource

- (a) On or before the date that is seventy-five (75) calendar days prior to the first Showing Month, and on a monthly basis thereafter no less than seventy-five (75) calendar 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, comprised solely of Unbundled Service Customers, or comprised of a mixture of Bundled and Unbundled Service Customers.
- (b) Sellers shall sell and deliver System Capacity, Local Capacity, and/or Flexible Capacity from PDRs, as designated in Section 1.1(b).
- (c) The Parties shall cooperate to implement the requirements of Rule 32 to enroll Resource Customers in order for Seller to designate the PDR(s) pursuant Section 1.4(a)(i).

1.5. Monthly Contracted Quantity and Corresponding Contract Price

- (a) The Monthly Contracted 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 B.
- (b) In the event that Seller is not able to register the DRAM Resource for part or all of a Monthly Contracted Quantity for a Showing Month due solely to (i) the actions or inactions of Buyer or the CAISO, or (ii) insufficient Rule 32 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) calendar days prior to the Showing Month for which Seller is unable to register the DRAM Resource, reduce the Monthly Contracted 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 Monthly Contracted 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 31, 2021, either (i) reduce the Monthly Contracted 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 DC Dispatches of the applicable PDR in the DRAM Resource during such Showing Month. The Demonstrated Capacity for System, Local, and Flexible Capacity will equal the average hourly load reduction of all DC Dispatches during such Showing Month as calculated

using the Capacity Baseline;. If the CAISO issues a dispatch instruction for less than one hundred percent (100%) of the Qualifying Capacity of the applicable PDR in the DRAM Resource (a “Partial DC Dispatch”), then Seller may elect to include the results of such Partial DC Dispatch during such Showing Month when calculating the average hourly load reduction for its Demonstrated Capacity showing. Upon such election, the load reduction resulting from such Partial DC Dispatch shall be compared to the Qualifying Capacity of the entire PDR for purposes of deriving the DC-MCQ Ratio of the DRAM Resource during such Partial DC Dispatch in accordance with Section 4.1.

- (ii) The results of a DC Test in the event that (A) there is no DC Dispatch of the applicable PDR in the DRAM Resource for one hundred percent (100%) of the Qualifying Capacity of the applicable Showing Month, and (B) Seller does not submit the results of a Partial DC Dispatch during the Showing Month as contemplated under 1.6(a)(i) above. The Demonstrated Capacity for System, Local, and Flexible Capacity will equal the average hourly load reduction of all DC Tests during the Showing Month as calculated using the Capacity Baseline; except that, for the Showing Month of August, the Demonstrated Capacity for System, Local, and Flexible Capacity will equal the average hourly load reduction during a minimum of two (2) consecutive hours of a DC Test as calculated using the Capacity Baseline.
 - (iii) In the event that (A) there is no DC Dispatch of the applicable PDR in the DRAM Resource during the Showing Month for one hundred percent (100%) of the Qualifying Capacity of the applicable Showing Month, (B) Seller does not submit the results of a Partial DC Dispatch as contemplated under 1.6(a)(i) above, and (C) 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 Must-Offer Obligation.
- (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).
 - (iii) Demonstrated Capacity for each PDR in the DRAM Resource shall be calculated under Section 1.6(a)(i) or 1.6(a)(ii) for any Showing Month for which a QC De-Rate Notice was issued without a corresponding agreed reduction in Supply Plan quantities, as further provided in Section 3.1(b).
 - (iv) Demonstrated Capacity for each PDR in the DRAM Resource shall not exceed, in any Showing Month, the lesser of (A) such PDR's corresponding Net Qualifying Capacity or (B) the Qualifying Capacity set forth for such PDR in the Supply Plan for such Showing Month, as determined pursuant to Section 3.1.
- (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 Seller has not received all Revenue Quality Meter Data for any Resource ID within fifteen (15) calendar days after the end of any Showing Month, Seller shall provide Notice to Buyer of the Resource IDs (and customer service accounts with missing Revenue Quality Meter Data within each such Resource ID), and the dispatch days and hours during such Showing Month, for which Revenue Quality Meter Data has not been received. Seller and Buyer shall comply with the communication protocols set forth in Exhibit D with respect to data issues.
- (f) If the DRAM Resource is composed of more than one PDR, then:
 - (i) Seller shall 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).

- (iii) In the event that multiple Resource IDs are dispatched concurrently in a Showing Month, Seller may aggregate the performance of the concurrently dispatched Resource IDs for the purpose of Demonstrated Capacity invoicing and compare the sum of such aggregated performance against the sum of the Qualifying Capacity of those Resource IDs as listed on the applicable Supply Plan. For Local Capacity products, the aggregation of concurrently dispatched Resource IDs shall be limited to resources within the same SubLAP.
- (g) With respect to any DRAM Resource Customer service account that was moved in a Showing Month pursuant to Section 3.4(d), Seller shall include the performance of such DRAM Resource Customer service account only in one PDR for purposes of the calculation of Demonstrated Capacity for 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) If Buyer is unable to validate, or disputes, any amount shown in Seller's invoice and Notice of Demonstrated Capacity, then Buyer shall issue a Notice to that effect to Seller in accordance with Section 1.6(k)(i) below. Pursuant to Section 1.6(k)(ii), Seller shall be required to provide additional documentation from Seller or Seller's SC in the form or format requested by Buyer that establishes to Buyer's reasonable satisfaction that the Demonstrated Capacity of each Product type from a PDR is as stated by Seller in its invoice for the applicable Showing Month.
 - (i) Buyer shall issue such Notice on or before the later of: (A) the twentieth (20th) calendar day of the month and (B) the tenth (10th) calendar day after receipt of Seller's invoice and Demonstrated Capacity; provided that, if such day is not a Business Day, then on the next Business Day.
 - (ii) No later than ten (10) Business Days after receipt of Buyer's Notice, Seller shall provide the additional documentation to Buyer. If Seller fails to provide the additional documentation within such ten (10) Business Day deadline, then Buyer shall either (A) pay the subject invoice or (B) initiate

an audit of Seller's or Seller's SC records by issuing a Notice ("Audit Notice") to Seller, in each case no later than fifteen (15) Business Days after the expiration of such ten (10) Business Day deadline.

- (iii) No later than fifteen (15) Business Days after receiving the additional documentation from Seller, Buyer shall either: (A) pay the subject invoice or (B) initiate an audit of Seller or Seller's SC records by issuing an Audit Notice to Seller if the additional documentation is unsatisfactory to Buyer in its reasonable discretion.
- (k) With respect to an Audit Notice issued under Section 1.6(k)(ii) or (iii), no later than five (5) Business Days after Seller's receipt of an Audit Notice, Seller shall allow, or cause its SC to allow, Buyer or its designated independent third-party auditor to have access to the records and data, which must be in the form or format requested by Buyer under Section 1.6(k) above, necessary to conduct such audit; *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 in the form or format requested by Buyer, 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 conducting such audit are the sole responsibility of Buyer. Buyer shall make a reasonable effort to conclude its audit within sixty (60) calendar days after receiving all records and data that Buyer deems necessary to complete or resolve the disputed invoice. If the audit does not result in the resolution of the disputed invoice, then either Party may initiate the Dispute Resolution process pursuant to Article 10.

1.7. Minimum Energy Dispatch Requirements

- (a) Seller shall comply with the energy dispatch requirements set forth on Exhibit E, "Minimum Energy Dispatch Requirements".
- (b) Concurrently with the submission of its final invoice under this Agreement pursuant to Section 4.2(a), (or earlier, if Seller has received sufficient Revenue Quality Meter Data), Seller shall submit to Buyer documentation showing CAISO settlements for the delivery of the Required Energy Quantity, as calculated in accordance with Exhibit E and Section 1.7(c) below. Seller may omit price and revenue data from the documentation submitted under this Section 1.7(b).
- (c) If Seller fails to meet any of the requirements of Sections 1.7(a) and (b) above, Seller shall pay to Buyer an "Undelivered Energy Penalty" equal to:

$$\$10,000/\text{MW} \times \text{AQC} \times (1 - \text{DEQ}/\text{REQ})$$

Where:

AQC = the average Qualifying Capacity (in MW) for each of the three highest Showing Months on the month-ahead Supply Plans delivered hereunder

DEQ = the cumulative energy delivered by the applicable aggregate resources during the contracted Showing Months and during the Availability Assessment Hours

REQ = $30 \text{ MWh} \times \text{AQC}$

- (d) The Undelivered Energy Penalty may be netted by Buyer against amounts that would otherwise be due to Seller under this Agreement. Seller's payment of the Undelivered Energy Penalty shall be secured by the Performance Assurance as specified in Article 5.

ARTICLE 2. CPUC APPROVAL

2.1. Obtaining CPUC Approval

Within thirty (30) calendar 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) calendar 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 ten (10) Business 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 F, 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 Monthly Contracted 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, as modified by D.19-09-041 and D.19-12-040, and set forth with more specificity in Exhibit G (the "QC Implementation Guidelines"), including the Qualifying Capacity for each PDR identified by Seller pursuant to Section 1.4(a)(i), presented in the standardized reporting format developed by the CPUC pursuant to Ordering Paragraph 8 of D.19-07-009. If the information provided pursuant to Exhibit G supports an estimated Qualifying Capacity greater than the amount of Qualifying Capacity Seller will identify for such PDR on the Supply Plan pursuant to Section 3.1(a)(i), Seller shall also provide such Supply Plan amount for such PDR. If Buyer has any questions or concerns about the information provided by Seller pursuant to this Section 3.1(a)(ii), Buyer shall, to the extent reasonably practicable, request clarification from Seller) and take into consideration any clarification or additional information timely provided by Seller.
- (b) No later than eight (8) Business Days prior to Buyer's Compliance Showing deadlines each year or Showing Month (as applicable), Buyer shall issue a Notice to Seller in the event Buyer intends to include in Buyer's applicable compliance filings any amount less than the quantities in Seller's Supply Plan submitted to Buyer ("QC De-Rate Notice"). The QC De-Rate Notice will include the amount of the de-rate to such quantities and will identify the shortcomings or deficiencies in the information provided by Seller pursuant to Section 3.1(a)(ii). If Buyer issues a QC De-Rate Notice, then Seller shall provide Notice to Buyer, no later than five (5) Business Days after receipt of such QC De-Rate Notice, that Seller will either:

- (i) reduce the quantities in its Supply Plan for the applicable Showing Month to conform to the quantities shown in the QC De-Rate Notice (or such other amount as may be agreed in writing by Buyer and Seller); or
- (ii) perform a DC Dispatch or DC Test during the applicable Showing Month.

In all cases, if the Parties do not agree upon the reduction in Seller's Supply Plan quantities under subsection 3.1(b)(i) above, then a DC Dispatch or DC Test shall be required for each and every Showing Month for which Buyer has issued a QC De-Rate Notice.

- (c) 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

- (a) Within a reasonable period of time, or such time prescribed by the CPUC, Seller shall provide to the CPUC (i) all periodic reports required by the CPUC and (ii) all other information requested by the CPUC relating to Seller's obligations and performance pursuant to this Agreement and the DRAM 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) Seller shall achieve, or shall cause its designated SC to achieve, each Milestone set forth in Exhibit H (each, a "Milestone") on or before the applicable deadline for achievement. Seller shall provide to Buyer:
 - (i) No later than the tenth (10th) calendar day of each month before the commencement of the Delivery Period, or within five (5) days after Buyer's request, a progress report in the form developed by the Commission's Energy Division pursuant to D.19-12-040, OP 28, as the same may be modified from time to time (or, if such form has not yet been

finalized, substantially in the form set forth in Exhibit H) (“Progress Report”), describing Seller’s progress, including projected time to completion of remaining Milestones.

- (ii) On or before the applicable deadline to achieve each Milestone, documentation evidencing that the Milestone has been achieved.
- (iii) Within five (5) Business Days after Buyer’s request, any additional evidence reasonably requested by Buyer that the Milestone has been achieved.

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 in compliance with the Must-Offer Obligation 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 32.
- (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, at any time during the Delivery Period 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 CAISO’s above 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 requirement, 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.
- (e) Seller shall cause each PDR in the DRAM Resource to have a minimum size of one (1) MW at all times during the Delivery Period, with the exception of one (1) PDR in each SubLAP, which may be less than one (1) MW.

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 Monthly Contracted 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 Monthly Contracted Quantity in accordance with Section 1.5(b) or (c);
- (b) Submit timely and accurate Supply Plans that identify Buyer's right to the Monthly Contracted 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 RA 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 Monthly Contracted Quantity (“DC-MCQ Ratio”):

Delivered Capacity (DC) Payment Values		
Band	DC- MCQ Ratio	Value for B
Pro-rated	> 70.00%	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) calendar 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 Monthly Contracted Quantity 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, if such day is not a Business Day, then on the next Business Day), or (ii) the tenth (10th) Business Day after receipt of Seller's invoice and Demonstrated Capacity.
- (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.

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 the sum of the following: (i) 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, plus (ii) twenty percent (20%) of the estimated Undelivered Energy Penalty based on the associated Monthly Contracted Quantity (collectively, "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) as of the Execution Date, Seller shall post the Performance Assurance with Buyer within ten (10) Business Days of the Execution Date. If required pursuant to Section 5.1(a) at any other time during the Term, Seller shall post the Performance Assurance with Buyer within five (5) Business Days of the date of the event that triggered Seller's posting requirement under Section 5.1(a).

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 during the Delivery Period (but not more than once each calendar quarter), 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, including without limitation any Undelivered Energy Penalty. 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. Buyer shall effect any permitted reduction in Performance Assurance in accordance with the form of the Performance Assurance that has been provided. 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, if Seller's reduction demand is made on or before the Notification Time on a Business Day, then Buyer shall have fifteen (15) Business Days to effect a permitted reduction in Performance Assurance, and if Seller's reduction demand is made after the Notification Time on a Business Day, then Buyer shall have sixteen (16) 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, 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) calendar 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) calendar 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) calendar 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) calendar 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) calendar 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 (A) treat as confidential any information disclosed to them by Buyer pursuant to this Section 5.7, (B) use such information solely for purposes of conducting the audits described in this Section 5.7, and (C) 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 provide to Seller, to the extent available and permitted by Applicable Law, including Rule 32, provide specific information consistent with the Customer Information Service Request Form for Demand Response Providers (CISR-DRP) 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, 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) calendar 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) calendar 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.

- a. Buyer has the right to disclose to the CPUC all such information provided by Seller pursuant to this Section 6.4.
- b. 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) calendar 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 no 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.
 - (iv) Seller will not use, grant, pledge, assign, or otherwise commit any Monthly Contracted Quantity to meet the RAR, Local RAR, and/or Flexible RAR, as applicable, 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. The total nameplate capacity in kW of the Customer's resource(s) will be used as the Default Adjustment Value (DAV) to adjust the Demand Response incentives / charge for the Customer's account.

For condition 1 above, the Customer's attestation must include the service account number. For conditions 2 and 3 above, each attestation must provide the service account number, the number of unit(s) of Prohibited Resources on site, and the nameplate capacity of the Prohibited Resource (or, if the Customer has multiple Prohibited Resources, the sum of the nameplate capacity values from all Prohibited Resources on site) (the "Default Adjustment Value"). For condition (3), this Default Adjustment Value will be subtracted from the Potential Load Reduction or Nominated Capacity. 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 Buyer, 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. Consistent with CPUC Resolution E-4906, the Seller's contractual agreement is contingent upon compliance with both the prohibition and the submission of the Customers' attestations, which are subject to verification.

- E. Seller shall include provisions in its contracts that Customers are subject to random annual audits (1) requiring compliance with verification requests and facility access for site visits as deemed necessary by the Verification Administrator; (2) requiring the Customer 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 (3) allowing the Buyer 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 (60) calendar days from receipt of notice to cure such Type-One Non-Compliance. If the instance of non-compliance involves either (1) 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 (2), 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 DRAM Resource as follows. If there is an instance of (x) an uncured Type One Non-Compliance, or (y) a Type Two Non-Compliance, the consequences will be removal from Seller's DRAM Resource and ineligibility to enroll in any DRAM Seller's Resource or Buyer's demand response 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, (1) Sellers will provide the Default Adjustment Values

(DAVs) monthly (with Demonstrated Capacity information); and, (2) Sellers will ensure that CAISO wholesale market bids 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.

- 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 Buyer, the CPUC, and the Verification Administrator upon the request of Buyer or the CPUC.
- I. Seller shall include provisions in its contracts with non-Residential Customers permitting updates to their attestations to (1) add, remove or modify an on-site Prohibited Resource; (2) change the status or use of a Prohibited Resource to reduce load during any Dispatch; or (3) 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 a Verification Administrator.
- J. Verification methods for Customers under the condition noted in Section 7.2(b)(v)(I)(3) above shall be based on documentation of nameplate capacity, instead of load curtailment plans.
- K. If further documentation in the form of load curtailment plans are required, Seller shall comply with the Verification Administrator's requests for supporting materials.
- L. The Buyer has been directed by the CPUC to require a standardized non-disclosure agreement (NDA) that the Verification Administrator executes with the Buyer. This NDA pertains to all sellers and their customers from whom they collect market-sensitive, proprietary data. Verification information obtained from sellers and their customers is only to be submitted to and collected by the Verification Administrator consistent with CPUC Resolution E-4906. Under the terms of this NDA, third party customers' market-sensitive, proprietary information shall not to be shared with the Buyer, will be kept under seal, and shall be made available to the Commission upon request. Per Ordering Paragraph 14 of CPUC Resolution E-4906, all aggregators must store Customer attestations and make them available to the CPUC upon request. The Seller shall store non-Residential Customer attestations and make them available to the Buyer or Commission upon request.

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: San Diego Gas and Electric Company

Street: 8315 Century Park Court
City: San Diego, CA
Zip: 92123
Attn: Demand Response – DRAM –
Brad Mantz
Phone: 858-790-1502
Email: BMantz@SDGE.com
Duns: 006911457
Federal Tax ID Number: 95-1184800

Supply Plan Contact:

San Diego Gas & Electric Company
8315 Century Park Ct.
San Diego, California 92123-1593
Attn: Electric and Fuel Procurement – Nuo Tang
Phone: (858) 654-1818
Email: NTang@SDGE.com

Other Buyer Contact Information

Payments:

San Diego Gas & Electric Company

PO Box 25110

Santa Ana, CA 92799-5110

Attn: Mail Payments

Phone: (619) 696-4521

Wire Transfer:

BNK: Union Bank of California for: San Diego Gas & Electric Company

ABA: Routing #122000496

ACCT: #4430000352

Reference: SAP # 2130015

Confirmation: SDG&E, Major Markets

Facsimile: (213) 244-8316

Credit and Collections:

San Diego Gas & Electric Company, Major Markets

555 W. Fifth Street, ML 18A3

Los Angeles, CA 90013-1011

Attn.: Major Markets, Credit and Collections Manager

Fax No.: (213) 244-8316

Phone: (213) 244-4343

Notices of an Event of Default or Potential Event of Default:

San Diego Gas & Electric Company

8330 Century Park Ct.

San Diego, California 92123

Attn: General Counsel

Phone: (858) 650-6141

Facsimile: (858) 650-6106

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

Credit and Collections

- (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) calendar 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 Monthly Contracted Quantity 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 Must-Offer Obligation bids pursuant to Section 1.6(a)(iii)).
- (vii) Seller fails to achieve a Milestone by the applicable deadline for such Milestone as set forth in Section 3.3(b), and such failure is not remedied within five (5) Business Days after Notice from Buyer.

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) calendar 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;
- (j) The obligation of confidentiality as set forth in Article 13; and
- (k) A Party's obligation to comply with all applicable federal, state and local laws and rules, including without limitation, laws and rules protecting the confidentiality and privacy of Customer and Personal Confidential Information, such as the California Consumer Privacy Act of 2018, as set forth in Section 13.1(b) of this Agreement.

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 10 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 in Section 8.2, 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 of such request, at a mutually agreed time and place. If the matter is not resolved within fifteen (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 five (5) Business Days of the Referral Date the Executives shall establish a mutually acceptable location and date, which date shall not be greater than thirty (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 forty-five (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 ten (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 ten (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.

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 8 of a demand for binding arbitration before a single, neutral arbitrator (the “Arbitrator”) if mediation pursuant to Section 10.3 above does not result in resolution of the dispute within sixty (60) calendar days after service of a written demand for mediation (as the same may be extended by mutual agreement of the Parties).

If Notice of arbitration is not provided by either Party within sixty (60) calendar 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 and scheduling the arbitration. 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) calendar 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) calendar 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) calendar 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.

Within thirty (30) calendar days after 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;
 - (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 (INDEMNIFICATION), NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

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

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

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

ARTICLE 13. CONFIDENTIALITY

13.1. Confidentiality and Privacy Obligations

- (a) 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 (i) 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(a)(i) and (vi); (ii) to the extent necessary for the enforcement of this Agreement; (iii) 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; (iv) to the extent such information is or becomes generally available to the public prior to such disclosure by a Party; (v) 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); (vi) 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 (vii) 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 (i) or (v) of the foregoing sentence of this Section 13(a).

- (b) During the Term of this Agreement, both Parties shall comply with all applicable federal, state and local laws protecting the confidentiality and privacy of the Customer and Personal Confidential Information, including without limitation, the California Consumer Privacy Act of 2018, California Civil Code 1798.100 et seq. In addition, Seller shall cause each of the PDRs in the DRAM Resource and corresponding DRPs and SCs to comply with all applicable federal, state, and local laws set forth in the prior sentence.

13.2. Obligation to Notify

In connection with discovery requests or orders pertaining to 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, these confidentiality and privacy obligations. With respect to information provided in connection with this Agreement, these obligations 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

- (a) 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), (a) 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, (b) 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 (c) 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.
- (b) If Seller seeks to assign this Agreement or its rights hereunder and Buyer's consent is required under Section 15.4(a) or pursuant to CPUC rules on reassignment described in Decision 19-12-040 or other applicable rules or laws, then no later than thirty (30) calendar days in advance of the proposed assignment, Seller shall issue Notices to the Commission's Energy Division and to Buyer informing each of Seller's intent to assign, and shall inform prospective Demand Response Providers by emailing all regulatory affairs or contract managers for all registered Demand Response Providers. Seller shall issue a Notice to Buyer of its selected assignee and shall provide concurrently with such Notice: (i) draft modifications to this Agreement to accommodate such assignment; (ii) evidence that the proposed assignee and the DRAM Resource is in compliance with the Milestones; and (iii) the additional information required by the QC Implementation Guidelines, as to the selected assignee. Buyer shall advise Seller of its approval or disapproval of such assignment, in its reasonable discretion, within fifteen (15) Business Days after receipt of all such information. Such assignment, if approved by Buyer, shall not become effective until CPUC Approval has been obtained with respect to the revised Agreement. Buyer shall request CPUC Approval of any revised Agreement via a Tier 1 Advice Letter.

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.

**SAN DIEGO GAS AND ELECTRIC
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 10.4.

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

"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.

"Average Qualifying Capacity" or AQC has the meaning set forth in Section 1.7 and Exhibit E.

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

"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 Corporation or any successor entity performing the same functions.

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

“CAISO Tariff” means the most current 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 twenty percent (20%) cap; (ii) a weather matching baseline with a forty percent (40%) cap; (iii) the use of control groups; and (iv) a five-in-ten baseline for residential customers, with a forty 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.

“Clock Hour” is the sixty (60) minute interval that starts at 00:00 and ends at 00:59.

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

“Compliance Showing(s)” means the RAR compliance or advisory showings (or similar or successor showings), that 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 B for each Showing Month.

“CPM Capacity” has the meaning set forth in the CAISO 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, 19-12-040 and any other existing or subsequent decisions, resolutions, or rulings related to Resource Adequacy, including, without limitation, the CPUC RA Filing Guide, in each case as may be amended from time to time by the CPUC.

“CPUC RA 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 and Personal Confidential Information” means (i) personal information as defined in California Civil Code section 1798.140(o); (ii) Customer specific information as defined in CPUC rules and decisions which does not meet the CPUC’s aggregation standards in CPUC D.14-05-016 for non-Residential Customers of at least fifteen (15) Customers with no Customer comprising fifteen percent (15%) or more of the data and for Residential Customers of at least one hundred (100) Customers per zip code (CPUC aggregation standards), (iii) all written materials marked “Confidential”, “Proprietary” or with words of similar import provided to the receiving Party; and (iv) any calculations and the results of such calculations involving the Customer and Personal Confidential Information disclosed by the disclosing Party that does not meet the CPUC’s aggregation standards. The Customer and Personal Confidential Information includes portions of documents, records and other material forms or representations which the receiving Party may create, including but not limited to handwritten notes or summaries, that contain or are derived from such Customer and Personal Confidential Information.

“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 the Dispatch(es) of a PDR in the DRAM Resource in the CAISO market, in accordance with the CAISO Tariff, for a duration of at least (i) one (1) Clock Hour within the Availability Assessment Hours for all Showing Months except the Showing Month of August or (ii) two (2) consecutive Clock Hours within the Availability Assessment Hours for the Showing Month of August that is used to demonstrate capacity; provided that, such two (2) consecutive Clock Hours requirement may be satisfied by a combination of a DC Dispatch and a DC Test.

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

“DC Test” means the capacity test(s) 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) for a duration of at least (i) one (1) Clock Hour within the Availability Assessment Hours for all Showing Months except the Showing Month of August or (ii) for a duration of at least two (2) consecutive Clock Hours within the Availability Assessment Hours for the Showing Month of August that is used to demonstrate capacity, conducted by the Seller’s SC during the applicable Showing Month, in accordance with the CAISO Tariff and D.14-06-050, Appendix B, that is used to demonstrate capacity.

“Default Adjustment Value” has the meaning set forth in Section 7.2(b)(v)(B), CPUC Resolution E-4838, and CPUC Resolution E-4906.

“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.

“Delivered Energy Quantity” or “DEQ” has the meaning set forth in Section 1.7 and Exhibit E.

“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” means the Demand Response Auction Mechanism, which is a procurement mechanism during 2022 for the Product as described in CPUC D.14-12-024, D.17-10-017, D.19-07-009 and D.19-12-040.

“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 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).

“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 calendar 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 10.3.

“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, EAGLROCK, 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 I 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) a Credit Rating of at least "A-, with a stable designation" from S&P and "A3, with a stable designation" by Moody's, if such entity is rated by both S&P and Moody's; or (b) "A-, with a stable designation" by S&P or "A3, with a stable designation" by Moody's, 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: (a) the issuer of such Letter of Credit shall fail to maintain a Credit Rating of at least "A-", with a stable outlook designation from S&P, and "A3", with a stable outlook designation from Moody's, if such issuer is rated by both S&P and Moody's, “A-“ by S&P with a stable outlook designation, if such issuer is rated only by S&P, or “A3” by Moody's with a stable outlook designation, if such issuer is rated only by Moody's; (b) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit; (c) 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; (d) 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 (e) 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.

“Milestone” has the meaning set forth Section 3.3(b).

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

“Monthly Quantity” means the aggregate amount of all Monthly Contracted Quantities set forth in Exhibit B 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 Investors Service, Inc. or its successor.

“Must-Offer Obligation” 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.

“Net Qualifying Capacity” or “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 DC Dispatch” has the meaning set forth in Section 1.6(a)(i).

“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 Section 13.1.

“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 agreements for separate products and will combine multiple awards of the same product into one agreement at a weighted average price.

“Progress Report” has the meaning set forth in Section 3.3(b).

“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.

“QC De-Rate Notice” shall have the meaning set forth in Section 3.1(b).

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

“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 or Moody’s (collectively the ‘Ratings Agencies’).

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

“Required Energy Quantity” or “REQ” has the meaning set forth in Section 1.7 and Exhibit E.

“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.

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

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

“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 32” means Direct Participation Demand Response:
http://regarchive.sdge.com/tm2/pdf/ELEC_ELEC-RULES_ERULE32.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 Monthly Contracted Quantity times the applicable Contract Price for each type of Product.

“Shortfall Capacity” means the amount of capacity with respect to the Monthly Contracted 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 Customer 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).

“SubLAP” means the geographic location corresponding to each customer service account within the distribution network located in Buyer’s service territory.

“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 expects to incur penalties, fines or costs from the CPUC, the CAISO, or any other Governmental Body, then Buyer may estimate the 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, the 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.

“Undelivered Energy Penalty” has the meaning set forth in Section 1.7.

“Verification Administrator” has the meaning set forth in CPUC Resolution E-4838 and CPUC Resolution E-4906.

EXHIBIT B
MONTHLY CONTRACTED QUANTITY
AND
CORRESPONDING CONTRACT PRICE

Showing Month	Product [Insert]	
	[Year]	
	Monthly Contracted 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 C-1

Form of Notice of Demonstrated Capacity

For use with System and Local Capacity Product

Total "Qualifying Capacity" (MW):
 Total "Demonstrated Capacity" (MW):
 Residential Product (Yes/No):
 Delivered Capacity Payment formula, "B" =

The information provided by Seller in this Notice of Demonstrated Capacity is required by Section 1.6 of the Agreement.

⁴ A combination of a market dispatch and test could be used to satisfy the August two consecutive hour requirement if the CAISO market dispatch does not cover the two consecutive hours.

EXHIBIT C-2

Form of Notice of Demonstrated Capacity

For use with System and Local Capacity Product

Showing Month:
 Seller:
 Seller Contact Name:
 Seller Contact Phone:
 SCD:
 Local Capacity Area (LCA): (mark "n/a" if not a Local Capacity Product)

Total "Qualifying Capacity"[▲] (MW):
 Total "Demonstrated Capacity" (MW):
 Residential Product (Yes/No):
 Therefore: in Delivered Capacity Payment formula, "B" =

PDRs in the DRAM Resource					--- "Demonstrated Capacity" (MW) ---						Prohibited Resources Adjustment		Residential Product Delivery			Local Capacity Product Delivery	
PDR Resource Name	CAISO Resource ID	Assigned QC (MW)	Assigned EFC (MW)	Flexible Category (1, 2, or 3)	For each PDR Resource (row), choose <u>one</u> demonstration method (column) to establish monthly Demonstrated Capacity						Complete for all resources		Residential Product This section is only required if delivering Residential Customer Product			Local Capacity Product This section is only required if delivering Local Capacity Product	
					DC Test Average hourly load reduction during DC Test(s) conducted by Seller's SC during Showing Month		Must Offer Obligation (MOO) Average amount of capacity Seller bid into CAISO Markets during Showing Month		DC Dispatch Average hourly load reduction from DC Dispatch(es) during Showing Month								
					Raw Demonstrated Capacity	Lesser of Assigned EFC, NQC, or Raw Demonstrated Capacity	Raw Demonstrated Capacity	Lesser of Assigned EFC, NQC, or Raw Demonstrated Capacity	Raw Demonstrated Capacity	Lesser of Assigned EFC, NQC, or Raw Demonstrated Capacity	Default Adjustment Value (DAV) [MW]	Net MW Claimed	Total Service Accounts**	Residential Customer Service Accounts**	Small Business Customer Service Accounts**	Total Service Accounts**	Customer Service Accounts within specified LCA**
		0.00 MW	0.00 MW			0.00 MW		0.00 MW		0.00 MW							
						0.00 MW		0.00 MW		0.00 MW							
						0.00 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							
						0.00 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							
						0.00 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							
						0.00 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							
						0.00 MW		0.00 MW		0.00 MW							
Demonstrated Capacity ==>						0.00 MW		0.00 MW		0.00 MW		0.00 MW				0	0
IMPORTANT NOTES: ▲ "Total Qualifying Capacity" is the total Supply Plan quantity identified through Section 3.1.					1) August Showing Month requires average hourly load reduction for two consecutive clock hours. 2) Only include results during the CAISO Availability Assessment Hours (AAH).		1) PDR must be bid into the Day-Ahead Market		1) August Showing Month requires average hourly load reduction for two consecutive clock hours. 2) Only include results during the CAISO AAH.		Per DRAM Agreement Section 7.2(b)(v), provide the Default Adjustment Value, if any.		Percent Residential Accounts			Percent Local Accounts	
					2) Calculate using the same PDR Capacity Baseline used for Month Ahead Supply Plan		2) Only include bids submitted in compliance with the CAISO AAH.		2) Calculate using the same PDR Capacity Baseline used for Month Ahead Supply Plan and CAISO Settlement Baseline								

The information provided by Seller in this Notice of Demonstrated Capacity is required by Section 1.6 of the Agreement.

⁴ A combination of a market dispatch and test could be used to satisfy the August two consecutive hour requirement if the CAISO market dispatch does not cover the two consecutive hours.

EXHIBIT D
COMMUNICATION PROTOCOLS FOR DATA ISSUES
(D.19-12-040, OP 26)

Below are the approved Protocols for Data Issues Communication - DRAM Sellers must use the most current version of the Final DRAM Template, “Data Issue Reporting” (originally published March 13, 2020, and subsequently updated on July 21, 2020).

- Buyer and Seller shall each designate a point of contact for all data delivery inquiries and notify the Commission’s Energy Division, the Buyer, and the Seller of any changes to this point of contact.
- Buyer shall facilitate a monthly call for Seller to report data issues.
- Seller shall perform troubleshooting prior to notifying Buyer of any data issues including:
 - a) verifying the Application Programming Interface data request was correctly formatted;
 - b) verifying Seller’s customer lists are updated, including removing customers whose service accounts have been closed; and c) verifying that missing data is not a result of a planned or unplanned outage where Buyer has notified Seller.
- Seller shall notify Buyer of data errors using the standardized data template finalized by the Commission’s Energy Division pursuant to OP 27 of D.19-12-040, as the same may be modified from time to time.
- Buyer shall confirm receipt of Seller’s inquiry and provide an estimated time of resolution of the inquiry within two (2) Business Days after receipt thereof.
- Buyer shall update Seller on a regular basis and when the estimated time of resolution could change.
- Buyer shall confirm resolution of the inquiry and data delivery.



STATE OF CALIFORNIA
PUBLIC UTILITIES COMMISSION

DATA ISSUE REPORTING TEMPLATE

Last Update:7/21/2020

DRP/Seller Contact Info	Name of DRP	
	Rule 24/32 DRP ID	
	Submission Date	
	DRP Contact Name	
	DRP Email addresses	
Issue Info	Authorization Mode	
	Type of data issue	
	Describe the data issue	
	Account Number	
	Subscription ID	
	UUID(s)	
	Date range for requested data	
	API call used and error message(s) received	
	Date and time of API call error	

Instructions:

	Item	Field	Description
DRP Contact Info	1	Name of DRP	Enter name of vendor registered with IOU as a Demand Response Provider (DRP)
	2	Rule 24/32 DRP ID	PG&E only. Enter the PG&E assigned 10 digit identifier
	3	Date Submitted to IOU	Enter date in MM/DD/YYYY format
	4	Name of person submitting form	Provide first and last name
	5	DRP Email addresses for IOU responses	Enter DRP email addresses for IOU responses on this issue
Issue Info	6	Authorization Mode (CISR-DRP Form vs Online)	Identify the mode used by the customer to create the data sharing authorization
	7	Type of data issue	Identify the type of data issue by making a selection in the drop down: Revenue Quality Meter Data (RQMD) interval; Raw/Non-RQMD interval; Billing; Customer; DR Program Info; API Call Failure; File Retrieval Issue. <i>Note: DRPs are to submit one intake form per data issue.</i>
	8	Describe the data issue	Describe the issue you are encountering for the type of data issue identified in Item 7 above.
	9	Account Number	SCE & SDG&E only. Enter the Account Number for the customer impacted by the data issue. If the data issue impacts multiple Accounts, please add the Account Number information in the tab titled Multiple UUIDs.
	10	Subscription ID	PG&E & SCE only. Provide the subscription ID associated with each UUID impacted by the data issue. If the data issue impacts multiple Subscription IDs, please add the Subscription ID information in the tab titled Multiple UUIDs.

	11	UUID(s)	PG&E & SDG&E only. Enter the UUID for the customer impacted by the data issue. If the data issue impacts multiple UUIDs, please add the UUID information in the tab titled Multiple UUIDs.
	12	Date range for requested data	Specify the start and end dates of requested data on a per customer basis. If there are multiple UUIDs, please add the date information in the tab titled Multiple UUIDs per customer. <i>Note: This item only pertains to issues related to Billing or Interval data.</i>
	13	API call used and error message(s) received	Paste the actual API call used into this field and indicate the response error code and response error message you received
	14	Date and time of API call error	Enter the dates and times of failed API calls

By submitting this form, the DRP attests that it has performed basic troubleshooting steps before notifying the IOU of the issue. Basic troubleshooting steps, include: (1) verifying that the applicable API calls were correctly formatted; (2) verifying that the DRP's customer list has been updated to remove service accounts that are closed; (3) verifying that missing data is not a result of a planned or unplanned outage where the IOU has notified the DRP; and (4) verifying that the customer's data sharing authorization is in the active status (i.e., it has not expired or been revoked).

EXHIBIT E
MINIMUM ENERGY DISPATCH REQUIREMENTS
(D.19-12-040 Attachment 1, Appendix C)

Below are the approved Requirements for Minimum Energy Dispatch Requirements – DRAM Sellers must use the most current version of the Final DRAM Templates, “Required Energy Quantity – A/B” (originally published March 13, 2020, and subsequently updated on July 21, 2020), as represented by the template diagram at the end of this Exhibit E for Seller’s submission pursuant to Section 1.7(b).

1. DRAM Resources must deliver a “Required Energy Quantity” (“REQ”) equal to 30 megawatt hours (MWh) per megawatt (MW) of Average Qualifying Capacity (“AQC”). The AQC shall be assessed as a total sum of the individual PDRs in the DRAM Resource.
2. The REQ shall be delivered during the Term and during the Availability Assessment Hours.
3. Seller shall submit documentation to the Buyer showing CAISO settlements for the Delivered Energy Quantity (“DEQ”), along with the calculation of AQC, at the time of the Seller’s last Demonstrated Capacity invoice submission or when Seller has received sufficient Revenue Quality Meter Data, whichever is earlier. The DEQ shall be assessed as a total sum of the individual PDRs in the DRAM Resource, and shall not exceed the REQ. To protect the confidentiality of market related data, Sellers may omit price and revenue data.
4. If the REQ is not delivered by the end of the Term, Seller will be assessed an Undelivered Energy Penalty based on the calculation set forth in Section 1.7(c) of the Agreement:



STATE OF CALIFORNIA
PUBLIC UTILITIES COMMISSION

REQUIRED ENERGY QUANTITY
TEMPLATE - A

Last Update: 3/13/2020

Demand Response Provider (DRP) Name	Investor Owned Utility (IOU)	Contract ID	Required Energy Quantity (MWh)	Delivered Energy (MWh)	Undelivered Energy (MWh)	Undelivered Energy Penalty (\$)	Monthly Quantity (MW)												Average of 3 Highest Monthly QC (MW)
							J	F	M	A	M	J	J	A	S	O	N	D	
							a	e	a	p	a	u	u	u	e	c	o	e	
							n	b	r	r	y			g		t	v	c	

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EXHIBIT F

Form of Notice of Showing Month Supply Plan

[illegible]

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

Below are the approved Guidelines for Qualifying Capacity – DRAM Sellers must use the most current versions of the Final DRAM Templates, “QC Supporting Data-Monthly” and “QC Monthly-Historical Data” (originally published March 13, 2020, and subsequently updated on July 21, 2020), as represented by the template diagram at the end of this Exhibit G, for Seller’s submission pursuant to Section 3.1(a)(ii).

- A. Seller shall provide the following details to the Buyer for each PDR in the DRAM Resource by the deadline specified in Section 3.1(a)(ii):
1. Customer class (or percent of mix): Residential Customer , non-Residential Customer
 2. Nature of load being aggregated: such as, whole house, air conditioning load, storage, building load, pumps, electric vehicles, or other (Seller shall provide a description)
 3. Dispatch method: automated via cloud control, or other (Seller shall provide a description)
 4. Projected number of SAIDs, including a breakdown of the active and registered number of SAIDs within the total projected service account numbers. Active and Registered SAIDs shall be defined as SAIDs that have been registered in the CAISO Demand Response Registration System (DRRS) as of the date of this submission with an active status.
 5. Projected aggregated load (if storage based, projected aggregated capacity)
 6. For Residential Customers, projected percentage of load impact or reduction (if storage based, projected percentage of capacity delivered). For non-Residential Customers, total load impact.
 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 Seller shall reference suitable publicly available performance data that best represents the anticipated performance of the DRAM Resource. Along with the supporting performance data, the following details for the DRAM Resource associated with the supporting performance data should be provided to establish similar characteristics:
 - a. Customer class (or percentage mix): Residential Customer, non-Residential Customer

- b. Nature of load being aggregated: such as, whole house, air conditioning load, storage, building load, pumps, electric vehicles, or other (Seller shall provide a description)
 - c. Dispatch method: automated via cloud control, or other (Seller shall provide a description)
 - d. Number of SAIDs
 - 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 for Residential Customers. A.6 for non-Residential Customers.
- B. Qualifying Capacity estimates should be provided for the Resource Adequacy measurement hours and the CAISO Availability Assessment Hours.
- C. The same baseline must be used for estimation of Qualifying Capacity at different stages of the Agreement.
- D. To the extent the projected percentage load impact for capacity delivered in A.6 deviates from the supporting data in A.7, Seller shall provide supplemental information to explain the reasonableness of the resulting “Estimated Qualifying Capacity” provided in A.8.
- E. To the extent the DRAM Resource consists of heterogenous combination of load types (in terms of A.1 through A.3 characteristics), Seller shall 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 Seller’s submission prior to Buyer’s Compliance Showing deadline for each year, it is sufficient to provide the information required by this Exhibit for the Showing Month with the highest megawatts. For Seller’s submission prior to Buyer’s Compliance Showing deadline for each Showing Month, the information required by this Exhibit shall correspond to the applicable Showing Month.
- G. At the time of Seller’s submission prior to the Buyer’s Compliance Showing deadline each year, it is sufficient to provide the information required by this Exhibit at the aggregate DRAM Resource level. For Seller’s submission prior to Buyer’s Compliance Showing deadline for each Showing Month, the information required by this Exhibit must be provided at the PDR level.

EXHIBIT H

MILESTONE SCHEDULE AND FORM OF PROGRESS REPORT

From the Effective Date of this Agreement and continuing until the commencement of the Delivery Period, Seller shall provide a monthly Progress Report containing, at a minimum, the information listed below, as applicable. In accordance with Section 3.3(b), the report must be sent via e-mail in the form of a single Adobe Acrobat file or facsimile to Buyer, on the tenth (10th) calendar day of each month, or within five (5) calendar days after Buyer's request.

1. An executive summary;
2. An updated Milestone Schedule
3. Chart showing schedule, percent completion, and percent change from previous report of major items and activities;
4. Forecast activities for next month; and
5. Potential issues affecting the DRAM Resource.

A list of milestones and completion dates for the DRAM Resource ("Milestone Schedule") is as follows. DRAM Sellers must use the most current version of the Final DRAM Template, "Milestone Progress" originally published March 13, 2020, and subsequently updated on July 21, 2020), as represented by the template diagram below.



STATE OF CALIFORNIA
PUBLIC UTILITIES COMMISSION

**DRAM Seller MILESTONE PROGRESS
TEMPLATE**

Last Update:

Seller Info	Name of Seller	
	Rule 24/32 DRP ID	
	Contract Term Start Date	
	Seller Contact Name	
	Seller Email addresses	

Submission Date	Milestone
<u>CAISO Registration Milestones:</u>	

Deadline for achievement of each Milestone is forty-five (45) calendar days prior to first Monthly Supply Plan submission	
	Seller or its Scheduling Coordinator registers as a CAISO Demand Response Provider, including execution of a DR Provider Agreement.
	Seller has become or has contracted with a Scheduling Coordinator or CAISO DR Provider and has identified the name of the Scheduling Coordinator
	Seller or its Scheduling Coordinator has completed other CAISO requirements, including executing a Meter Service Agreement (MSA SC) and obtaining DR Registration System (DRRS) access.
	Seller or Scheduling Coordinator has registered a resource pursuant to Section 4.13 of the CAISO tariff and applicable CAISO BPM and received Net Qualifying Capacity (NQC) approval from the CAISO
	Seller has attested to having reviewed the CAISO's Demand Response User Guide
<u>Buyer Data Systems Integration Milestones:</u> Deadline for achievement of each Milestone is forty-five (45) calendar days prior to first Monthly Supply Plan submission	
	Seller has completed Buyer Onboarding Process for Rule 24/32
	Seller has completed registration with Buyer's data sharing platform and completed all connectivity requirements
	Seller has obtained a Click-Through authorization and/or submitted a Customer Information Service Request DR Provider form for processing
	Seller has utilized Buyer's Application Programming Interface to obtain the full Rule 24/32 data set for a customer authorization
<u>California Public Utilities Commission (CPUC) Registration Milestones:</u> Deadline for achievement of each Milestone is forty-five (45) calendar days prior to first Monthly Supply Plan submission	
	Seller has executed the Demand Response Provider Service Agreement with Buyer.
	Seller has executed and notarized the CPUC Demand Response Service Provider Registration Application Form
	Seller has paid the \$100 fee
	If Seller includes Residential Customers or small commercial customers in its aggregation, Seller has received approval for the customer letter and posted the bond
	Seller has obtained a CPUC registration certificate or registration has been published on the CPUC's website
<u>Resource Adequacy Milestones:</u> Deadline for achievement of each Milestone is set forth in Exhibit F, "Implementation Guidelines for Qualifying Capacity"	
	Prior to first month of meeting Qualifying Capacity requirements, Seller has had phone call with Buyer to discuss resource creation and progress
	Seller has submitted Qualifying Capacity information in a timely manner

EXHIBIT I

Form of Letter of Credit

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT

Bank Reference Number: _____

Issuance Date:

Issuing Bank:

[insert bank name and address]

Applicant:

[insert applicant name and address]

BENEFICIARY:

San Diego Gas and Electric Company

[Address]

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 San Diego Gas and Electric 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) calendar 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:

San Diego Gas & Electric Company
8330 Century Park Ct.
San Diego, California 92123
Attn: General Counsel
Phone: (858) 650-6141
Facsimile: (858) 650-6106

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]

Attachment C

2022 DRAM Purchase Agreement (Redline)

2022~~2~~ DRAM RFO PRO FORMA

Deleted: 1

**DEMAND RESPONSE AUCTION MECHANISM RESOURCE PURCHASE
AGREEMENT**

between

[NAME OF SELLER]

and

SAN DIEGO GAS AND ELECTRIC COMPANY

DEMAND RESPONSE AUCTION MECHANISM RESOURCE PURCHASE AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS AND ELECTRIC 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.....	3
1.5. Monthly Contracted Quantity and Corresponding Contract Price.....	4
1.6. Demonstrated Capacity	4
1.7. Minimum Energy Dispatch Requirements.....	8
ARTICLE 2. CPUC APPROVAL	9
2.1. Obtaining CPUC Approval.....	9
2.2. CPUC Approval Termination Right	9
ARTICLE 3. SELLER OBLIGATIONS	10
3.1. Delivery of Product	10
3.2. Resource Adequacy Benefits	11
3.3. Provision of Information	11
3.4. Seller's Obligations	12
3.5. Indemnities for Failure to Perform.	13
ARTICLE 4. PAYMENT AND BILLING.....	14
4.1. Delivered Capacity Payment.....	14
4.2. Invoice and Payment Process.....	14
4.3. Allocation of Other CAISO Payments and Costs	15

**DEMAND RESPONSE RESOURCE PURCHASE AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS AND ELECTRIC COMPANY**

Table Of Contents (Continued)

ARTICLE 5. CREDIT AND COLLATERAL	16
5.1. Seller's Credit and Collateral Requirements	16
5.2. Grant of Security Interest/Remedies.....	16
5.3. Reduction and Substitution of Performance Assurance	17
5.4. Administration of Performance Assurance	18
5.5. Exercise of Rights against Performance Assurance	20
5.6. Financial Information.....	21
5.7. Access to Financial Information	21
5.8. Uniform Commercial Code Waiver	24
ARTICLE 6. SPECIAL TERMS AND CONDITIONS	24
6.1. Limitation of Liability	24
6.2. Buyer Provision of Information.....	24
6.3. Changes in Applicable Laws	25
6.4. DBE Reporting	25
6.5. Governmental Charges.....	25
6.6. Customers in Buyer Automated Demand Response Program	26
ARTICLE 7. REPRESENTATIONS, WARRANTIES AND COVENANTS	27
7.1. Representations and Warranties of Both Parties	27
7.2. Additional Seller Representations, Warranties and Covenants	28
ARTICLE 8. NOTICES.....	32
8.1. Notices	32
8.2. Contact Information	32

DEMAND RESPONSE RESOURCE PURCHASE AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS AND ELECTRIC COMPANY

Table Of Contents (Continued)

ARTICLE 9. EVENTS OF DEFAULT; TERMINATION	34
9.1. Events of Default	34
9.2. Early Termination	35
9.3. Termination Payment	36
9.4. Reserved	36
9.5. Suspension of Performance	36
9.6. Rights and Obligations Surviving Termination or Expiration	37
ARTICLE 10. DISPUTE RESOLUTION	37
10.1. Dispute Resolution	37
10.2. Negotiation	38
10.3. Mediation	39
10.4. Arbitration	39
10.5. Provisional Relief	42
ARTICLE 11. INDEMNIFICATION	42
11.1. Seller's Indemnification Obligations	42
11.2. Indemnification Claims	43
ARTICLE 12. LIMITATION OF REMEDIES, LIABILITY, AND DAMAGES	43
ARTICLE 13. CONFIDENTIALITY	44
13.1. Confidentiality and Privacy Obligations	44
13.2. Obligation to Notify	45
13.3. Remedies; Survival	45

DEMAND RESPONSE RESOURCE PURCHASE AGREEMENT
BETWEEN
[SELLER] AND SAN DIEGO GAS AND ELECTRIC COMPANY

Table Of Contents (Continued)

ARTICLE 14. FORCE MAJEURE	46
ARTICLE 15. MISCELLANEOUS	46
15.1. General.....	46
15.2. Governing Law and Venue	46
15.3. Amendment	47
15.4. Assignment.....	47
15.5. Successors and Assigns	48
15.6. Waiver	48
15.7. No Agency	48
15.8. No Third-Party Beneficiaries.....	48
15.9. Entire Agreement.....	48
15.10. Severability	48
15.11. Multiple Originals.....	49
15.12. Mobile Sierra	49
15.13. Performance Under this Agreement	49

**DEMAND RESPONSE RESOURCE PURCHASE AGREEMENT
BETWEEN**

***[SELLER]* AND SAN DIEGO GAS AND ELECTRIC COMPANY**

Table Of Exhibits

EXHIBIT

EXHIBIT A DEFINITIONS

EXHIBIT B MONTHLY CONTRACTED QUANTITY AND CORRESPONDING
CONTRACT PRICE

EXHIBIT C FORM OF NOTICE OF DEMONSTRATED CAPACITY

EXHIBIT D COMMUNICATION PROTOCOLS FOR DATA ISSUES

EXHIBIT E MINIMUM ENERGY DISPATCH REQUIREMENTS

EXHIBIT F FORM OF NOTICE OF SHOWING MONTH SUPPLY PLAN

EXHIBIT G IMPLEMENTATION GUIDELINES FOR QUALIFYING CAPACITY

EXHIBIT H MILESTONE SCHEDULE AND FORM OF PROGRESS REPORT

EXHIBIT I FORM OF LETTER OF CREDIT

DEMAND RESPONSE RESOURCE PURCHASE AGREEMENT
BY AND BETWEEN
[NAME OF SELLER]
AND
SAN DIEGO GAS AND ELECTRIC COMPANY

PREAMBLE

This Demand Response Resource Purchase Agreement, together with its exhibits (the “Agreement”) is entered into by and between **SAN DIEGO GAS AND ELECTRIC COMPANY** a California corporation (“Buyer”), and **[Aggregator or Demand Response Provider]**, a **[Seller’s business registration]** (“Seller”), as of the latest signature date hereof (“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 Monthly Contracted Quantity, as indicated in Exhibit B, subject to and in accordance with the terms and conditions of this Agreement. The Product shall be a Proxy Demand Resource (PDR) consisting entirely of DRAM Resource Customers registered by the Seller (or its DRP).

(b) The Product is:

Table 1.1(b)

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

Product Selected	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	SDG&E
<input type="checkbox"/>	Product D1-2: Flexible Capacity (Flexible Category 1) with Local and System Capacity	SDG&E
<input type="checkbox"/>		
<input type="checkbox"/>		

- (c) Seller to indicate whether the Product is:
 ____ a Residential Customer Product; or

_____ not a Residential Customer Product

[SDG&E 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, subject to the survival provisions of Section 9.6.

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) calendar days following CPUC Approval, and (b) *TBD* and shall continue in full force and effect until *TBD* 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.

[SDG&E Comment: Dates will be based on Seller's bid that was selected by SDG&E in the RFO. Currently that would be no earlier than January 2022 and no later than December 2022.]

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1.4. Seller's Designation of the DRAM Resource

(a) On or before the date that is seventy-five (75) calendar days prior to the first Showing Month, and on a monthly basis thereafter no less than seventy-five (75) calendar 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, comprised solely of Unbundled Service Customers, or comprised of a mixture of Bundled and Unbundled Service Customers.

(b) ~~Sellers shall sell and deliver System Capacity, Local Capacity, and/or Flexible Capacity from PDRs, as designated in Section 1.1(b).~~

(c) The Parties shall cooperate to implement the requirements of Rule 32 to enroll Resource Customers in order for Seller to designate the PDR(s) pursuant Section 1.4(a)(i).

Deleted: <#>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.

1.5. Monthly Contracted Quantity and Corresponding Contract Price

- (a) The Monthly Contracted 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 B.
- (b) In the event that Seller is not able to register the DRAM Resource for part or all of a Monthly Contracted Quantity for a Showing Month due solely to (i) the actions or inactions of Buyer or the CAISO, or (ii) insufficient Rule 32 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) calendar days prior to the Showing Month for which Seller is unable to register the DRAM Resource, reduce the Monthly Contracted 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 Monthly Contracted 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 31, 2021, either (i) reduce the Monthly Contracted 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).

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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 DC Dispatches of the applicable PDR in the DRAM Resource during such Showing Month. The Demonstrated Capacity for System, Local, and Flexible Capacity will equal the average hourly load reduction of all DC Dispatches during such Showing Month as calculated

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using the Capacity Baseline; ~~if the CAISO issues a dispatch instruction for less than one hundred percent (100%) of the Qualifying Capacity of the applicable PDR in the DRAM Resource (a “Partial DC Dispatch”), then Seller may elect to include the results of such Partial DC Dispatch during such Showing Month when calculating the average hourly load reduction~~ for its Demonstrated Capacity showing. Upon such election, the load reduction resulting from such Partial DC Dispatch shall be compared to the Qualifying Capacity of the entire PDR for purposes of deriving the DC-MCQ Ratio of the DRAM Resource ~~during such Partial DC Dispatch~~ in accordance with Section 4.1.

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Deleted: The Demonstrated Capacity for Flexible Capacity will equal the average hourly load reduction of such DC Dispatch as calculated using the Capacity Baseline.

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- (ii) The results of a DC Test in the event that (A) there is no DC Dispatch of the ~~applicable~~ PDR in the DRAM Resource for one hundred percent (100%) of the Qualifying Capacity of the applicable Showing Month, and (B) Seller does not submit the results of a Partial DC Dispatch during the Showing Month as contemplated under 1.6(a)(i) above. The Demonstrated Capacity for System, ~~Local, and Flexible~~ Capacity will equal the ~~average~~ hourly load reduction ~~of all DC Tests during the Showing Month~~ as calculated using the Capacity Baseline; ~~except~~ that, for the Showing Month of August, the Demonstrated Capacity for System, ~~Local, and Flexible~~ Capacity will equal the average hourly load reduction during a ~~minimum of two (2) consecutive hours of a DC Test~~ as calculated using the Capacity Baseline.

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Deleted: 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 (A) there is no DC Dispatch of the ~~applicable~~ PDR in the DRAM Resource during the Showing Month for one hundred percent (100%) of the Qualifying Capacity of the applicable Showing Month, (B) Seller does not submit the results of a Partial DC Dispatch as contemplated under 1.6(a)(i) above, and (C) 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 ~~Must-Offer Obligation~~.

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- (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).
- (iii) Demonstrated Capacity for each PDR in the DRAM Resource shall be calculated under Section 1.6(a)(i) or 1.6(a)(ii) for any Showing Month for which a QC De-Rate Notice was issued without a corresponding agreed reduction in Supply Plan quantities, as further provided in Section 3.1(b).
- (iv) Demonstrated Capacity for each PDR in the DRAM Resource shall not exceed, in any Showing Month, the lesser of (A) such PDR's corresponding Net Qualifying Capacity or (B) the Qualifying Capacity set forth for such PDR in the Supply Plan for such Showing Month, as determined pursuant to Section 3.1.
- (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 Seller has not received all Revenue Quality Meter Data for any Resource ID within fifteen (15) calendar days after the end of any Showing Month, Seller shall provide Notice to Buyer of the Resource IDs (and customer service accounts with missing Revenue Quality Meter Data within each such Resource ID), and the dispatch days and hours during such Showing Month, for which Revenue Quality Meter Data has not been received. Seller and Buyer shall comply with the communication protocols set forth in Exhibit D with respect to data issues.
- (f) If the DRAM Resource is composed of more than one PDR, then:
 - (i) Seller ~~shall~~ 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

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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).

- (iii) In the event that multiple Resource IDs are dispatched concurrently in a Showing Month, Seller may aggregate the performance of the concurrently dispatched Resource IDs for the purpose of Demonstrated Capacity invoicing and compare the sum of such aggregated performance against the sum of the Qualifying Capacity of those Resource IDs as listed on the applicable Supply Plan. For Local Capacity products, the aggregation of concurrently dispatched Resource IDs shall be limited to resources within the same SubLAP.
- (g) With respect to any DRAM Resource Customer service account that was moved in a Showing Month pursuant to Section 3.4(d), Seller shall include the performance of such DRAM Resource Customer service account only in one PDR for purposes of the calculation of Demonstrated Capacity for 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) If Buyer is unable to validate, or disputes, any amount shown in Seller's invoice and Notice of Demonstrated Capacity, then Buyer shall issue a Notice to that effect to Seller in accordance with Section 1.6(k)(i) below. Pursuant to Section 1.6(k)(ii), Seller shall be required to provide additional documentation from Seller or Seller's SC in the form or format requested by Buyer that establishes to Buyer's reasonable satisfaction that the Demonstrated Capacity of each Product type from a PDR ~~is as stated by Seller in its invoice for the applicable Showing Month.~~
- (i) Buyer shall issue such Notice on or before the later of: (A) the twentieth (20th) calendar day of the month and (B) the tenth (10th) calendar day after receipt of Seller's invoice and Demonstrated Capacity; provided that, if such day is not a Business Day, then on the next Business Day.
- (ii) No later than ten (10) Business Days after receipt of Buyer's Notice, Seller shall provide the additional documentation to Buyer. If Seller fails to provide the additional documentation within such ten (10) Business Day deadline, then Buyer shall either (A) pay the subject invoice or (B) initiate

Deleted: <#>If any respective PDR in the DRAM Resource is a Joint Resource, Seller's invoice shall indicate (i) 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 (ii) the total capacity of such Joint Resource during such Showing Month. ¶

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an audit of Seller's or Seller's SC records by issuing a Notice ("Audit Notice") to Seller, in each case no later than fifteen (15) Business Days after the expiration of such ten (10) Business Day deadline.

- (iii) No later than fifteen (15) Business Days after receiving the additional documentation from Seller, Buyer shall either: (A) pay the subject invoice or (B) initiate an audit of Seller or Seller's SC records by issuing an Audit Notice to Seller if the additional documentation is unsatisfactory to Buyer in its reasonable discretion.
- (k) With respect to an Audit Notice issued under Section 1.6(k)(ii) or (iii), no later than five (5) Business Days after Seller's receipt of an Audit Notice, Seller shall allow, or cause its SC to allow, Buyer or its designated independent third-party auditor to have access to the records and data, which must be in the form or format requested by Buyer under Section 1.6(k) above, necessary to conduct such audit; *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 in the form or format requested by Buyer, 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 conducting such audit are the sole responsibility of Buyer. Buyer shall make a reasonable effort to conclude its audit within sixty (60) calendar days after receiving all records and data that Buyer deems necessary to complete or resolve the disputed invoice. If the audit does not result in the resolution of the disputed invoice, then either Party may initiate the Dispute Resolution process pursuant to Article 10.

1.7. Minimum Energy Dispatch Requirements

- (a) Seller shall comply with the energy dispatch requirements set forth on Exhibit E, "Minimum Energy Dispatch Requirements".
- (b) Concurrently with the submission of its final invoice under this Agreement pursuant to Section 4.2(a), (or earlier, if Seller has received sufficient Revenue Quality Meter Data), Seller shall submit to Buyer documentation showing CAISO settlements for the delivery of the Required Energy Quantity, as calculated in accordance with Exhibit E and Section 1.7(c) below. Seller may omit price and revenue data from the documentation submitted under this Section 1.7(b).
- (c) If Seller fails to meet any of the requirements of Sections 1.7(a) and (b) above, Seller shall pay to Buyer an "Undelivered Energy Penalty" equal to:

$$\$10,000/\text{MW} \times \text{AQC} \times (1 - \text{DEQ}/\text{REQ})$$

Where:

AQC = the average Qualifying Capacity (in MW) for each of the three highest Showing Months on the month-ahead Supply Plans delivered hereunder

DEQ = the cumulative energy delivered by the applicable aggregate resources during the contracted Showing Months and during the Availability Assessment Hours

REQ = 30 MWh \times AQC

- (d) The Undelivered Energy Penalty may be netted by Buyer against amounts that would otherwise be due to Seller under this Agreement. Seller's payment of the Undelivered Energy Penalty shall be secured by the Performance Assurance as specified in Article 5.

ARTICLE 2. CPUC APPROVAL

2.1. Obtaining CPUC Approval

Within thirty (30) calendar 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) calendar 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 ten (10) Business 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 F, 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 Monthly Contracted 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, as modified by D.19-09-041 and D.19-12-040, and set forth with more specificity in Exhibit G (the "QC Implementation Guidelines"), including the Qualifying Capacity for each PDR identified by Seller pursuant to Section 1.4(a)(i), presented in the standardized reporting format developed by the CPUC pursuant to Ordering Paragraph 8 of D.19-07-009. If the information provided pursuant to Exhibit G supports an estimated Qualifying Capacity greater than the amount of Qualifying Capacity Seller will identify for such PDR on the Supply Plan pursuant to Section 3.1(a)(i), Seller shall also provide such Supply Plan amount for such PDR. If Buyer has any questions or concerns about the information provided by Seller pursuant to this Section 3.1(a)(ii), Buyer shall, to the extent reasonably practicable, request clarification from Seller) and take into consideration any clarification or additional information timely provided by Seller.
- (b) No later than eight (8) Business Days prior to Buyer's Compliance Showing deadlines each year or Showing Month (as applicable), Buyer shall issue a Notice to Seller in the event Buyer intends to include in Buyer's applicable compliance filings any amount less than the quantities in Seller's Supply Plan submitted to Buyer ("QC De-Rate Notice"). The QC De-Rate Notice will include the amount of the de-rate to such quantities and will identify the shortcomings or deficiencies in the information provided by Seller pursuant to Section 3.1(a)(ii). If Buyer issues a QC De-Rate Notice, then Seller shall provide Notice to Buyer, no later than five (5) Business Days after receipt of such QC De-Rate Notice, that Seller will either:

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- (i) reduce the quantities in its Supply Plan for the applicable Showing Month to conform to the quantities shown in the QC De-Rate Notice (or such other amount as may be agreed in writing by Buyer and Seller); or
- (ii) perform a DC Dispatch or DC Test during the applicable Showing Month.

In all cases, if the Parties do not agree upon the reduction in Seller's Supply Plan quantities under subsection 3.1(b)(i) above, then a DC Dispatch or DC Test shall be required for each and every Showing Month for which Buyer has issued a QC De-Rate Notice.

- (c) 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

- (a) Within a reasonable period of time, or such time prescribed by the CPUC, Seller shall provide to the CPUC (i) all periodic reports required by the CPUC and (ii) all other information requested by the CPUC relating to Seller's obligations and performance pursuant to this Agreement and the DRAM 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) Seller shall achieve, or shall cause its designated SC to achieve, each Milestone set forth in Exhibit H (each, a "Milestone") on or before the applicable deadline for achievement. Seller shall provide to Buyer:
 - (i) No later than the tenth (10th) calendar day of each month before the commencement of the Delivery Period, or within five (5) days after Buyer's request, a progress report in the form developed by the Commission's Energy Division pursuant to D.19-12-040, OP 28, as the same may be modified from time to time (or, if such form has not yet been

finalized, substantially in the form set forth in Exhibit H) (“Progress Report”), describing Seller’s progress, including projected time to completion of remaining Milestones.

- (ii) On or before the applicable deadline to achieve each Milestone, documentation evidencing that the Milestone has been achieved.
- (iii) Within five (5) Business Days after Buyer’s request, any additional evidence reasonably requested by Buyer that the Milestone has been achieved.

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 in compliance with the Must-Offer Obligation 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 32.
- (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, at any time during the Delivery Period 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 CAISO’s above 10 MW telemetry requirement, Seller may split the affected PDR into two or more smaller resources as necessary to comply with CAISO requirements.

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(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 requirement, 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.

(e) Seller shall cause each PDR in the DRAM Resource to have a minimum size of one (1) MW at all times during the Delivery Period, with the exception of one (1) PDR in each SubLAP, which may be less than one (1) MW.

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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 Monthly Contracted 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 Monthly Contracted Quantity in accordance with Section 1.5(b) or (c);
- (b) Submit timely and accurate Supply Plans that identify Buyer's right to the Monthly Contracted 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 RA 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 Monthly Contracted Quantity (“DC-MCQ Ratio”):

Delivered Capacity (DC) Payment Values		
Band	DC- <u>MCQ</u> Ratio	Value for B
Pro-rated	> 70.00%	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) calendar 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

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Deleted: Qualifying Capacity (kW)

Deleted: to 90.00%

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 Monthly Contracted Quantity for the applicable Showing Month (i.e., within the "forfeiture" payment band in the chart in Section 4.1).

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- (b) Buyer will pay Seller all undisputed invoice amounts on or before the later of (i) the twentieth (20th) day of each month (or, if such day is not a Business Day, then on the next Business Day), or (ii) the tenth (10th) Business Day after receipt of Seller's invoice and Demonstrated Capacity.
- (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.

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.

Deleted: <#>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. ¶

<#>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 QC 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(h), and Seller's compensation shall be calculated using its percentage allocation of such PDR's capacity, accordingly. ¶

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 the sum of the following: (i) 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, plus (ii) twenty percent (20%) of the estimated Undelivered Energy Penalty based on the associated Monthly Contracted Quantity (collectively, "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) as of the Execution Date, Seller shall post the Performance Assurance with Buyer within ten (10) Business Days of the Execution Date. If required pursuant to Section 5.1(a) at any other time during the Term, Seller shall post the Performance Assurance with Buyer within five (5) Business Days of the date of the event that triggered Seller's posting requirement under Section 5.1(a).

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 during the Delivery Period (but not more than once each calendar quarter), 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, including without limitation any Undelivered Energy Penalty. 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. Buyer shall effect any permitted reduction in Performance Assurance in accordance with the form of the Performance Assurance that has been provided. 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, if Seller's reduction demand is made on or before the Notification Time on a Business Day, then Buyer shall have fifteen (15) Business Days to effect a permitted reduction in Performance Assurance, and if Seller's reduction demand is made after the Notification Time on a Business Day, then Buyer shall have sixteen (16) 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

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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, 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) calendar 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) calendar 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) calendar 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) calendar 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) calendar 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 (A) treat as confidential any information disclosed to them by Buyer pursuant to this Section 5.7, (B) use such information solely for purposes of conducting the audits described in this Section 5.7, and (C) 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 provide to Seller, to the extent available and permitted by Applicable Law, including Rule 32, provide specific information consistent with the Customer Information Service Request Form for Demand Response Providers (CISR-DRP) 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, 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) calendar 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) calendar 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.

- a. Buyer has the right to disclose to the CPUC all such information provided by Seller pursuant to this Section 6.4.
- b. 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) calendar 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 no 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.
 - (iv) Seller will not use, grant, pledge, assign, or otherwise commit any Monthly Contracted Quantity to meet the RAR, Local RAR, and/or Flexible RAR, as applicable, 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. The total nameplate capacity in kW of the Customer's resource(s) will be used as the Default Adjustment Value (DAV) to adjust the Demand Response incentives / charge for the Customer's account.

For condition 1 above, the Customer's attestation must include the service account number. For conditions 2 and 3 above, each attestation must provide the service account number, the number of unit(s) of Prohibited Resources on site, and the nameplate capacity of the Prohibited Resource (or, if the Customer has multiple Prohibited Resources, the sum of the nameplate capacity values from all Prohibited Resources on site) (the "Default Adjustment Value"). For condition (3), this Default Adjustment Value will be subtracted from the Potential Load Reduction or Nominated Capacity. 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 Buyer, 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. Consistent with CPUC Resolution E-4906, the Seller's contractual agreement is contingent upon compliance with both the prohibition and the submission of the Customers' attestations, which are subject to verification.

- E. Seller shall include provisions in its contracts that Customers are subject to random annual audits (1) requiring compliance with verification requests and facility access for site visits as deemed necessary by the Verification Administrator; (2) requiring the Customer 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 (3) allowing the Buyer 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 (60) calendar days from receipt of notice to cure such Type-One Non-Compliance. If the instance of non-compliance involves either (1) 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 (2), 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 DRAM Resource as follows. If there is an instance of (x) an uncured Type One Non-Compliance, or (y) a Type Two Non-Compliance, the consequences will be removal from Seller's DRAM Resource and ineligibility to enroll in any DRAM Seller's Resource or Buyer's demand response 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, (1) Sellers will provide the Default Adjustment Values

(DAVs) monthly (with Demonstrated Capacity information); and, (2) Sellers will ensure that CAISO wholesale market bids 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.

- 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 Buyer, the CPUC, and the Verification Administrator upon the request of Buyer or the CPUC.
- I. Seller shall include provisions in its contracts with non-Residential Customers permitting updates to their attestations to (1) add, remove or modify an on-site Prohibited Resource; (2) change the status or use of a Prohibited Resource to reduce load during any Dispatch; or (3) 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 a Verification Administrator.
- J. Verification methods for Customers under the condition noted in Section 7.2(b)(v)(I)(3) above shall be based on documentation of nameplate capacity, instead of load curtailment plans.
- K. If further documentation in the form of load curtailment plans are required, Seller shall comply with the Verification Administrator's requests for supporting materials.
- L. The Buyer has been directed by the CPUC to require a standardized non-disclosure agreement (NDA) that the Verification Administrator executes with the Buyer. This NDA pertains to all sellers and their customers from whom they collect market-sensitive, proprietary data. Verification information obtained from sellers and their customers is only to be submitted to and collected by the Verification Administrator consistent with CPUC Resolution E-4906. Under the terms of this NDA, third party customers' market-sensitive, proprietary information shall not to be shared with the Buyer, will be kept under seal, and shall be made available to the Commission upon request. Per Ordering Paragraph 14 of CPUC Resolution E-4906, all aggregators must store Customer attestations and make them available to the CPUC upon request. The Seller shall store non-Residential Customer attestations and make them available to the Buyer or Commission upon request.

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: San Diego Gas and Electric Company

Street: 8315 Century Park Court
City: San Diego, CA
Zip: 92123
Attn: Demand Response – DRAM –
Brad Mantz
Phone: 858-790-1502
Email: BMantz@SDGE.com
Duns: 006911457
Federal Tax ID Number: 95-1184800

Supply Plan Contact:

San Diego Gas & Electric Company
8315 Century Park Ct.
San Diego, California 92123-1593
Attn: Electric and Fuel Procurement – Nuo Tang
Phone: (858) 654-1818
Email: NTang@SDGE.com

Other Buyer Contact Information

Payments:

Deleted: <#>If any respective PDR is a Joint Resource, Seller shall ensure that: (A) 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, any other demand resource agreement or program, or any combination thereof; (B) 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, any other demand resource agreement or program, or any combination thereof; and (C) 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(h) 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(k) to the same extent Buyer may audit PDRs that are not Joint Resources.¶

San Diego Gas & Electric Company
PO Box 25110
Santa Ana, CA 92799-5110
Attn: Mail Payments
Phone: (619) 696-4521

Wire Transfer:

BNK: Union Bank of California for: San Diego Gas & Electric Company
ABA: Routing #122000496
ACCT: #4430000352
Reference: SAP # 2130015
Confirmation: SDG&E, Major Markets
Facsimile: (213) 244-8316

Credit and Collections:

San Diego Gas & Electric Company, Major Markets
555 W. Fifth Street, ML 18A3
Los Angeles, CA 90013-1011
Attn.: Major Markets, Credit and Collections Manager
Fax No.: (213) 244-8316
Phone: (213) 244-4343

Notices of an Event of Default or Potential Event of Default:

San Diego Gas & Electric Company
8330 Century Park Ct.
San Diego, California 92123
Attn: General Counsel
Phone: (858) 650-6141
Facsimile: (858) 650-6106

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

Credit and Collections

Attn:

Phone:

Facsimile:

Email:

[Name]

Facsimile:

Email:

ARTICLE 9. EVENTS OF DEFAULT; TERMINATION

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

- 34-

- (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) calendar 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 **Monthly Contracted Quantity** 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 **Must-Offer Obligation** bids pursuant to Section 1.6(a)(iii)).
- (vii) Seller fails to achieve a Milestone by the applicable deadline for such Milestone as set forth in Section 3.3(b), and such failure is not remedied within five (5) Business Days after Notice from Buyer.

Deleted: aggregate Qualifying Capacity

Deleted: MOO

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) calendar 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;
- (j) The obligation of confidentiality as set forth in Article 13; and
- (k) A Party's obligation to comply with all applicable federal, state and local laws and rules, including without limitation, laws and rules protecting the confidentiality and privacy of Customer and Personal Confidential Information, such as the California Consumer Privacy Act of 2018, as set forth in Section 13.1(b) of this Agreement.

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 10 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 in Section 8.2, 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 of such request, at a mutually agreed time and place. If the matter is not resolved within fifteen (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 five (5) Business Days of the Referral Date the Executives shall establish a mutually acceptable location and date, which date shall not be greater than thirty (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 forty-five (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 ten (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 ten (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.

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 8 of a demand for binding arbitration before a single, neutral arbitrator (the "Arbitrator") if mediation pursuant to Section 10.3 above does not result in resolution of the dispute within sixty (60) calendar days after service of a written demand for mediation (as the same may be extended by mutual agreement of the Parties).

If Notice of arbitration is not provided by either Party within sixty (60) calendar 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 and scheduling the arbitration. 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) calendar 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) calendar 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) calendar 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.

Within thirty (30) calendar days after 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;
 - (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;

Deleted: or any payment disputes resulting from the use of a Joint Resource

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

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

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

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

ARTICLE 13. CONFIDENTIALITY

13.1. Confidentiality and Privacy Obligations

- (a) 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 (i) 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(a)(i) and (vi); (ii) to the extent necessary for the enforcement of this Agreement; (iii) 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; (iv) to the extent such information is or becomes generally available to the public prior to such disclosure by a Party; (v) 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); (vi) 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 (vii) 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 (i) or (v) of the foregoing sentence of this Section 13(a).

- (b) During the Term of this Agreement, both Parties shall comply with all applicable federal, state and local laws protecting the confidentiality and privacy of the Customer and Personal Confidential Information, including without limitation, the California Consumer Privacy Act of 2018, California Civil Code 1798.100 et seq. In addition, Seller shall cause each of the PDRs in the DRAM Resource and corresponding DRPs and SCs to comply with all applicable federal, state, and local laws set forth in the prior sentence.

13.2. Obligation to Notify

In connection with discovery requests or orders pertaining to 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, these confidentiality and privacy obligations. With respect to information provided in connection with this Agreement, these obligations 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

- (a) 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), (a) 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, (b) 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 (c) 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.
- (b) If Seller seeks to assign this Agreement or its rights hereunder and Buyer's consent is required under Section 15.4(a) or pursuant to CPUC rules on reassignment described in Decision 19-12-040 or other applicable rules or laws, then no later than thirty (30) calendar days in advance of the proposed assignment, Seller shall issue Notices to the Commission's Energy Division and to Buyer informing each of Seller's intent to assign, and shall inform prospective Demand Response Providers by emailing all regulatory affairs or contract managers for all registered Demand Response Providers. Seller shall issue a Notice to Buyer of its selected assignee and shall provide concurrently with such Notice: (i) draft modifications to this Agreement to accommodate such assignment; (ii) evidence that the proposed assignee and the DRAM Resource is in compliance with the Milestones; and (iii) the additional information required by the QC Implementation Guidelines, as to the selected assignee. Buyer shall advise Seller of its approval or disapproval of such assignment, in its reasonable discretion, within fifteen (15) Business Days after receipt of all such information. Such assignment, if approved by Buyer, shall not become effective until CPUC Approval has been obtained with respect to the revised Agreement. Buyer shall request CPUC Approval of any revised Agreement via a Tier 1 Advice Letter.

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.

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

**SAN DIEGO GAS AND ELECTRIC
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 10.4.

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

"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.

"Average Qualifying Capacity" or AQC has the meaning set forth in Section 1.7 and Exhibit E.

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

"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 Corporation or any successor entity performing the same functions.

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

“CAISO Tariff” means the most current 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 twenty percent (20%) cap; (ii) a weather matching baseline with a forty percent (40%) cap; (iii) the use of control groups; and (iv) a five-in-ten baseline for residential customers, with a forty 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.

“Clock Hour” is the sixty (60) minute interval that starts at 00:00 and ends at 00:59.

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

“Compliance Showing(s)” means the RAR compliance or advisory showings (or similar or successor showings), that 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 B for each Showing Month.

“CPM Capacity” has the meaning set forth in the CAISO 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, 19-12-040 and any other existing or subsequent decisions, resolutions, or rulings related to Resource Adequacy, including, without limitation, the CPUC RA Filing Guide, in each case as may be amended from time to time by the CPUC.

“CPUC RA 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 and Personal Confidential Information” means (i) personal information as defined in California Civil Code section 1798.140(o); (ii) Customer specific information as defined in CPUC rules and decisions which does not meet the CPUC’s aggregation standards in CPUC D.14-05-016 for non-Residential Customers of at least fifteen (15) Customers with no Customer comprising fifteen percent (15%) or more of the data and for Residential Customers of at least one hundred (100) Customers per zip code (CPUC aggregation standards), (iii) all written materials marked “Confidential”, “Proprietary” or with words of similar import provided to the receiving Party; and (iv) any calculations and the results of such calculations involving the Customer and Personal Confidential Information disclosed by the disclosing Party that does not meet the CPUC’s aggregation standards. The Customer and Personal Confidential Information includes portions of documents, records and other material forms or representations which the receiving Party may create, including but not limited to handwritten notes or summaries, that contain or are derived from such Customer and Personal Confidential Information.

“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 ~~the~~ Dispatch(es) of a PDR in the DRAM Resource in the CAISO market, in accordance with the CAISO Tariff, for a duration of ~~at least~~ (i) one (1) ~~Clock Hour~~ within the Availability Assessment Hours for all Showing Months except the Showing Month of August or (ii) two (2) consecutive ~~Clock Hours~~ within the Availability Assessment Hours for the Showing Month of August that is used to demonstrate capacity; provided that, such two (2) consecutive ~~Clock Hours~~ requirement may be satisfied by a combination of a DC Dispatch and a DC Test.

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

“DC Test” means ~~the~~ capacity test(s) 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) ~~for a duration of at least (i) one (1) Clock Hour within the Availability Assessment Hours for all Showing Months except the Showing Month of August or (ii) for a duration of at least two (2) consecutive Clock Hours within the Availability Assessment Hours for the Showing Month of August that is used to demonstrate capacity~~, conducted by the Seller’s SC during the applicable Showing Month, in accordance with the CAISO Tariff and D.14-06-050, Appendix B, that is used to demonstrate capacity.

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“Default Adjustment Value” has the meaning set forth in Section 7.2(b)(v)(B), CPUC Resolution E-4838, and CPUC Resolution E-4906.

“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.

“Delivered Energy Quantity” or “DEQ” has the meaning set forth in Section 1.7 and Exhibit E.

“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” means the Demand Response Auction Mechanism, which is a procurement mechanism during 2022 for the Product as described in CPUC D.14-12-024, D.17-10-017, D.19-07-009 and D.19-12-040.

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“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 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).

“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 calendar 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 10.3.

“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, EAGLROCK, 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 I 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) a Credit Rating of at least “A-”, with a stable designation” from S&P and “A3, with a stable designation” by Moody’s, if such entity is rated by both S&P and Moody’s; or (b) “A-”, with a stable designation” by S&P or “A3, with a stable designation” by Moody’s, 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: (a) the issuer of such Letter of Credit shall fail to maintain a Credit Rating of at least “A-”, with a stable outlook designation from S&P, and “A3”, with a stable outlook designation from Moody’s, if such issuer is rated by both S&P and Moody’s, “A-“ by S&P with a stable outlook designation, if such issuer is rated only by S&P, or “A3” by Moody’s with a stable outlook designation, if such issuer is rated only by Moody’s; (b) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit; (c) 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; (d) 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 (e) 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.

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Deleted: “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. ¶

“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.

“Milestone” has the meaning set forth Section 3.3(b).

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

“Monthly Quantity” means the aggregate amount of all Monthly Contracted Quantities set forth in Exhibit B 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 Investors Service, Inc. or its successor.

“Must-Offer Obligation” 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.

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| “Net Qualifying Capacity” or “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 DC Dispatch” has the meaning set forth in Section 1.6(a)(i).

“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 Section 13.1.

“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 agreements for separate products and will combine multiple awards of the same product into one agreement at a weighted average price.

“Progress Report” has the meaning set forth in Section 3.3(b).

“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.

“QC De-Rate Notice” shall have the meaning set forth in Section 3.1(b).

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

“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 or Moody’s (collectively the ‘Ratings Agencies’).

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

“Required Energy Quantity” or “REQ” has the meaning set forth in Section 1.7 and Exhibit E.

“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.

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

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

“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 32” means Direct Participation Demand Response:
http://regarchive.sdge.com/tm2/pdf/ELEC_ELEC-RULES_ERULE32.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 Monthly Contracted Quantity times the applicable Contract Price for each type of Product.

“Shortfall Capacity” means the amount of capacity with respect to the Monthly Contracted 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 Customer 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).

“SubLAP” means the geographic location corresponding to each customer service account within the distribution network located in Buyer’s service territory.

“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 expects to incur penalties, fines or costs from the CPUC, the CAISO, or any other Governmental Body, then Buyer may estimate the 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, the 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.

“Undelivered Energy Penalty” has the meaning set forth in Section 1.7.

“Verification Administrator” has the meaning set forth in CPUC Resolution E-4838 and CPUC Resolution E-4906.

EXHIBIT B
MONTHLY CONTRACTED QUANTITY
AND
CORRESPONDING CONTRACT PRICE

Showing Month	Product [Insert]	
	[Year]	
	Monthly Contracted 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 C-1

Form of Notice of Demonstrated Capacity

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For use with System and Local Capacity Product

Therefore: in Delivered Capacity Payment formula, "B" =

¹A combination of a market dispatch and test could be used to satisfy the August two consecutive hour requirement if the CAISO market dispatch does not cover the two consecutive hours.

EXHIBIT D
COMMUNICATION PROTOCOLS FOR DATA ISSUES
(D.19-12-040, OP 26)

Below are the approved Protocols for Data Issues Communication - DRAM Sellers must use the most current version of the Final DRAM Template, "Data Issue Reporting" (originally published March 13, 2020, and subsequently updated on July 21, 2020).

- Buyer and Seller shall each designate a point of contact for all data delivery inquiries and notify the Commission's Energy Division, the Buyer, and the Seller of any changes to this point of contact.
- Buyer shall facilitate a monthly call for Seller to report data issues.
- Seller shall perform troubleshooting prior to notifying Buyer of any data issues including:
 - a) verifying the Application Programming Interface data request was correctly formatted;
 - b) verifying Seller's customer lists are updated, including removing customers whose service accounts have been closed; and
 - c) verifying that missing data is not a result of a planned or unplanned outage where Buyer has notified Seller.
- Seller shall notify Buyer of data errors using the standardized data template finalized by the Commission's Energy Division pursuant to OP 27 of D.19-12-040, as the same may be modified from time to time.
- Buyer shall confirm receipt of Seller's inquiry and provide an estimated time of resolution of the inquiry within two (2) Business Days after receipt thereof.
- Buyer shall update Seller on a regular basis and when the estimated time of resolution could change.
- Buyer shall confirm resolution of the inquiry and data delivery.



STATE OF CALIFORNIA
PUBLIC UTILITIES COMMISSION

DATA ISSUE REPORTING TEMPLATE

Last Update:7/21/2020

DRP/Seller Contact Info	Name of DRP	-
	Rule 24/32 DRP ID	-
	Submission Date	-
	DRP Contact Name	-
	DRP Email addresses	-
Issue Info	Authorization Mode	-
	Type of data issue	-
	Describe the data issue	-
	Account Number	-
	Subscription ID	-
	UUID(s)	-
	Date range for requested data	-
	API call used and error message(s) received	-
Date and time of API call error	-	

Instructions:

	Item	Field	Description
DRP Contact Info	1	Name of DRP	Enter name of vendor registered with IOU as a Demand Response Provider (DRP)
	2	Rule 24/32 DRP ID	PG&E only. Enter the PG&E assigned 10 digit identifier
	3	Date Submitted to IOU	Enter date in MM/DD/YYYY format
	4	Name of person submitting form	Provide first and last name
	5	DRP Email addresses for IOU responses	Enter DRP email addresses for IOU responses on this issue
Issue Info	6	Authorization Mode (CISR-DRP Form vs Online)	Identify the mode used by the customer to create the data sharing authorization
	7	Type of data issue	Identify the type of data issue by making a selection in the drop down: Revenue Quality Meter Data (RQMD) interval; Raw/Non-RQMD interval; Billing; Customer; DR Program Info; API Call Failure; File Retrieval Issue. Note: DRPs are to submit one intake form per data issue.
	8	Describe the data issue	Describe the issue you are encountering for the type of data issue identified in Item 7 above.
	9	Account Number	SCE & SDG&E only. Enter the Account Number for the customer impacted by the data issue. If the data issue impacts multiple Accounts, please add the Account Number information in the tab titled Multiple UUIDs.
	10	Subscription ID	PG&E & SCE only. Provide the subscription ID associated with each UUID impacted by the data issue. If the data issue impacts multiple Subscription IDs, please add the Subscription ID information in the tab titled Multiple UUIDs.

<u>11</u>	<u>UUID(s)</u>	<u>PG&E & SDG&E only. Enter the UUID for the customer impacted by the data issue. If the data issue impacts multiple UUIDs, please add the UUID information in the tab titled Multiple UUIDs.</u>
<u>12</u>	<u>Date range for requested data</u>	<u>Specify the start and end dates of requested data on a per customer basis. If there are multiple UUIDs, please add the date information in the tab titled Multiple UUIDs per customer. Note: This item only pertains to issues related to Billing or Interval data.</u>
<u>13</u>	<u>API call used and error message(s) received</u>	<u>Paste the actual API call used into this field and indicate the response error code and response error message you received</u>
<u>14</u>	<u>Date and time of API call error</u>	<u>Enter the dates and times of failed API calls</u>

By submitting this form, the DRP attests that it has performed basic troubleshooting steps before notifying the IOU of the issue. Basic troubleshooting steps, include: (1) verifying that the applicable API calls were correctly formatted; (2) verifying that the DRP's customer list has been updated to remove service accounts that are closed; (3) verifying that missing data is not a result of a planned or unplanned outage where the IOU has notified the DRP; and (4) verifying that the customer's data sharing authorization is in the active status (i.e., it has not expired or been revoked).

EXHIBIT E **MINIMUM ENERGY DISPATCH REQUIREMENTS** **(D.19-12-040 Attachment 1, Appendix C)**

Below are the approved Requirements for Minimum Energy Dispatch Requirements – DRAM Sellers must use the most current version of the Final DRAM Templates, “Required Energy Quantity – A/B” (originally published March 13, 2020, and subsequently updated on July 21, 2020), as represented by the template diagram at the end of this Exhibit E for Seller’s submission pursuant to Section 1.7(b).

1. DRAM Resources must deliver a “Required Energy Quantity” (“REQ”) equal to 30 megawatt hours (MWh) per megawatt (MW) of Average Qualifying Capacity (“AQC”). The AQC shall be assessed as a total sum of the individual PDRs in the DRAM Resource.
2. The REQ shall be delivered during the Term and during the Availability Assessment Hours.
3. Seller shall submit documentation to the Buyer showing CAISO settlements for the Delivered Energy Quantity (“DEQ”), along with the calculation of AQC, at the time of the Seller’s last Demonstrated Capacity invoice submission or when Seller has received sufficient Revenue Quality Meter Data, whichever is earlier. The DEQ shall be assessed as a total sum of the individual PDRs in the DRAM Resource, and shall not exceed the REQ. To protect the confidentiality of market related data, Sellers may omit price and revenue data.
4. If the REQ is not delivered by the end of the Term, Seller will be assessed an Undelivered Energy Penalty based on the calculation set forth in Section 1.7(c) of the Agreement.



STATE OF CALIFORNIA
PUBLIC UTILITIES COMMISSION

REQUIRED ENERGY QUANTITY
TEMPLATE - A

Last Update: 3/13/2020

Required Auction Resource (MW) (REQ)	Required Auction Resource (MW) (REQ)	Contract ID	Required Energy Quantity (MWh) (REQ)	Delivered Energy (MWh)	Undelivered Energy (MWh)	Undelivered Energy Penalty (\$)	Monthly Quantity (MWh)												Average of 3 Highest Qualifying Months (MWh) (AQC)
							1	2	3	4	5	6	7	8	9	10	11	12	

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0 From (\$10,000*T 9)*(1-(E9/D9))

REQ-B

EXHIBIT F

Form of Notice of Showing Month Supply Plan

[illegible]

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

Below are the approved Guidelines for Qualifying Capacity – DRAM Sellers must use the most current versions of the Final DRAM Templates, “QC Supporting Data-Monthly” and “QC Monthly-Historical Data” (originally published March 13, 2020, and subsequently updated on July 21, 2020), as represented by the template diagram at the end of this Exhibit G, for Seller’s submission pursuant to Section 3.1(a)(ii).

- A. Seller shall provide the following details to the Buyer for each PDR in the DRAM Resource, by the deadline specified in Section 3.1(a)(ii):
1. Customer class (or percent of mix): Residential Customer, non-Residential Customer
 2. Nature of load being aggregated: such as, whole house, air conditioning load, storage, building load, pumps, electric vehicles, or other (Seller shall provide a description)
 3. Dispatch method: automated via cloud control, or other (Seller shall provide a description)
 4. Projected number of SAIDs, including a breakdown of the active and registered number of SAIDs within the total projected service account numbers. Active and Registered SAIDs shall be defined as SAIDs that have been registered in the CAISO Demand Response Registration System (DRRS) as of the date of this submission with an active status.
 5. Projected aggregated load (if storage based, projected aggregated capacity)
 6. For Residential Customers, projected percentage of load impact or reduction (if storage based, projected percentage of capacity delivered). For non-Residential Customers, total load impact.
 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 Seller shall reference suitable publicly available performance data that best represents the anticipated performance of the DRAM Resource. Along with the supporting performance data, the following details for the DRAM Resource associated with the supporting performance data should be provided to establish similar characteristics:
 - a. Customer class (or percentage mix): Residential Customer, non-Residential Customer

Deleted: In case of a conflict between the language of this Exhibit and the language of the main body of the Agreement, the language of the main body of the Agreement shall take precedence. Use of capital letters in the text below does not necessarily mean the term is defined, and failure to use capital letters herein for a term defined within the Agreement shall mean that the definition found in Exhibit A shall apply.

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EXHIBIT H

MILESTONE SCHEDULE AND FORM OF PROGRESS REPORT

From the Effective Date of this Agreement and continuing until the commencement of the Delivery Period, Seller shall provide a monthly Progress Report containing, at a minimum, the information listed below, as applicable. In accordance with Section 3.3(b), the report must be sent via e-mail in the form of a single Adobe Acrobat file or facsimile to Buyer, on the tenth (10th) calendar day of each month, or within five (5) calendar days after Buyer's request.

1. An executive summary;
2. An updated Milestone Schedule
3. Chart showing schedule, percent completion, and percent change from previous report of major items and activities;
4. Forecast activities for next month; and
5. Potential issues affecting the DRAM Resource.

A list of milestones and completion dates for the DRAM Resource ("Milestone Schedule") is as follows. DRAM Sellers must use the most current version of the Final DRAM Template, "Milestone Progress" originally published March 13, 2020, and subsequently updated on July 21, 2020, as represented by the template diagram below.



STATE OF CALIFORNIA PUBLIC UTILITIES COMMISSION

Deleted: In case of a conflict between the language of this Exhibit and the language of the main body of the Agreement, the language of the main body of the Agreement shall take precedence. Use of capital letters in the text below does not necessarily mean the term is defined, and failure to use capital letters herein for a term defined within the Agreement shall mean that the definition found in Exhibit A shall apply.

DRAM Seller MILESTONEPROGRESS TEMPLATE

Last Update:

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<u>Seller Info</u>	Name of <u>Seller</u>	
	Rule 24/32 DRP ID	
	Contract Term Start Date	
	<u>Seller</u> Contact Name	
	<u>Seller</u> Email addresses	

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Submission D a t e	Milestone
<u>CAISO Registration Milestones:</u>	

Deadline for achievement of each Milestone is forty-five (45) calendar days prior to first Monthly Supply Plan submission	
	Seller or its Scheduling Coordinator registers as a CAISO Demand Response Provider, including execution of a DR Provider Agreement.
	Seller has become or has contracted with a Scheduling Coordinator or CAISO DR Provider and has identified the name of the Scheduling Coordinator
	Seller or its Scheduling Coordinator has completed other CAISO requirements, including executing a Meter Service Agreement (MSA SC) and obtaining DR Registration System (DRRS) access.
	Seller or Scheduling Coordinator has registered a resource pursuant to Section 4.13 of the CAISO tariff and applicable CAISO BPM and received Net Qualifying Capacity (NQC) approval from the CAISO
	Seller has attested to having reviewed the CAISO's Demand Response User Guide
Buyer Data Systems Integration Milestones:	
Deadline for achievement of each Milestone is forty-five (45) calendar days prior to first Monthly Supply Plan submission	
	Seller has completed Buyer Onboarding Process for Rule 24/32
	Seller has completed registration with Buyer's data sharing platform and completed all connectivity requirements
	Seller has obtained a Click-Through authorization and/or submitted a Customer Information Service Request DR Provider form for processing
	Seller has utilized Buyer's Application Programming Interface to obtain the full Rule 24/32 data set for a customer authorization
California Public Utilities Commission (CPUC) Registration Milestones:	
Deadline for achievement of each Milestone is forty-five (45) calendar days prior to first Monthly Supply Plan submission	
	Seller has executed the Demand Response Provider Service Agreement with Buyer.
	Seller has executed and notarized the CPUC Demand Response Service Provider Registration Application Form
	Seller has paid the \$100 fee
	If Seller includes Residential Customers or small commercial customers in its aggregation, Seller has received approval for the customer letter and posted the bond
	Seller has obtained a CPUC registration certificate or registration has been published on the CPUC's website
Resource Adequacy Milestones:	
Deadline for achievement of each Milestone is set forth in Exhibit F, "Implementation Guidelines for Qualifying Capacity"	
	Prior to first month of meeting Qualifying Capacity requirements, Seller has had phone call with Buyer to discuss resource creation and progress
	Seller has submitted Qualifying Capacity information in a timely manner

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EXHIBIT I

Form of Letter of Credit

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT

Bank Reference Number: _____

Issuance Date:

Issuing Bank:
[insert bank name and address]

Applicant:
[insert applicant name and address]

BENEFICIARY:

San Diego Gas and Electric Company

[Address]

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 San Diego Gas and Electric 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) calendar 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:

San Diego Gas & Electric Company
8330 Century Park Ct.
San Diego, California 92123
Attn: General Counsel
Phone: (858) 650-6141
Facsimile: (858) 650-6106

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]:

☐ JA. 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.

☐ JB. 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]

**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	Redwood Coast Energy Authority
Alcantar & Kahl LLP	Ellison Schneider & Harris LLP	Regulatory & Cogeneration Service, Inc.
	Energy Management Service	SCD Energy Solutions
Alta Power Group, LLC	Engineers and Scientists of California	
Anderson & Poole		
Atlas ReFuel	GenOn Energy, Inc.	SCE
BART	Goodin, MacBride, Squeri, Schlotz & Ritchie	SDG&E and SoCalGas
Barkovich & Yap, Inc.	Green Power Institute	SPURR
California Cotton Ginners & Growers Assn	Hanna & Morton	San Francisco Water Power and Sewer
California Energy Commission	ICF	Seattle City Light
California Public Utilities Commission	IGS Energy	Sempra Utilities
California State Association of Counties	International Power Technology	Southern California Edison Company
Calpine	Intestate Gas Services, Inc.	Southern California Gas Company
	Kelly Group	Spark Energy
Cameron-Daniel, P.C.	Ken Bohn Consulting	Sun Light & Power
Casner, Steve	Keyes & Fox LLP	Sunshine Design
Cenergy Power	Leviton Manufacturing Co., Inc.	Tecogen, Inc.
Center for Biological Diversity		TerraVerde Renewable Partners
		Tiger Natural Gas, Inc.
Chevron Pipeline and Power	Los Angeles County Integrated	TransCanada
City of Palo Alto	Waste Management Task Force	Troutman Sanders LLP
	MRW & Associates	Utility Cost Management
City of San Jose	Manatt Phelps Phillips	Utility Power Solutions
Clean Power Research	Marin Energy Authority	Water and Energy Consulting Wellhead
Coast Economic Consulting	McKenzie & Associates	Electric Company
Commercial Energy		Western Manufactured Housing
Crossborder Energy	Modesto Irrigation District	Communities Association (WMA)
Crown Road Energy, LLC	NLine Energy, Inc.	Yep Energy
Davis Wright Tremaine LLP	NRG Solar	
Day Carter Murphy		
Dept of General Services	Office of Ratepayer Advocates	
Don Pickett & Associates, Inc.	OnGrid Solar	
Douglass & Liddell	Pacific Gas and Electric Company	
	Peninsula Clean Energy	