# **LONG FORM CONFIRMATION**

# **FOR RESOURCE ADEQUACY CAPACITY PRODUCT**

# Resource Adequacy Contract Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

This confirmation letter (“Confirmation”) confirms the transaction (the “Transaction”) between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Seller”) and San Diego Gas & Electric Company (“Buyer”), each individually a “Party” and together the “Parties”, dated as of October \_\_\_, 2016 (the “Confirmation Execution Date”) in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Section 3 of this Confirmation. This Transaction shall be deemed to have been entered into pursuant to, and shall supplement, form a part of, and be governed by the terms and conditions of the form of Master Power Purchase and Sale Agreement published by the Edison Electric Institute and the National Energy Marketers Association (version 2.1 dated 4/25/00) (the “EEI Agreement”) with a Cover Sheet containing the elections and other changes contained herein as if the Parties have executed the EEI Agreement (with such Cover Sheet the “Master Agreement”). The Parties agree that the only transactions to be concluded pursuant to such Master Agreement shall be the Transaction documented in this Confirmation. The Master Agreement and this Confirmation shall be collectively referred to herein as the “Agreement”. Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein). To the extent that this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

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| **Name:** Party A / Seller | **Name:** Party B / Buyer |
| **All Notices:**  < company name >  < street address >  < city/state/zip >  Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Telephone: (\_\_\_) \_\_\_-\_\_\_\_  Facsimile: (\_\_\_) \_\_\_-\_\_\_\_  Duns: \_\_\_\_\_\_\_\_\_  Federal Tax ID Number: \_\_\_\_\_\_\_\_\_\_ | **All Notices:**  San Diego Gas & Electric Company  8315 Century Park Court CP 21D  San Diego CA 92123-1593  Attn: Contract Administration  Telephone: (858) 650-6176  Facsimile: (858) 650-6190  Duns: 006911457  Federal Tax ID Number: 95-1184800 |
| **Invoices:**  < company name >  < street address >  < city/state/zip >  Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Telephone: (\_\_\_) \_\_\_-\_\_\_\_  Facsimile: (\_\_\_) \_\_\_-\_\_\_\_ | **Invoices:**  San Diego Gas & Electric Company  8315 Century Park Court  San Diego CA 92123-1593  Attn: Energy Accounting Manager  Telephone: (858) 650-6177  Facsimile: (858) 650-6190 |
| **Scheduling:**  < company name >  < street address >  < city/state/zip >  Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Day Ahead: (\_\_\_) \_\_\_-\_\_\_\_  Real Time: (\_\_\_) \_\_\_-\_\_\_\_  Facsimile: (\_\_\_) \_\_\_-\_\_\_\_ | **Scheduling:**  San Diego Gas & Electric Company  8315 Century Park Court, CP 21D  San Diego, CA 92123-1593  Attn: Transaction Scheduling Manager  Day Ahead: (858) 650-6168  Real Time: (858) 650-6160  Facsimile: (858) 650-6191 |
| **Payments:**  < company name >  < street address >  < city/state/zip >  Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Telephone: (\_\_\_) \_\_\_-\_\_\_\_  Facsimile: (\_\_\_) \_\_\_-\_\_\_\_ | **Payments:**  San Diego Gas & Electric Company  8315 Century Park Court  San Diego CA 92123-1593  Attn: Energy Accounting Manager  Telephone: (858) 650-6177  Facsimile: (858) 650-6190 |
| **Wire Transfer:**  < bank name >  < bank street address >  < bank city/state/zip >  ABA Routing Number: \_\_\_\_\_\_\_\_\_\_  Payee: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Account Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_  Confirmation: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Facsimile: (\_\_\_) \_\_\_-\_\_\_\_ | **Wire Transfer:**  Union Bank of California  445 South Figueroa Street  Los Angeles CA 90071  ABA Routing Number: 122000496  Payee: San Diego Gas & Electric Company  Account Number: 4430000352  Confirmation: SDG&E – Major Markets  Facsimile: (213) 244-8316 |
| **Credit and Collections:**  < company name >  < street address >  < city/state/zip >  Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Telephone: (\_\_\_) \_\_\_-\_\_\_\_  Facsimile: (\_\_\_) \_\_\_-\_\_\_\_ | **Credit and Collections:**  San Diego Gas & Electric Company  555 West Fifth Street, ML 18A3  Los Angeles, CA 90013-1011  Attn: Major Markets – Credit and   Collections Manager  Telephone: (213) 244-4343  Facsimile: (213) 244-8316 |
| With additional Notices of an Event of Default or Potential Event of Default to:  < company name >  < street address >  < city/state/zip >  Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Telephone: (\_\_\_) \_\_\_-\_\_\_\_  Facsimile: (\_\_\_) \_\_\_-\_\_\_\_ | **With additional Notices of an Event of Default or Potential Event of Default to:**  San Diego Gas & Electric Company  8330 Century Park Ct.  San Diego, California 92123  Attn: General Counsel  Telephone: (858) 650-6141  Facsimile: (858) 650-6106 |

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

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| **Article Two** |  | |
| Transaction Terms  and Conditions | 🞎 Optional provision in Section 2.4.   If not checked, inapplicable. | |
| **Article Four** |  | |
| Remedies for Failure  to Deliver or Receive | 🗷 Accelerated Payment of Damages.   If not checked, inapplicable. | |
| **Article Five** | 🞎 Cross Default for Party A: | |
| Events of Default; Remedies | 🞎 Party A: | Cross Default Amount: |
|  | 🞎 Other Entity: | Cross Default Amount: |
|  | 🞎 Cross Default for Party B: | |
|  | 🞎 Party B: N/A | Cross Default Amount: N/A |
|  | 🞎 Other Entity: N/A | Cross Default Amount: N/A |
|  | 5.6 Closeout Setoff | |
|  | 🗷 Option A (Applicable if no other selection is made.) | |
|  | 🞎 Option B – Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |
|  | 🞎 Option C (No Setoff) | |
| **Article 8** | 8.1 Party A Credit Protection: | |
| Credit and  Collateral Requirements | (a) Financial Information:  🞎 Option A | |
|  | 🞎 Option B Specify: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  🞎 Option C Specify: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |
|  | (b) Credit Assurances: | |
|  | 🗷 Not Applicable  🞎 Applicable | |
|  | (c) Collateral Threshold: | |
|  | 🗷 Not Applicable  🞎 Applicable | |
|  | (d) Downgrade Event: | |
|  | 🗷 Not Applicable  🞎 Applicable | |
|  | (e) Guarantor for Party B: None. | |
|  | Guarantee Amount: N/A | |
|  | 8.2 Party B Credit Protection: [SDG&E CREDIT DEPARTMENT TO EVALUATE BASED ON COUNTERPARTY] | |
|  | (a) Financial Information:  🞎 Option A | |
|  | 🞎 Option B Specify: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  🞎 Option C Specify: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |
|  | (b) Credit Assurances: | |
|  | 🞎 Not Applicable  🞎 Applicable | |
|  | (c) Collateral Threshold: | |
|  | 🞎 Not Applicable 🞎 Applicable | |
|  | If applicable, complete the following: | |
|  | Party A Collateral Threshold: $\_\_\_\_\_\_\_\_\_\_\_\_\_\_; provided, however, that Party A’s Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.  Party A Independent Amount: $\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Party A Rounding Amount: $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |
|  | (d) Downgrade Event: | |
|  | 🞎 Not Applicable  🞎 Applicable | |
|  | If applicable, complete the following: | |
|  | * It shall be a Downgrade Event for Party A if Party A ‘s Credit Rating falls below \_\_\_\_\_\_\_ from S&P or \_\_\_\_\_\_\_ from Moody’s or if Party A is not rated by either S&P or Moody’s * Other:   Specify: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |
|  | (e) Guarantor for Party A: None | | |
|  | Guarantee Amount: N/A | | |
| **Article 10** |  | | |
| Confidentiality | 🗷 Confidentiality Applicable If not checked, inapplicable. | | |
| **Schedule M** | 🞎 Party A is a Governmental Entity or Public Power System | | |
|  | 🞎 Party B is a Governmental Entity or Public Power System | | |
|  | 🞎 Add Section 3.6. If not checked, inapplicable | | |
|  | 🞎 Add Section 8.4. If not checked, inapplicable | | |
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| **Other Changes** | 1. The modifications to Section 1.12, 1.50 and 5.2 of the Master Agreement specified in that certain Errata published by the Edison Electric Institute (version 1.1, July 18, 2007) are hereby incorporated herein as if set forth in full.  2. Section 10.2(ii) of the Master Agreement shall be modified by inserting “Except for the conditions precedent described in Section 2.2 of this Confirmation,” at the beginning of the first sentence in such section.  3. Section 10.6 of the Master Agreement shall be deleted in its entirety and replaced with the following:  “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 LAW. TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW, EACH PARTY WAIVES ITS RESPECTIVE RIGH TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.”  4. Schedule P: Products and Related Definitions shall be deleted in its entirety**.** | | |
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1. **Definitions**
   1. “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
   2. “Availability Incentive Payments” has the meaning set forth in the Tariff and (if the Product includes any Flexible RA Attributes) includes any similarly defined payments under the Tariff in respect of Flexible RA Attributes.
   3. “Availability Standards” has the meaning set forth in the Tariff and (if the Product includes any Flexible RA Attributes) includes any similarly defined standards under the Tariff in respect of Flexible RA Attributes.
   4. “Buyer” has the meaning specified in the introductory paragraph.
   5. “CAISO” means the California Independent System Operator Corporation, or any successor entity performing the same functions.
   6. “Capacity Attributes” means (a) the Local RA Attributes, (b) the System RA Attributes, (c) the Flexible RA Attributes, and (d) any other current or future defined characteristics (including the ability to generate at a given capacity level, provide ancillary services, ramp up or down at a given rate, and flexibility or dispatch-ability attributes), certificates, tags, credits, howsoever entitled, including any accounting construct applied to any Compliance Obligations.
   7. “Capacity Price” means the price specified in the Capacity Price Table in Section 4.1.
   8. “Capacity Replacement Price” means (a) the actual rate per kW-day paid for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) including any penalties, fines, transaction costs and expenses reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of Replacement Capacity, any penalties, fines, transaction costs and expenses plus the per kW-day market price for the Product not delivered by Seller under this Confirmation. Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 1.51 of the Master Agreement, “Capacity Replacement Price” shall be deemed the “Replacement Price” for this Transaction.
   9. “Compliance Obligations” means the RAR, Local RAR, Flexible RAR, and other resource adequacy requirements associated with a generating unit’s Capacity Attributes established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
   10. “Compliance Showing” means one or more of the following: (a) Local RAR Showing, (b) RAR Showing, (c) Flexible RAR Showing, or (d) other Capacity Attributes compliance or advisory filing (or similar or successor showing or filing), in each case, that an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
   11. “Confirmation” has the meaning specified in the introductory paragraph.
   12. “Confirmation Effective Date” has the meaning specified in Section 2.2.
   13. “Confirmation Execution Date” has the meaning specified in the introductory paragraph.
   14. “Contract Price” means, for any day in any Monthly Delivery Period, the Capacity Price for such period.
   15. “Contract Quantity” means the quantity of Product (in MW) as set forth in Section 3.4.
   16. “Contract Term” has the meaning set forth in Section 2.1.
   17. “CPUC” means the California Public Utilities Commission.
   18. “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-25, 13-06-024, 14-06-050, 15-06-063, and any other existing or subsequent decisions, resolutions or rulings related to resource adequacy, as may be amended from time to time by the CPUC.
   19. “CPUC Filing Guide” is the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSEs to demonstrate compliance with the CPUC’s resource adequacy program as provided in the CPUC Decisions.
   20. “Credit Rating” means, with respect to any entity, the rating assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Master Agreement, 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 S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Master Agreement.
   21. “Delivery Period” has the meaning specified in Section 3.3.
   22. “Emission Reduction Credits” or “ERC(s)” means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby such district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.
   23. “Environmental Costs” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product’s compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits (including any costs related to greenhouse gas emissions) required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the site, and the decontamination or remediation, on or off the site, necessitated by the introduction of such hazardous substances on the site.
   24. “Flexible Capacity Category” has the meaning set forth in the Tariff.
   25. “Flexible RA Attributes” means, with respect to a Unit, any and all flexible resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward Flexible RAR, exclusive of any System RA Attributes and Local RA Attributes.
   26. “Flexible RAR” means the flexible capacity requirements, including, without limitation, maximum continuous ramping, load following, and regulation, established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Flexible RAR may also be known as ramping, maximum ramping, maximum continuous ramping, maximum continuous ramping capacity, maximum continuous ramping ramp rate, load following, load following capacity, load following ramp rate, regulation, regulation capacity, regulation ramp rate.
   27. “Flexible RAR Showing” means the Flexible RAR compliance or advisory filing (or similar or successor showing or filing) 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, or to any Governmental Body having jurisdiction.
   28. “GADS” means the Generating Availability Data System, or its successor.
   29. “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.
   30. “Local Capacity Area” has the meaning set forth in the Tariff.
   31. “Local RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes or other locational attributes for the Unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward a Local RAR, but exclusive of any System RA Attributes and Flexible RA Attributes.
   32. “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.
   33. “Local RAR Showing” means the Local RAR compliance or advisory filing (or similar or successor showing or filing) 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, or to any Governmental Body having jurisdiction.
   34. “LSE” means load-serving entity.
   35. “Marketable Emission Trading Credits” means without limitation, emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (see 42 U.S.C. § 7651b.(a) to (f)).
   36. “Master Agreement” has the meaning specified in the introductory paragraph.
   37. “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
   38. “Monthly Payment” has the meaning specified in Section 4.1.
   39. “Moody’s” means Moody’s Investors Services, Inc. or its successor.
   40. “NERC” means the North American Electric Reliability Corporation, or its successor.
   41. “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.
   42. “Net Qualifying Capacity” has the meaning set forth in the Tariff.
   43. “Non-Availability Charges” has the meaning set forth in the Tariff and (if the Product includes any Flexible RA Attributes) includes any similarly defined charges under the Tariff in respect of Flexible RA Attributes.
   44. “Non-Specified RA Replacement Capacity” has the meaning set forth in the Tariff and (if the Product includes any Flexible RA Attributes) includes any similarly defined capacity under the Tariff in respect of Flexible RA Attributes.
   45. “Outage” means any disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
   46. “Outage Schedule” has the meaning specified in Section 3.7.
   47. “Planned Outage” shall have the meaning in CPUC Decisions, and includes a planned, scheduled, or any other Outage approved by the CAISO for the routine repair or maintenance of the Unit, or for the purposes of new construction work, and does not include any Outage designated as either forced or unplanned as defined by the CAISO or NERC/GADS Protocols.
   48. “Product” has the meaning specified in Section 3.1.
   49. “Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix A, of the Unit NQC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.
   50. “Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix A, of the Unit EFC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.
   51. “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
   52. “RAR Showing” means the RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
   53. “Replacement Capacity” means capacity which has equivalent Capacity Attributes as the portion of the Product not provided by the Units committed to Buyer as of the Confirmation Execution Date.
   54. “Replacement Rules” has the meaning set forth in Section 3.8(b).
   55. “Replacement Unit” means a generating unit providing Replacement Capacity.
   56. “Resource Category” shall be as described in the CPUC Filing Guide.
   57. “RMR Contract” has the meaning set forth in the Tariff.
   58. “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc. or its successor).
   59. “Scheduling Coordinator” or “SC” has the meaning set forth in the Tariff.
   60. “Seller” has the meaning specified in the introductory paragraph.
   61. “Seller’s Firm Quantity” has the meaning set forth in Section 3.2.
   62. “Showing Month” shall be the calendar month that is the subject of the Compliance Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Execution Date, the monthly RAR Showing made in June is for the Showing Month of August.
   63. “Specified RA Replacement Capacity” has meaning set forth in the Tariff and (if the Product includes any Flexible RA Attributes) includes any similarly defined capacity under the Tariff in respect of Flexible RA Attributes.
   64. “Substitute/Specified Capacity” has the meaning set forth in Section 3.8(a).
   65. “Substitution Rules” has the meaning set forth in Section 3.8(b).
   66. “Supply Plan” has the meaning set forth in the Tariff and (if the Product includes any Flexible RA Attributes) includes any similarly defined plan under the Tariff in respect of Flexible RA Attributes.
   67. “System RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any Local RA Attributes and Flexible RA Attributes.
   68. “Tariff” means the tariff and protocol provisions, including any applicable CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended or supplemented from time to time, of the CAISO.
   69. “Transaction” has the meaning specified in the introductory paragraph.
   70. “Unit” or “Units” shall mean the generation assets described in Appendix A (including any Replacement Units), from which Product is provided by Seller to Buyer.
   71. “Unit Contract Quantity” means the amount of Product (in MW) to be delivered by Seller to Buyer by each individual Unit, as specified in Appendix A as of the Confirmation Execution Date.
   72. “Unit EFC” means the effective flexible capacity or capacity that is qualified to provide Flexible RA Attributes established by the CAISO for the applicable Unit.
   73. “Unit NQC” means the Net Qualifying Capacity established by the CAISO for the applicable Unit.
   74. “Unit Delivered Quantity” means the amount of applicable Product (in MW) actually “delivered” by Seller to Buyer by each individual Unit. As used herein, “delivered” shall mean shown in the Supply Plan and, for purposes of Section 4.1, shall include any Substitute/Specified Capacity under Section 3.8, and in all cases, shall not include (i) any portion of Seller’s Firm Quantity for which Buyer is required under the Compliance Obligations or the Tariff to procure Replacement Capacity, and (ii) any portion of Seller’s Firm Quantity for which Seller is required hereunder, but fails, to provide Replacement Capacity to Buyer.
2. **Term**
   1. Contract Term

The “Contract Term” shall mean the period of time commencing upon the Confirmation Effective Date and continuing until the later of (a) the expiration of the Delivery Period or (b) the date the Parties’ obligations under this Agreement have been fulfilled.

* 1. Conditions Precedent; Binding Nature

This Agreement shall not be effective or binding on either Party until, and it shall become effective and binding on both Parties as of, the date on which the conditions precedent, if any, described below shall have been achieved (or waived in writing by each of the Parties in their sole discretion) (the “Confirmation Effective Date”).

* + 1. None.

If any of the foregoing conditions precedent are not achieved (or waived in writing by each of the Parties) on or before the deadline dates therefor (without extension for Force Majeure or any other reason), then this Agreement shall automatically terminate. If there are no conditions precedent listed above in this Section 2.2 then the Confirmation Effective Date shall be the Confirmation Execution Date. This Agreement shall be effective and binding as of the Confirmation Effective Date.

1. **Transaction**
   1. Product
      1. Seller shall sell and Buyer shall receive and purchase, the Capacity Attributes (including all Local RA Attributes and Flexible RA Attributes) as described in Section 3.4 of the Units identified in Appendix A (collectively, the “Product”) and Seller shall deliver the Product as described in Section 3.2 below. Product does not include any right to dispatch or receive the energy or ancillary services from the Unit. Seller retains the right to sell any Product from a Unit in excess of its Unit Contract Quantity.
      2. The Parties agree that (i) the Contract Price for the Product shall not change if the CAISO, CPUC or other Governmental Body (A) defines new or re-defines existing Local Capacity Areas which decreases or increases the amount of Local RA Attributes provided hereunder, or (B) defines new or re-defines existing Local Capacity Areas whereby the Units qualify for a Local Capacity Area and (ii) if the event in Section 3.1(b)(i)(B) occurs then the Product shall include such Local RA Attributes.
      3. If the Product includes any Flexible RA Attributes, the Parties agree that (i) the Contract Price for the Product shall not change if the CAISO, CPUC or other Governmental Body defines new or re-defines existing Flexible RAR, Capacity Attributes related to Flexible RAR, or attributes of the Unit related to Flexible RAR, that results in a decrease or increase in the amount of Capacity Attributes related to Flexible RAR provided hereunder, and (ii) if the event in Section 3.1(c)(i) occurs then the Product shall include such Capacity Attributes related to Flexible RAR.
   2. Seller’s Firm Quantity

During the Delivery Period, Seller shall provide Buyer with the Product from the Unit(s) in the amount of the Contract Quantity. Except as otherwise stated in this Section 3.2 and except for reasons of Force Majeure, if the Unit(s) are not available to provide any portion of the Product for any reason including without limitation any Outage or any adjustment of the Capacity Attributes of any Unit(s), Seller shall provide Buyer with Replacement Capacity from one or more Replacement Units pursuant to Section 5.1. If Seller fails to provide Buyer with Replacement Capacity pursuant to Section 5.1, then Seller shall be liable for damages and/or to indemnify Buyer for penalties, fines or costs pursuant to the terms of Section 5 and Section 10. “Seller’s Firm Quantity” shall equal the Contract Quantity during all times during the Delivery Period, except during the periods listed in Appendix B, during which time Seller’s Firm Quantity shall be reduced by the Outage amount for each Unit specified in Appendix B and Seller shall not be obligated to and shall not provide Buyer with Replacement Capacity pursuant to Section 5.1 for the Outage amount resulting in the reduction in Seller’s Firm Quantity as specified in the Outage Schedule in Appendix B.

* 1. Delivery Period

The “Delivery Period” shall be \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ thru \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, inclusive, unless terminated earlier in accordance with the terms of this Agreement.

* 1. Contract Quantity:

During each month of the Delivery Period, Seller shall provide the Product from each Unit in the total amount for such month as follows:

**CONTRACT QUANTITY TABLE**

| **Unit Name** | **CAISO Resource ID\*** | **Month(s)** | **Unit Contract Quantity (MW) of Capacity Attributes** | | |
| --- | --- | --- | --- | --- | --- |
| **Local RA Attributes and/or System RA Attributes** | **Flexible RA Attributes** | **Flexible Capacity Category** |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
| \* *CAISO Resource ID* should match a Unit described in Appendix A | | | | |  |

* 1. Delivery of Product

Seller shall provide Buyer with the Contract Quantity for each day in each Monthly Delivery Period consistent with the following:

* + 1. Seller shall, on a timely basis, submit, or cause each Unit's SC to submit, Supply Plans to identify and confirm the Unit Delivered Quantity for each Unit provided to Buyer so that the total amount of Unit Delivered Quantity identified and confirmed equals the Unit Contract Quantity for each Unit, unless specifically notified or requested not to do so by the Buyer pursuant to Section 3.8, and;
    2. Seller shall cause each Unit’s SC to submit written notification to Buyer, no later than fifteen (15) Business Days before the relevant deadline for any applicable Compliance Showing, that Buyer will be credited with Unit Delivered Quantity for the applicable portion of the Delivery Period in the Unit’s SC Supply Plan so that the total amount of Unit Delivered Quantity for each Unit credited equals the Unit Contract Quantity.
  1. CAISO Offer Requirements

Subject to Buyer’s request under Section 3.8(a), Seller shall, or cause the Unit’s SC to, bid and/or schedule with, or make available to, the CAISO the Unit Contract Quantity associated with each Product type (i.e. System RA Attributes, Local RA Attributes, Flexible RA Attributes and Flexible Capacity Category) for each Unit in compliance with the Tariff and the CPUC Filing Guide, including any must offer obligation under the Tariff or the CPUC Filing Guide, and shall, or cause the Unit’s SC, owner, or operator, as applicable, to perform all obligations under the Tariff and the CPUC Filing Guide that are associated with the sale and delivery of Product hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit’s SC, owner, or operator to comply with such Tariff and CPUC Filing Guide provisions, including any penalties, charges or fines imposed on Seller or the Unit’s SC, owner, or operator for such noncompliance.

* 1. Planned Outages

As of the Confirmation Execution Date, Seller and Buyer have agreed to all Planned Outages during the Delivery Period (other than “Short-Notice Opportunity RA Maintenance Outages”, “Off-Peak Opportunity RA Maintenance Outage” and “RA Maintenance Outage With Replacement” as defined or described in the Tariff) as specified in Appendix B (“Outage Schedule”). Seller shall, or cause the Unit’s SC to reconfirm the Outage Schedule or submit a schedule of proposed changes to the Outage Schedule, if any, to Buyer on each of the following dates during the Contract Term: (i) the Confirmation Effective Date, (ii) thirty (30) days before the applicable year-ahead showing, and (iii) no later than January 1, April 1, July 1 and October 1 of each calendar year. Within twenty (20) Business Days after its receipt of a schedule of proposed changes, Buyer shall notify Seller in writing of any reasonable request for modifications to such Seller proposed changes, and Seller shall, to the extent consistent with Good Utility Practices, accommodate Buyer’s requests regarding the timing of any Seller proposed changes to the Outage Schedule. In addition, Seller shall, or cause the Unit’s SC to, submit any subsequent Seller proposed changes to the Outage Schedule to Buyer at least ten (10) Business Days before such change is to occur. Within three (3) Business Days after its receipt of such Seller proposed change to the Outage Schedule, Buyer may notify Seller in writing of any reasonable requests for modifications to such Seller proposed changes. Seller shall, to the extent consistent with Good Utility Practices, accommodate Buyer's requests regarding the timing of any Seller proposed changes to the Outage Schedule. Any such notification shall not affect Seller’s obligation to provide Replacement Capacity in accordance with Section 3.2, and any such changes to the Outage Schedule shall not alter or otherwise amend Seller’s Firm Quantities specified as of the Execution Date.

* 1. Unit Substitution; RA Replacement Capacity
     1. Substitute/Specified Capacity: No later than five (5) Business Days before the relevant deadline for each applicable Compliance Showing, Buyer may (i) request, subject to Seller’s reasonable approval, that Seller not, or cause each Unit’s SC not to, list a portion or all of a Unit’s applicable Unit Contract Quantity on the Supply Plan or (ii) notify Seller that a portion or all of the Unit Contract Quantity of a Unit will be included in an applicable Compliance Showing as Specified RA Replacement Capacity or Non-Specified RA Replacement Capacity. The amount of Unit Contract Quantity that is the subject of such a request or notice shall be known as “Substitute/Specified Capacity” and, for purposes of calculating a Monthly Payment pursuant to Section 4.1, to the extent provided, such Substitute/Specified Capacity shall be deemed Unit Delivered Quantity provided consistent with Section 3.5.
     2. Seller’s Obligations With Respect to Substitute/Specified Capacity: If Buyer requests Substitute/Specified Capacity, Seller shall (i) make such Substitute/Specified Capacity available to Buyer during the applicable Showing Month to allow Buyer to utilize, as applicable, the substitution rules in Section 40.9.4.2.1 of the Tariff including (if the Product includes any Flexible RA Attributes) any similarly defined substitution rules under the Tariff in respect of Flexible RA Attributes (“Substitution Rules”) or, if approved in accordance with the Applicable Laws, the replacement rules in Sections 9.3.1.3.1 and 9.3.1.3.2 of the Tariff including (if the Product includes any Flexible RA Attributes) any similarly defined replacement rules under the Tariff in respect of Flexible RA Attributes (the “Replacement Rules”), and (ii) take, or cause each Unit’s SC to take, all action to allow Buyer to utilize, as applicable, the Substitution Rules and the Replacement Rules, including, but not limited to, ensuring that the Substitute/Specified Capacity will qualify, as applicable, for substitution under the Substitution Rules and for replacement under the Replacement Rules, and providing Buyer with all information needed to utilize the Substitution Rules and Replacement Rules.
     3. Seller agrees that all Substitute/Specified Capacity utilized by Buyer under the Substitution Rules and Replacement Rules, as applicable, is subject to the requirements identified in Section 3.6.
     4. Failure to Provide Substitute/Specified Capacity: If Seller fails to provide Substitute/Specified Capacity or Buyer is unable to utilize the Substitute/Specified Capacity under the Substitution Rules and Replacement Rules due to Seller’s failure to fulfill its obligations under Section 3.8(b)(ii), then Seller shall reimburse Buyer for any and all Non-Availability Charges incurred by Buyer and shall pay Buyer the CPM revenue the CASIO would have paid the Buyer but for Seller failure, due to such failure or inability to utilize the Substitution Rules and Replacement Rules; provided, that if Buyer is unable to utilize the Substitution Rules because the Substitute/Specified Capacity does not qualify for substitution under Section 40.9.4.2.1(1)(i) or (ii) of the Tariff, then Seller shall not be responsible for any such Non-Availability Charges described in this Section 3.8(d) associated with such inability.
  2. Buyer’s Re-Sale of Product

Buyer may re-sell all or a portion of the Product.

1. **Payment**
   1. Monthly Payment

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a “Monthly Payment” to Seller for each Unit after the applicable Monthly Delivery Period, as follows:

***where:***

*A = applicable Contract Price (in $/kW-day) for that calendar day*

***B*** *= The difference between (i) the Unit Contract Quantity (in MW) for Capacity Attributes excluding Flexible RA Attributes (i.e. Local RA Attributes and/or System RA Attributes) as specified in the Contract Quantity Table in Section 3.5, minus (ii) the greater of (a) the amount (in MW), if any, that such Unit Contract Quantity for Capacity Attributes excluding Flexible RA Attributes exceeds the Unit Delivered Quantity for such Product provided by Seller for such Unit in that calendar day, or (b) the amount (in MW), if any, that the Unit Contract Quantity for Flexible RA Attributes of the specified Flexible Capacity Category as specified in the Contract Quantity Table in Section 3.5 exceeds the Unit Delivered Quantity for such Product provided by Seller for such Unit in that calendar day; provided, however, in no event shall this quantity “****B****” exceed Seller’s Firm Quantity for such Unit (in MW) for Capacity Attributes excluding Flexible RA Attributes as specified in the Contract Quantity Table in Section 3.5 nor shall this quantity “****B****” be less than zero.*

***d*** *= Total number of calendar days in the respective Monthly Delivery Period*

The Monthly Payment calculation shall be rounded to two decimal places. In no case shall a Unit's Monthly Payment (or any day in any Monthly Payment) be less than zero.

CAPACITY PRICE TABLE

| **2017 Contract Month** | **Capacity Price**  **($/kW-day)** |
| --- | --- |
| January |  |
| February |  |
| March |  |
| April |  |
| May |  |
| June |  |
| July |  |
| August |  |
| September |  |
| October |  |
| November |  |
| December |  |

* 1. Allocation of Other Payments and Costs
     1. Seller shall retain any revenues it may receive from and pay all costs charged by, the CAISO or any other third party with respect to any Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, and (iv) any revenues for black start or reactive power services. Seller shall indemnify, defend and hold Buyer harmless from and against all liabilities, damages, claims, losses, costs or expenses (including, without limitation, attorneys' fees) incurred by or brought against Buyer in connection with Environmental Costs.
     2. Buyer shall be entitled to receive and retain all revenues associated with the Contract Quantity during the Delivery Period including any capacity or availability revenues from RMR Contracts for any Unit, Capacity Procurement Mechanism (CPM) or its successor, and Residual Unit Commitment (RUC) Availability Payments, or its successor but excluding payments described in Section 4.2(a)(i)-(iv).
     3. In accordance with Section 4.1 of this Confirmation and Article Six of the Master Agreement, all such Buyer revenues described in Section 4.2(b), but received by Seller, or a Unit’s SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit’s SC, owner, or operator fails to remit those revenues to Buyer. In order to verify the accuracy of such revenues, Buyer shall have the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity.
     4. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit the Contract Quantity for re-sale in such market, and retain and receive any and all related revenues.
     5. Subject to the Unit being made available to the CAISO in accordance with Article 3 of this Confirmation, Seller agrees that the Unit is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments under the Tariff. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of Seller and for Seller’s account and that any Non-Availability Charges are the responsibility of Seller and for Seller’s account.
  2. Offset Rights

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

1. **Seller's Failure to Deliver Contract Quantity**
   1. Seller’s Duty to Provide Replacement Capacity

If Seller is unable to provide the Contract Quantity from any Unit(s) for any day in any Monthly Delivery Period and Replacement Capacity is required under Section 3.2, then:

* + 1. Seller shall notify Buyer of the non-availability of any portion of the Contract Quantity from any Unit(s) and identify Replacement Unit(s), no later than fifteen (15) Business Days before the relevant deadline for an LSE’s Compliance Showing, and
    2. Within five (5) Business Days after receiving Seller’s notification of Replacement Unit(s) above, Buyer shall notify Seller whether it has elected to purchase such Contract Quantity from such Replacement Unit(s). If Buyer has elected to purchase such Contract Quantity from such Replacement Unit(s), Seller shall, at no additional cost to Buyer, provide Buyer with Replacement Capacity from one or more Replacement Units, such that the total amount of Product provided to Buyer from all Units and Replacement Units equals Seller’s Firm Quantity.

The designation of any Replacement Unit by Seller shall be subject to Buyer’s prior written approval and its election, in its sole discretion, to purchase Contract Quantity from such Replacement Unit. Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 5.1, and Buyer has approved the designation of the Replacement Unit and has elected to purchase Contract Quantity from such Replacement Unit, then any such Replacement Unit shall be deemed a Unit for purposes of this Confirmation for that day in such Monthly Delivery Period. To the extent Buyer does not elect to purchase Contract Quantity from any Replacement Units offered by Seller within the notice deadlines specified in this Section 5.1, then Buyer shall not be obligated to pay Seller for such Contract Quantity that is not available from the Unit(s) identified in Appendix A and Seller shall not be liable for any damages payable to Buyer and/or indemnification of Buyer against any penalties, fines or costs under Section 5 and Section 10 with respect to the Contract Capacity associated with such Replacement Units. Notwithstanding anything to the contrary in this Confirmation, Seller’s failure to properly provide Replacement Capacity, including Seller’s obligation to identify Replacement Units within the notice deadlines specified in this Section 5.1, may result in the calculation of damages payable to Buyer and/or the indemnification of Buyer against any penalties, fines or costs under Section 5 and Section 10.

* 1. Damages for Failure to Provide Replacement Capacity

If Seller fails to provide Buyer any portion of the Seller’s Firm Quantity from Replacement Units for any day in any Monthly Delivery Period as required by Section 5.1, then the following shall apply:

* + 1. Buyer may, but shall not be obligated to, obtain Replacement Capacity. Buyer may enter into purchase transactions with one or more parties to replace the portion of Seller’s Firm Quantity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver the capacity to another party, and such arrangements shall be considered the procurement of Replacement Capacity. Buyer shall act in a commercially reasonable manner in purchasing any Replacement Capacity, and;
    2. Seller shall pay to Buyer damages, in accordance with the terms of Section 4.1 of the Master Agreement relating to “Accelerated Payment of Damages,” if applicable, an amount equal to the positive difference, if any, between (i) the sum of (A) the Capacity Replacement Price ($/kW-day) paid by Buyer times any Replacement Capacity (in MW) purchased by Buyer pursuant to Section 5.2(a) for such day times 1,000 kW/MW, plus (B) the Capacity Replacement Price ($/kW-day) times the portion of Seller’s Firm Quantity (in MW) not provided by Seller nor purchased by Buyer pursuant to Section 5.2(a) for such day times 1,000 kW/MW, and (ii) the portion of Seller’s Firm Quantity (in MW) not provided for the applicable day in the applicable Monthly Delivery Period times the Contract Price ($/kW-day) for that day times 1,000 kW/MW.
  1. Indemnities for Failure to Deliver Seller’s Firm Quantity

If Buyer is unable to purchase Replacement Capacity after Seller fails to provide Buyer a portion of the Seller’s Firm Quantity from Replacement Units for any day in any Monthly Delivery Period as required by Section 5.1, then in addition to the damages pursuant to Section 5.2(b)(i)(B) with respect to the portion of Seller’s Firm Quantity that Buyer has not replaced, Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC, CAISO, or any Governmental Body having jurisdiction, resulting from any of the following:

* + 1. Seller’s failure to provide any portion of the Seller’s Firm Quantity or any portion of the Replacement Capacity;
    2. Seller’s failure to provide timely notice of the non-availability of any portion of the Seller’s Firm Quantity;
    3. A Unit’s SC’s failure to timely submit Supply Plans that identify Buyer’s right to the Contract Quantity purchased hereunder, or;
    4. any other failure by Seller to perform its obligations under this Confirmation.

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

1. **Other Buyer and Seller Covenants**
   1. Seller’s and Buyer’s Duty to Take Action to Allow the Utilization of the Product

Buyer and Seller shall, throughout the Delivery Period, take commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's Compliance Obligations. The Parties further agree to negotiate in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions or decisions rendered by the CPUC, FERC, or other Governmental Body having jurisdiction to administer Compliance Obligations, to maintain the benefits of the bargain struck by the Parties on the Confirmation Execution Date. The Parties acknowledge that the benefit of the bargain as stated in this Agreement attempts to reflect anticipated changes to the CASIO and CPUC Resource Adequacy rules as such rules have been proposed as of the Confirmation Execution Date.

* 1. Seller’s Represents, Warrants and Covenants
     1. Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:
        1. Seller owns or has the exclusive right to the Product sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
        2. No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit’s owner or operator;
        3. Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
        4. Seller shall, and each Unit’s SC, owner and operator is obligated to, comply with Applicable Laws, including the Tariff, relating to the Product;
        5. If Seller is the owner of any Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for any Unit does not exceed the Unit NQC or Unit EFC, as applicable, for that Unit;
        6. Seller has notified the SC of each Unit that Seller has transferred the Unit Contract Quantity applicable to such Unit to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff fully reflecting such transfer;
        7. Seller has notified the SC of each Unit that Seller is obligated to cause each Unit’s SC to provide to Buyer, at least fifteen (15) Business Days before the relevant deadline for each Compliance Showing, the Unit Contract Quantity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period;
        8. Seller has notified each Unit’s SC that Buyer is entitled to the revenues set forth in Section 4.2, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues;
        9. In the event Seller has rights to the energy output of any Unit, and Seller or the Unit’s SC schedules energy from the Unit for export from the CAISO Control Area, or commits energy to another entity in a manner that could result in scheduling energy from the Unit for export from the CAISO Control Area, it shall do so only as allowed by, and in accordance with, Applicable Laws and such exports may, if allowed by the Tariff, be curtailed by the CAISO, and;
        10. The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities.
     2. Seller represents, warrants and covenants to Buyer that, as of the Confirmation Execution Date, all of the information set forth on Appendix A hereto is true, correct and complete.

1. **Confidentiality**

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that Buyer and Seller may disclose this Agreement to the CPUC, CAISO and any Governmental Body, as required by Applicable Law, and Seller may disclose the transfer of the Contract Quantity under this Transaction to the SC of each Unit in order for such SC to timely submit accurate Supply Plans; provided, that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or SC to further disclose such information. In addition, in the event Buyer resells all or any portion of the Product, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction.

1. **Counterparts**

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Delivery of an executed counterpart of this Agreement by fax will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by facsimile will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

1. **Collateral Requirements** [NOTE to respondents: Amount to be determined by SDG&E credit department]

On or before the Confirmation Execution Date, to secure its obligations under this Confirmation, Seller agrees to deliver a Letter of Credit or cash in the amount of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ to Buyer and maintain such security in full force and effect until it is required to be returned in accordance with this Section 9. The security posted under this Section 9 shall not be deemed a limitation of Seller’s damages. Buyer shall return to Seller any unused portion of this security after the following have occurred: (i) the Delivery Period has expired or terminated early; and (ii) all payment obligations of the Seller arising under this Confirmation, including compensation for penalties, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

1. **Declaration of an Early Termination Date and Calculation of Settlement Amounts**

Notwithstanding anything to the contrary, the Parties shall determine the Settlement Amount for this Transaction in accordance with Section 5.2 of the Master Agreement using the defined terms contained in this Confirmation as applicable. Furthermore, with respect to this Transaction only, the following language is to be added at the end of Section 5.2 of the EEI Agreement:

“If Buyer is the Non-Defaulting Party and Buyer reasonably expects to incur penalties, fines or costs from the CPUC, the CAISO, or any other Governmental Body having jurisdiction, because Buyer is not able to include the Contract Quantity in any applicable Compliance Showing due to the termination of the Transaction under the Master Agreement caused by Seller’s Event of Default and Buyer has not purchased Replacement Capacity for the applicable portion of the Contract Quantity, then Buyer may, in good faith, estimate as its Losses in respect of the Transaction the present value of the amount of those penalties, fines and costs on a $/kW-day basis subtracting the Contract Price (in $/kW-day) and include this estimate in its determination of the Settlement Amount, subject to accounting to Seller when those penalties, fines and costs are finally ascertained. The rights and obligations with respect to determining and paying any Settlement Amount or Termination Payment, and any dispute resolution provisions with respect thereto, shall survive the termination of this Transaction and shall continue until after those penalties or fines are finally ascertained.”

*[Signature page follows]*

IN WITNESS WHEREOF, the Parties have caused this Confirmation to be duly executed as of the date first above written.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ SAN DIEGO GAS & ELECTRIC COMPANY   
a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ a California corporation

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

APPROVED as to legal form \_\_\_\_\_

**APPENDIX A**

**Unit Information**

|  |  |
| --- | --- |
| Unit Resource Name |  |
| CAISO Resource ID |  |
| Unit SCID |  |
| 2017 Unit NQC (MW) |  |
| Prorated Percentage of Unit Factor |  |
| 2017 Unit EFC (MW) | *[Comment: If the Product does not include flexible capacity, insert “Not Applicable”]* |
| Prorated Percentage of Unit Flexible Factor | *[Comment: If the Product does not include flexible capacity, insert “Not Applicable”]* |
| Resource Type |  |
| Resource Category  (MMC Bucket 1, 2, 3 or 4) |  |
| Path 26 (North or South) |  |
| Local Capacity Area (if any, as of Confirmation Execution Date) |  |
| Unit Contract Quantity (MW) for Capacity Attributes excluding Flexible RA Attributes (i.e. System RA Attributes and/or Local RA Attributes) |  |
| Unit Contract Quantity (MW) for Flexible RA Attributes |  |
| Flexible Capacity Category | *[Comment: If the Product does not include flexible capacity, insert “Not Applicable”]* |
| Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment |  |
| Run Hour Restrictions |  |

APPENDIX B

Outage Schedule

Seller’s Firm Quantity shall be, for each calendar day, on a Unit basis for each Unit, the Contract Quantity listed in Section 3.4, except as stated below:

| **Unit Name** | **CAISO Resource ID\*** | **Outage (MW)** | **SLIC Outage Start Date** | **SLIC Outage End Date** | **Duration** | **Adjusted Seller’s Firm Quantity (MW) of Capacity Attributes** | |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Days** | **Local RA Attributes and/or System RA Attributes** | **Flexible RA Attributes** |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |

\* *CAISO Resource ID* should match a Unit described in Appendix A