

SAMPLE FORMS - CONTRACTS  
Distributed Energy Resources Services (DERS) Agreement (Form 7400)

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(See Attached Form)

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(TO BE INSERTED BY UTILITY)  
ADVICE LETTER NO. 4918  
DECISION NO. 15-10-049

ISSUED BY  
**Dan Skopec**  
Vice President  
Regulatory Affairs

(TO BE INSERTED BY CAL. PUC)  
DATE FILED Jan 19, 2016  
EFFECTIVE May 25, 2017  
RESOLUTION NO. \_\_\_\_\_

*Instructions: Terms that are boxed and shaded in light gray are instructions for preparing this Agreement and must be removed before this Agreement is finalized. Terms that are bracketed or highlighted in yellow are transaction-specific terms that must be removed, accepted, revised, expanded upon, or completed (as applicable) before this Agreement is finalized.*

*This Agreement is subject to negotiation and, upon the mutual agreement of the Parties, may be modified as necessary or appropriate based on the requirements of contemplated transaction, the unique circumstances of the Customer, or in order to maximize the value of the transaction, subject to Regulatory Requirements.*

## DISTRIBUTED ENERGY RESOURCES SERVICES AGREEMENT

This Distributed Energy Resources Services Agreement is entered into and effective as of [insert date of execution] (the “Effective Date”) by and between Southern California Gas Company, a California corporation (“Utility”), and [insert full legal name of Customer], a [insert form of business entity and state of registration] (“Customer”).

### RECITALS

- A. Customer (a) owns and operates [insert name or description of Customer Facility] (the “Customer Facility”) located at [insert address of Customer Facility] (as further described in Exhibit A, the “Premises”), or (b) has the necessary legal rights and the full power and authority to perform all of its obligations under this Agreement related to the Customer Facility and the Premises.
- B. Customer desires to retain Utility to perform, and Utility desires to perform the DER Services in accordance with and subject to the terms of this Agreement.

The Parties, intending to be legally bound, hereby agree as follows:

### ARTICLE 1 DEFINITIONS AND EXHIBIT LIST

1.1 Definitions. As used in this Agreement, the following terms and variations thereof have the meanings specified or referred to in this Section 1.1:

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

“Applicable Law” means (a) any constitution, charter, act, statute, law, Environmental Law, ordinance, code, rule, regulation, order, or other legislative or administrative action of a Governmental Authority, or a final decree, judgment, or order of a court or tribunal, including, in each case, any and all requirements thereof or set forth therein, or (b) laws, orders, ordinances, rules, regulations, certificates, consents, Permits, or any other authorizations of a Governmental Authority or public officer that relate to the design, construction, maintenance, operation, repair, upgrade, renovation, removal, alteration, use, occupancy, or control of the Customer Facility, the DER Facilities, or the Premises (including the Regulatory Requirements, the Customer-Acquired Permits, and the Utility-Acquired Permits).

“Capital Charge” is defined in Section 5.1(b).

“Change in Services” is defined in Section 9.1(b).

“Confidential Information” means confidential or proprietary information concerning the business, operations, or assets of each Party or its affiliates, whether or not reduced to writing or other tangible form, including (a) the terms and conditions of this Agreement or any related agreement (including the Services Fee, the calculation thereof, and all other information related thereto), (b) information or materials prepared in connection with the

performance of DER Services under this Agreement or any related agreement, (c) designs, drawings, specifications, techniques, models, data, documentation, source code, object code, diagrams, flow charts, research, development, processes, procedures, know-how, manufacturing, development or marketing techniques and materials, development or marketing timetables, strategies and development plans, customer, supplier or personnel names and other information related to customers, suppliers or personnel, pricing policies, and financial information, (d) any information defined as “trade secrets” under the Uniform Trade Secrets Act of California, or (e) information of a similar nature as that which is set forth in subsections (a)-(e). Confidential Information does not include information that is (i) is known to the receiving Party before obtaining the same from the disclosing Party, (ii) in the public domain at the time of disclosure by the disclosing Party, (iii) is disclosed to the receiving Party by a third party having a bona fide right to do so, (iv) independently developed by an individual or entity that had no access to the Confidential Information; or (v) approved for release by express prior written consent of an authorized officer of the disclosing Party.

“Consequential Damages” means damages for loss of anticipated profits, loss by reason of the DER Facilities’ shutdown, non-operation or increased expense of operation, service interruptions, cost of purchased or replacement gas or power, cost of money, loss of use of capital or revenue, or any other indirect, incidental, special, punitive, exemplary, or consequential loss or damage, whether arising from defects, delay, or from any other cause whatsoever.

“Construction Commencement Date” is defined in Section 4.1(a).

“CPUC” means the Public Utilities Commission of the State of California.

“Creditworthiness Requirements” has the meaning set forth in the Tariff.

“Customer” is defined in the introductory paragraph of this Agreement.

“Customer-Acquired Permits” is defined in Section 3.3.

“Customer Event of Default” is defined in Section 18.1.

“Customer Facility” is defined in Recital A.

“Customer Representative” is defined in Section 3.5.

“DER Facilities” is defined in Section 2.2.

“DER Services” has the meaning set forth in the Tariff.

“Disputes” is defined in Section 22.1.

“Effective Date” is defined in the introductory paragraph of this Agreement.

“Environmental Attributes” is defined in Section 7.1(a).

“Environmental Laws” is defined in Section 21.2.

“Feasibility Analysis” has the meaning set forth in the Tariff and is attached to this Agreement as Exhibit D.

“Force Majeure” means any occurrence beyond the reasonable control of and to the extent occurring without the fault or negligence of the Party claiming Force Majeure that, in whole or part, delays a Party’s performance under this Agreement or causes the Party to be unable to perform its obligations under this Agreement (other than a Party’s ability to pay debts as they become due), which by exercise of due foresight such Party could not reasonably have been expected to avoid and which such Party is unable to overcome by the exercise of due

diligence. Such occurrences may include acts of God, disruption of natural gas supplies, power outages or disruptions, flood, drought, earthquake, storm, fire, pestilence, lightning, and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, terrorism, sabotage, strike or labor dispute, or actions or inactions of any Governmental Authority.

“Governmental Authority” means (a) any federal, state, local, municipal, or other government, (b) any governmental, regulatory or administrative agency, commission, or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power, or (c) any court or governmental tribunal.

“Hazardous Substances” is defined in Section 21.1.

“Index” means [insert applicable agreed-upon Index, if any.]

*Instructions: Whether and which Index should be included is to be determined by the mutual agreement of the Parties. If the Parties do not use an Index, this definition and references to it in this Agreement must be removed.*

“Latent Site Defects” is defined in Section 6.2(f).

“O&M Charge” is defined in Section 5.1(b).

“Party” refers to Utility or Customer individually, and “Parties” refers to Utility and Customer collectively.

“Performance Requirements” is defined in Section 4.3 and is specified in Exhibit E.

“Permits” means all local, state, and federal permits, licenses, consents, orders, waivers, franchises, registrations, variances, extensions, filings, certificates, exemptions, approvals, and other authorizations obtained from or made with a Governmental Authority.

“Premises” has the meaning set forth in the Tariff and as further described in Recital A.

“Regulatory Requirements” is defined in Article 8.

“Remedial Work” is defined in Section 21.3.

“Services Commencement Date” means the date that is the first day of the month following the date Utility causes the DER Facilities to achieve the Performance Requirements.

“Services Fee” is defined in Section 5.1(a).

“Tariff” means Schedule GO-DERS in force at the time of interpretation and incorporated herein by reference.

“Taxes” means all federal, state, regional, municipal, and local sales, use, excise, ad valorem and other taxes, charges, or contributions.

“Termination by Utility Payment” is defined in Section 19.1(b).

“Utility” is defined in the introductory paragraph of this Agreement.

“Utility-Acquired Permits” is defined in Section 4.2.

“Utility Representative” is defined in Section 4.5.

“Work Notice” is defined in Section 21.3.

1.2 Exhibit List. The following Exhibits are specifically made a part of this Agreement by this reference:

Exhibit A	–	Description and Location of the Premises and the DER Facilities
Exhibit B	–	Safety and Security Requirements
[Exhibit C	–	[Easement][Lease Agreement]
Exhibit D	–	Feasibility Analysis
Exhibit E	–	Statement of Services and Performance Requirements
Exhibit F	–	Services Fee
[Exhibit G	–	Bill of Sale]

## ARTICLE 2 TERM; DESCRIPTION OF THE DER FACILITIES

2.1 Term. The term of this Agreement commences on the Effective Date and will be in full force and effect for a period of [insert years] years after the Services Commencement Date, unless terminated earlier in accordance with the terms hereof. At least ninety (90) days before the end of the term of this Agreement and assuming that all required payments have been made by Customer, the Parties shall meet and confer in order to determine whether to extend the term of this Agreement for a period and at a Services Fee to be mutually agreed upon.

2.2 Description of the DER Facilities. [Provide a brief description of the DER Facilities] (as further described in Exhibit A and the Tariff, the “DER Facilities”).

2.3 Location of the DER Facilities. The DER Facilities will be located at the Premises, as further described in Exhibit A.

## ARTICLE 3 RESPONSIBILITIES OF CUSTOMER

3.1 Premises and Security Requirements. Customer shall provide an appropriate location at the Premises for the delivery of equipment and materials, layout and storage of equipment and materials, ingress and egress, and parking of construction or installation-related vehicles and the construction or installation of the DER Facilities, including ongoing safeguards at the Premises for the protection of the DER Facilities and provision of the DER Services, and all individuals and other property related thereto, including lights and barriers, guard service, controlled access, and other measures developed pursuant to a continuous safety and security assurance program acceptable to Utility, or otherwise reasonably required to prevent vandalism, theft, and danger to the DER Facilities, all as described in greater detail in Exhibit B. Unless otherwise stated in Exhibit B, within thirty (30) days after the Construction Commencement Date, Customer shall provide a notice satisfactory to Utility describing Customer’s safety and security assurance program.

3.2 Access to Premises. At all times and as necessary for Utility or its subcontractors or agents to perform the DER Services and for the purpose of delivery and acceptance of equipment, construction or installation and testing of the DER Facilities and all related construction or installation activities, as well as the operation and maintenance of the DER Facilities or the exercise of Utility’s rights under this Agreement, including Utility’s rights under Section 4.4, Company shall provide Utility and its subcontractors and agents with reasonable access to the Premises and the DER Facilities, including unobstructed ready ingress and egress for all personnel, equipment, materials, and vehicles [all in accordance with the [Easement][Lease Agreement] attached hereto as Exhibit C].

3.3 Permits. Customer shall provide reasonable assistance and shall promptly provide all requested information, at no additional cost to Utility, to enable Utility to apply for and obtain all necessary Utility-Acquired

Permits. As between Customer and Utility, Customer shall at all times remain responsible for all of the Permits relating to the ownership and operation of the Customer Facility and the Premises (the “Customer-Acquired Permits”), and shall expeditiously acquire any additional Permits related to the operation of the Customer Facility that are made necessary for Customer to operate the Customer Facility due to the DER Facilities.

- 3.4 Cooperation. Customer shall reasonably cooperate and cause its contractors and agents to cooperate with Utility and its subcontractors and agents while working at or near the Premises in order to assure that Customer does not unreasonably hinder or interfere with the DER Services. Each Party shall use its commercially reasonable efforts to cause its contractors and agents to maintain good working relationships with the other Party’s contractors and agents.
- 3.5 Customer Representative. Within fourteen (14) days after the Effective Date, Customer shall designate by written notice an individual as Customer’s representative for all matters relating to this Agreement (the “Customer Representative”). The Customer Representative or designee shall be reasonably available during all business hours and shall provide or facilitate all access, scheduling and operating and maintenance at the Premises to support Utility’s performance of the DER Services and other rights and obligations under this Agreement. The actions taken by the Customer Representative shall be deemed acts of Customer. Customer may at any time, upon written notice to Utility, change the Customer Representative.

#### **ARTICLE 4 RESPONSIBILITIES OF UTILITY**

- 4.1 Scope of Services. In accordance with and subject to the terms of this Agreement and the Feasibility Analysis, Utility shall, directly or through its subcontractors or agents, perform the DER Services, as set forth in Exhibit E, in the following phases:
- (a) Construction or Installation of the DER Facilities. Upon the date of Utility’s issuance of a notice to Customer of Utility’s intent and authorization to proceed with the supply and construction or installation of the DER Facilities (the “Construction Commencement Date”), which date shall be at Utility’s discretion (but subject to Article 11), Utility or its subcontractors or agents shall initiate the construction or installation of the DER Facilities.
  - (b) Start-up and Testing of the DER Facilities. Before the Services Commencement Date, Utility or its subcontractors or agents shall perform all start-up and testing of the DER Facilities to confirm that it meets or exceeds the Performance Requirements, all as further described in Exhibit E.
  - (c) Commencement of Operation of the DER Facilities. Utility shall provide Customer with thirty (30) days advance written notice of the Services Commencement Date. As of the Services Commencement Date, Utility shall commence operation of the DER Facilities.

Utility shall provide the DER Services on a non-discriminatory basis, dependent only on factors such as safety, system capacity, Utility resource availability, technical feasibility, and acceptability of the commercial terms.

- 4.2 Utility-Acquired Permits. Utility shall be responsible for acquiring all Permits necessary to do business in the jurisdiction where the DER Facilities is located and the DER Services are to be performed, and all other Permits necessary to perform the DER Services (the “Utility-Acquired Permits”); *provided that* Utility is not required to obtain or maintain any Permits for the ownership or operation of the DER Facilities or Customer Facility that are required to be held by Customer.
- 4.3 Performance Requirements. Utility or its subcontractors or agents shall operate the DER Facilities so that, as of the Services Commencement Date, the DER Facilities satisfy the performance requirements set forth in Exhibit E (the “Performance Requirements”).

- 4.4 Decommissioning. Upon expiration or termination of this Agreement, and subject to Article 13 and Applicable Law, Utility or its subcontractors or agents shall be responsible for safely decommissioning or removing the DER Facilities and all of the improvements made thereto pursuant to this Agreement by Utility.
- 4.5 Utility Representative. Within fourteen (14) days after the Effective Date, Utility will designate by written notice an individual as Utility's representative for all matters relating to Utility's performance of the DER Services under this Agreement (the "Utility Representative"). The actions taken by the Utility Representative with respect to such performance shall be deemed acts of Utility. Utility may at any time, upon written notice to Customer, change the Utility Representative.

## **ARTICLE 5 FEE FOR SERVICES**

### 5.1 Services Fee.

- (a) Commencing as of the Services Commencement Date and continuing throughout the term of this Agreement, Customer shall pay Utility the services fee ("Services Fee") in accordance with and as set forth in this Article and Exhibit F.
- (b) The Services Fee shall consist of (i) a capital-related charge ("Capital Charge"), (ii) an operations and maintenance-related charge ("O&M Charge"), and (iii) any other charge or cost mutually agreed to by the Parties, each as further described in Exhibit F. [The O&M Charge is subject to annual adjustment on each yearly anniversary of the Services Commencement Date by the positive percentage change in the Index most recently published as of such anniversary over the Index determined for the prior annual period (or in the case of the first anniversary, the Index most recently published as of the Effective Date).]

*Instructions: Include the bracketed language if the Parties agree to an Index.*

- 5.2 Invoicing. Utility shall provide Customer with an invoice on a monthly basis and Customer shall pay each such invoice within nineteen (19) days after the date of such invoice. If payment is not received by Utility by the due date, late payment charges shall be imposed by Utility. Notwithstanding the foregoing, billing and late payment charges shall be consistent with Utility's applicable tariff schedules as filed from time to time with the CPUC.

## **ARTICLE 6 COVENANTS, WARRANTIES, AND REPRESENTATIONS**

*Instructions: Upon the mutual agreement of the Parties, disclosure schedules may be added to this Agreement with respect to Article 6.*

- 6.1 Utility Covenants, Representations, and Warranties. Utility covenants, represents, and warrants to Customer that:
- (a) Organization, Standing and Qualification. Utility is a corporation, duly organized, validly existing, and in good standing under the laws of California, and has full power and authority to execute, deliver, and perform its obligations under this Agreement and to engage in the business it presently conducts and contemplates conducting.
- (b) Professional Skills. Utility and its subcontractors and agents shall have all the required authority, ability, skills, experience, and capacity necessary to perform and shall diligently perform the DER Services in a timely and professional manner, utilizing sound engineering principles, project management procedures, construction procedures, and supervisory procedures, all in accordance with industry standards.

- (c) Enforceable Agreement. This Agreement has been duly authorized, executed, and delivered by or on behalf of Utility and is, upon execution and delivery, the legal, valid, and binding obligation of Utility, enforceable against Utility in accordance with its terms, except as such enforceability may be limited by the Regulatory Requirements, applicable bankruptcy, insolvency, or similar laws affecting creditors' rights generally and by general equitable principles.
- (d) No Conflict. The execution, delivery, and performance by Utility of this Agreement will not:
  - (i) Conflict with, violate, or cause any default under: (1) its organizational documents; (2) any indenture, mortgage, chattel mortgage, deed of trust, lease, conditional sales agreement, loan or credit arrangement, or any other agreement or instrument to which Utility is a party or by which it or its properties may be bound or affected; or (3) any Applicable Laws; or
  - (ii) Subject the Customer Facility, the DER Facilities, or any component part thereof, or the Premises or any portion thereof to any lien other than as may be contemplated or permitted by this Agreement.

6.2 Customer Covenants, Representations, and Warranties. Customer covenants, represents, and warrants to Utility that:

- (a) Organization, Standing and Qualification. Customer is a [insert business entity type] duly formed, validly existing, and in good standing under the laws of the State of [insert state of registration], and has full power and authority to execute, deliver, and perform its obligations under this Agreement and to engage in the business Customer presently conducts and contemplates conducting.
- (b) Enforceable Agreement. This Agreement has been duly authorized, executed, and delivered by or on behalf of Customer and is, upon execution and delivery, the legal, valid, and binding obligation of Customer, enforceable against Customer in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting creditors' rights generally and by general equitable principles.
- (c) No Conflict. The execution, delivery and performance by Customer of this Agreement will not conflict with, violate, or cause any default under: (i) its organizational documents; (ii) any indenture, mortgage, chattel mortgage, deed of trust, lease, conditional sales agreement, loan or credit arrangement, or any other agreement or instrument to which Customer is a party or by which it or its properties may be bound or affected; or (iii) any Applicable Laws.
- (d) Governmental Approvals. No authorization, approval, exemption, or consent by any Governmental Authority is required in connection with the execution, delivery, and performance of this Agreement by Customer. The Customer-Acquired Permits either have been obtained and are in full force and effect on the date hereof or will be obtained and will be in full force and effect, so as to permit Utility to commence and prosecute the DER Services to completion.
- (e) No Suits, Proceedings. There are no material actions, suits, proceedings, or investigations pending or, to Customer's knowledge, threatened against it at law or in equity before any Governmental Authority (whether or not covered by insurance) that individually or in the aggregate could result in any materially adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Customer or in any impairment of its ability to perform its obligations under this Agreement. Customer has no knowledge of any violation or default with respect to any order, writ, injunction, or any decree of any Governmental Authority that may result in any such materially adverse effect or such impairment.
- (f) No Latent Site Defects. There are no Latent Site Defects at the Premises that will impede Utility from obtaining the Utility-Acquired Permits. "Latent Site Defects" means any conditions or circumstances that were not revealed to or ascertained by Utility during the development of the Feasibility Analysis, and



include the presence of legally significant cultural resources, endangered species, dangerous site conditions, earthquake fault lines, or air, soil, or water contamination.

- (g) Control of Premises. On the Effective Date and continuing throughout the term of this Agreement, Customer (i) shall own and operate the Customer Facility and the Premises, or (ii) shall have the necessary legal rights to the Customer Facility and the Premises, and shall have the full power and authority to perform all of its obligations under this Agreement and with respect to the Customer Facility, the DER Facilities, and the Premises.

## **ARTICLE 7 ENVIRONMENTAL ATTRIBUTES**

- 7.1 Definition. “Environmental Attributes” means any and all current or future credits, benefits, air quality credits, renewable energy credits, emission reductions, offsets and allowances, howsoever entitled or referred to, earned by or in connection with the reduction of air pollutants or the avoidance of the emission of any gas, chemical or other substance, including any Environmental Attributes arising out of laws or regulations involving or administered by the Environmental Protection Agency, the California Air Resources Board, California Energy Commission, South Coast Air Quality Management District, or any state, federal or international entity given jurisdiction over a program involving transferability of Environmental Attributes, and any reporting rights to such Environmental Attributes. Environmental Attributes include (i) voluntary and mandatory international, federal, state or local credits associated with the construction or operation of air quality projects, (ii) any other financial incentives in the form of credits, reductions, or allowances associated with the Customer Facility or the DER Facilities that are applicable to a Tax obligation, and (iii) any corporate citizen or corporate sustainability measurements, ratings or benefits.
- 7.2 Ownership of Environmental Attributes. Customer shall be entitled to all Environmental Attributes that relate to the DER Facilities. Both Parties shall provide reasonable assistance to fulfill any requirements related to the Environmental Attributes but the Party holding legal title to the particular Environmental Attribute shall be responsible for reimbursing any additional costs incurred by the other Party in providing reasonable assistance.

## **ARTICLE 8 REGULATORY MATTERS**

This Agreement shall at all times be (a) subject to changes or modifications by the CPUC, as the CPUC may, from time to time, direct in the exercise of its jurisdiction, (b) subject to and incorporate by reference all of Utility’s applicable tariff schedules (including the Tariff) as filed from time to time with the CPUC (collectively, the “Regulatory Requirements”), and (c) subject to all Permits.

## **ARTICLE 9 CHANGE IN SERVICES**

### 9.1 Change Events.

- (a) Minor Variations in Services. Utility shall have the right, at any time, to make minor variations in the DER Services that do not involve an adjustment in the Services Fee and are compatible with the design concept of the DER Facilities.
- (b) Change in Services. If, during the term of this Agreement, as a result of a change in Applicable Law, a Latent Site Defect (subject to Section 19.1), or Customer’s requirements, there needs to be a change to the cost or time required for the performance of the DER Services or a change in the DER Services or to the DER Facilities (a “Change in Services”), the Parties shall negotiate in good faith to enter into a contract modification providing for an equitable adjustment of Services Fees reflecting any additional

costs incurred by Utility, as well as any other contract modification necessary to implement such Change in Services.

- (c) Customer-Requested Change in Services. Customer may request a Change in Services in writing to Utility. In such event, Utility shall prepare and submit to Customer a written estimate relating to the proposed Change in Services, including: (i) any projected change in the cost of the performance of the DER Services and any projected modification of the Services Fee occasioned by such Change in Services; and (ii) the effect such Change in Services could be expected to have on the performance of the DER Facilities. If Customer elects to proceed with a more detailed examination of such proposed Change in Services, within such period as shall be agreed upon by the Parties, Utility shall submit to Customer a detailed estimate relating to the contemplated change and Customer shall be responsible for the cost of preparing the detailed estimate. If Customer elects to proceed with the proposed Change in Services, Customer and Utility shall agree upon a change order that shall include (x) an adjustment in the Services Fee for the costs expected to be incurred by Utility as a result of such Change in Services less any savings or costs not incurred as a result of such Change in Services, and (y) an adjustment in other terms of this Agreement, including the Performance Requirements, as a result of such Change in Services.

**ARTICLE 10  
NOTICES**

Any notice, request, demand or other communication required or permitted under this Agreement, shall be deemed to be properly given by the sender and received by the addressee if made in writing and (a) personally delivered; or (b) as of the date of signed return receipt after deposit with the U.S. Postal Service by certified or registered mail, postage prepaid, with a return receipt requested; or (c) if sent by email or facsimile with confirmation sent as provided in (b) above. Notices shall be addressed as follows to:

If to Utility: [redacted]  
[redacted]  
[redacted]  
[redacted]  
Fax: [redacted]  
Email: [redacted]

with a copy to: [redacted]  
[redacted]  
[redacted]  
[redacted]  
Fax: [redacted]  
Email: [redacted]

If to Customer: [redacted]  
[redacted]  
[redacted]  
[redacted]  
Fax: [redacted]  
Email: [redacted]

with a copy to: [redacted]  
[redacted]  
[redacted]

[REDACTED]  
Fax: [REDACTED]  
Email: [REDACTED]

or, as to each Party, at such other or additional address as may be designated by such Party in a written notice to the other Party.

## ARTICLE 11 TERMINATION BY EITHER PARTY

If the Construction Commencement Date has not occurred by [insert date], either Party shall have the right to terminate this Agreement upon notice to the other Party, in which case neither Party shall have any further rights or obligations hereunder (other than such rights and obligations that by the express terms of this Agreement survive the expiration or earlier termination of this Agreement).

## ARTICLE 12 INSURANCE, CREDIT AND SECURITY REQUIREMENTS

12.1 Customer Insurance. Customer agrees to obtain and maintain at Customer's sole cost and expense the following types and amounts of insurance coverage consistent with the following requirements for the entire term of this Agreement to insure against any and all claims, losses, damages or expenses resulting from Customer's facilities located at the Premises and Customer's responsibilities under the Tariff or this Agreement:

- (a) Workers' Compensation and Employers' Liability Insurance. In accordance with the laws of California, Customer shall maintain in force workers' compensation insurance for all of its employees. Customer shall also maintain Employers' Liability coverage in an amount of not less than \$[REDACTED] (REDACTED Million Dollars) per accident and per employee for disease. In lieu of such insurance, Customer may maintain a self-insurance program meeting the requirements of California along with the required Employers' Liability insurance. Such insurance shall contain a waiver of subrogation in favor of Utility.
- (b) Commercial or Business Automobile Liability Insurance. Customer shall maintain an automobile liability policy or policies insuring against liability for damages because of bodily injury, death, or damage to property (including loss of use thereof), and occurring in any way related to the use by or on behalf of Customer, including loading or unloading of any of Customer's automobiles (including owned, non-owned, leased, rented or hired vehicles). Such coverage shall be in an amount of not less than \$[REDACTED] (REDACTED Million Dollars) combined single limit.
- (c) Commercial General Liability Insurance. Customer shall carry and maintain on an "occurrence" form commercial general liability policy or policies, insuring against liability arising from bodily injury, death, property damage, personal and advertising injury, products/completed operations liability, contractual liability covering all operations of Customer on the Premises which policy shall contain a waiver of subrogation in favor of Utility. There shall be no explosion, collapse or underground exclusion. Such coverage shall be in an amount of not less than \$[REDACTED] (REDACTED Million Dollars) per occurrence. If the policy maintains a policy aggregate, such aggregate shall not be less than twice the per occurrence limit.
- (d) Pollution Liability Insurance. Customer shall maintain pollution liability insurance or insurance policies in an amount not less than \$[REDACTED] (REDACTED Million Dollars) each claim. If the policy maintains a policy aggregate, such aggregate shall not be less than twice the per occurrence limit.
- (e) Policy Requirements. The required policies and any of Customer's policies providing coverage in excess of the required policies shall provide that the coverage is primary for all purposes and Customer shall not

seek any contribution from any insurance or self-insurance maintained by Utility. All required policies of insurance shall be written by companies having an A.M. Best rating of “A -, VII” or better, or equivalent. Customer shall be solely responsible for any deductible or self-insured retention on insurance required under this Agreement.

- (f) Additional Insureds. Utility, its parent company, and its subsidiaries, affiliates, contractors and their respective officers, directors, employees, successors and assigns shall be named as additional insureds for policies listed above, except for workers’ compensation. Commercial General Liability insurance shall provide a severability of interest or cross-liability clause. Customer shall not violate nor knowingly permit to be violated any condition of the policies required under this Section.

*Instructions: Coverage for (a) workers’ compensation and employers’ liability insurance, and (b) commercial or business automobile liability insurance must each be no less than \$1,000,000. Coverage for (x) commercial general liability insurance and (y) pollution liability insurance must each be no less than \$5,000,000. In all instances, such amounts are subject to approval by Utility.*

12.2 Certificates of Insurance. On or before the Effective Date, and thereafter upon Utility’s request during the term of this Agreement, Customer shall provide Utility with original, current certificates of insurance, and renewal certificates of insurance thereafter, executed by a duly authorized representative of each insurer, or by the insurance agent or broker authorized to do so, as evidence of all insurance policies required under this Section. Utility shall not commence any of the DER Services until Customer has obtained all insurance required by this Article and has provided acceptable certificates of insurance to Utility for review and approval. No insurance policy may be canceled, materially revised, or subject to non-renewal without at least thirty (30) days prior written notice being given to Utility, ten (10) days for non-payment of premium. Customer shall provide Utility with renewal certificates of insurance or binders within seven (7) days before or after such expiration. Insurance shall be maintained without lapse in coverage during the Term.

12.3 Recorded and Secured Interest. At Utility’s election, Utility shall be entitled to record in the public records a [memorandum of lease describing its leasehold interest in the Premises][an easement describing its interest in the Premises]. To the extent that either presently or in the future, there is any individual or entity other than Customer and Utility holding any interests in the Premises, Customer and Utility shall enter into a subordination and non-disturbance agreement that secures Utility’s interest in the Customer Facility and the Premises in a manner satisfactory to Utility. At Utility’s election, Utility may file a Uniform Commercial Code (“UCC”) Financing Statement identifying Utility as the owner of the Customer Facility. Customer shall fully cooperate with the UCC filing if pursued by Utility.

12.4 Creditworthiness Requirements. Customer shall be responsible for meeting all Creditworthiness Requirements.

### **ARTICLE 13 OPTION TO PURCHASE THE DER FACILITIES**

13.1 Option to Purchase. Customer shall have the option to purchase the DER Facilities upon the expiration of term of this Agreement and in accordance with the following terms and conditions (the “Option”):

- (a) Customer may purchase the DER Facilities pursuant to the Option;
- (b) Any conveyance made pursuant to the Option shall be made by bill of sale, in the form set forth in Exhibit G, and which shall be delivered by Utility to Customer at the Closing;
- (c) Customer shall exercise the Option, if at all, by giving written notice to Utility, at any time during the term of this Agreement, but, in any event, no later than ninety (90) days before the expiration of the term of this Agreement;

- (d) The purchase price for the DER Facilities shall be [REDACTED];
- (e) Each Party shall be responsible for its own closing costs, including attorney's fees, at every level. Customer shall pay all transfer taxes, surtax and similar Taxes due in connection with the conveyance of the DER Facilities by Utility to Customer, other than income taxes;
- (f) Unless otherwise agreed to in writing by the Parties, the closing on the Option shall occur immediately following the expiration of the term of this Agreement (the "Closing"); and
- (g) A Customer Event of Default or a default under a related agreement or obligation (as described in Article 17) by Customer shall void the Option, notwithstanding that Customer may have given notice of its intent to exercise the Option before such Customer Event of Default or a default under a related agreement or obligation.
- (h) Ownership of Facilities. The Parties acknowledge and agree that, prior to the Closing, Utility shall be the sole owner of the DER Facilities.

*Instructions: Article 13 is an optional provision and is subject to modification upon mutual agreement of the Parties. If the Parties do not desire to have this Article included in the Agreement, it should be removed in its entirety and replaced with "[Intentionally omitted]."*

## **ARTICLE 14 CONFIDENTIALITY**

### 14.1 Confidentiality.

- (a) A Party may only disclose Confidential Information of the other Party to its directors, officers, employees, agents, subcontractors, or representatives (collectively, "Representatives"), and only to the extent that such Representatives require such Confidential Information in order to carry out such Party's obligations under this Agreement. The Party receiving Confidential Information shall, and shall cause its Representatives to use such Confidential Information solely for the limited purpose of performing its obligations under this Agreement and not for its or their own benefit, and to keep confidential and not disclose the Confidential Information. Each Party agrees to use the same degree of care with the other Party's Confidential Information that such Party uses with respect to its own proprietary or confidential information, which in any event shall result in a reasonable standard of care to prevent unauthorized use or disclosure of the Confidential Information of the other Party. Each Party shall cause each of its Representatives to become familiar with and abide by the terms of this Agreement. Each Party shall be responsible for any breach of this Agreement by its Representatives.
- (b) Notwithstanding Section 14.1, a Party may disclose the Confidential Information of the other Party in the event, but only to the extent, that, based upon the reasonable advice of counsel, such Party is required to do so by the disclosure requirements of any Applicable Laws. Before making or permitting any such disclosure, such Party shall provide the other Party with prompt written notice of any such requirement so that the Party seeking to prevent disclosure (with the other Party's assistance, at the expense of the Party seeking to prevent disclosure) may seek a protective order or other appropriate remedy. Notwithstanding anything to the contrary set forth herein, Utility may, without providing notice thereof to Customer, disclose Confidential Information to regulatory agencies with jurisdiction over Utility, including the CPUC and the Federal Energy Regulatory Commission.
- (c) The confidentiality provisions set forth in this Agreement shall remain in full force and effect with respect to specific Confidential Information until the later of the end of the term of this Agreement or the date that is five (5) years after the date of disclosure of such Confidential Information.

- (d) The Parties acknowledge that the Confidential Information is valuable and unique, and that damages would be an inadequate remedy for breach of this Agreement and the obligations of each Party are specifically enforceable. Accordingly, the Parties agree that in the event of a breach or threatened breach of this Agreement by either Party, the other Party shall be entitled to seek an injunction preventing such breach. Any such relief shall be in addition to, and not in lieu of, monetary damages or any other legal or equitable remedy available to the Parties under any Applicable Law.

## **ARTICLE 15 FORCE MAJEURE**

- 15.1 Force Majeure. A Party shall promptly notify the other Party in writing of any delay or anticipated delay in that Party's ability to perform its obligations under this Agreement due to the occurrence of events of Force Majeure and the reason for and anticipated length of such delay.
- 15.2 Excuse of Performance. If, because of an occurrence of an event of Force Majeure, either Party is unable to perform its obligations under this Agreement (other than a Party's ability to pay debts as they become due), the affected Party shall be excused from whatever performance is affected by the event of Force Majeure to the extent so affected, *provided that* the suspension of performance is of no greater scope and of no longer duration than is required by the event of Force Majeure and the affected Party shall use commercially reasonable efforts to mitigate damages.
- 15.3 Termination Due to Force Majeure. In the event a Party's performance of obligations hereunder (other than a Party's ability to pay debts as they become due) is prevented by an event of Force Majeure for a period of more than one hundred twenty (120) days, the unaffected Party may elect to terminate this Agreement. In such case, if the terminating Party is Utility, following such termination, Customer shall be liable for the Termination by Utility Payment.

## **ARTICLE 16 TAXES**

- 16.1 Utility Tax Obligations. Utility assumes the benefit of any tax credits related to the DER Facilities and exclusive liability for and shall pay before delinquency any and all Taxes imposed on, or with respect to, or measured by, the materials, supplies or labor furnished hereunder, or the wages, salaries or other remunerations paid to individuals employed in connection with the performance of the DER Services. Utility agrees to comply with all applicable laws and regulations setting forth withholding requirements for Taxes and unemployment and disability insurance premiums applicable to its employees and independent contractors (collectively, the "Withholding Requirements"). Utility also agrees to secure the agreement of each of its subcontractors and agents to comply with all Withholding Requirements applicable to such subcontractor's and agent's employees.
- 16.2 Customer Obligations. Customer assumes exclusive liability for and shall pay before delinquency for (i) any and all increased real property or other applicable Taxes it may be subject to as a result of the ownership and operation of the Premises, including the Customer Facility, and (ii) any and all sales Taxes imposed on, or with respect to, the DER Facilities.

## **ARTICLE 17 RELATED AGREEMENT**

Any violation of the terms of the Tariff [or the Easement][or the Lease] shall constitute a default under this Agreement. Any notice of default given under [the Easement][the Lease,] this Agreement, or the Tariff shall be deemed to have also been given under the other agreements. Any cure periods under such agreements for any act or omission that constitutes a default shall run concurrently. [This Agreement and [the Easement][the Lease] are

indivisible for purposes of section 365 of the Bankruptcy Code. In the event that any part of this Agreement [or the Easement] [or the Lease] is assumed or assigned pursuant to section 365, the other parts of this Agreement [and the Easement][and the Lease] shall similarly be assumed or assigned.]

## **ARTICLE 18 DEFAULT**

- 18.1 Customer Default. At any time during the term of this Agreement, if Customer (a) abandons the Premises, (b) tampers with or otherwise affects the operations of the DER Facilities, (c) creates a condition at the Premises that poses a risk to health or safety, (d) fails to pay the Services Fee, (e) files a petition or otherwise commences a proceeding or case under bankruptcy, or becomes bankrupt or insolvent, (f) is unable to pay its debts as they fall due, or has a receiver, custodian, trustee, or similar official appointed with respect to it or substantially all of its assets, or (g) violates or fails to perform any material provision of this Agreement, including if any representation or warranty made by Customer herein was materially false or misleading when made, and, in each case, Customer fails to cure such event of default within sixty (60) days (or, with respect to Section 18.1(d), within seven (7) days) after written notice from Utility (each, a “Customer Event of Default”), Utility may notify Customer and exercise its rights under Section 19.1.
- 18.2 Utility Event of Default. At any time during the term of this Agreement, if Utility violates or fails to perform any material provision of this Agreement, including if any representation or warranty made by Utility herein was materially false or misleading when made (“Utility Event of Default”), and Utility fails to cure such event of default within sixty (60) days after written notice from Customer, Customer may notify Utility and exercise its rights under Section 19.2.

## **ARTICLE 19 REMEDIES**

- 19.1 Utility Remedies. In the event of a Customer Event of Default, or in the event of a Latent Site Defect that cannot reasonably be remedied by a Change in Services and subject to Section 19.3, Utility shall have the following non-exclusive rights and remedies, which Utility may exercise in its sole discretion:
- (a) To suspend performance of the DER Services until Customer cures such Customer Event of Default or removes the Latent Site Defect, in which event Customer shall be liable for all additional costs and expenses incurred by Utility arising out of such suspension;
  - (b) To terminate this Agreement, in which event Customer shall be liable for all of Utility’s unrecovered Capital Charge and other ownership costs and including any costs resulting from early termination provisions in Utility’s subcontracts (“Termination by Utility Payment”); or
  - (c) To avail itself of any equitable remedy to enforce the obligations of Customer under this Agreement.
- 19.2 Customer Remedies. In the event of a Utility Event of Default that is uncured by Utility following notice from Customer as required by Section 18.2, Customer shall have the right to terminate this Agreement, in which case Utility, as its sole liability and Customer’s sole remedy, shall be responsible for the removal of the DER Facilities and restoration of the Customer Facility and the Premises to a condition similar to that which existed before the construction or installation of the DER Facilities.
- 19.3 Limitation of Remedies. Except as set forth as a specific remedy hereunder, each Party waives any and all Consequential Damages from the other Party that may result from a breach of this Agreement by such other Party. Except as expressly limited by the terms of this Agreement, the Parties shall have all remedies, at law or equity, for any cause of action based on or arising out of this Agreement.



**ARTICLE 20  
INDEMNIFICATION**

20.1 Indemnification.

- (a) Utility Indemnification. Utility shall indemnify, defend, and hold Customer and its affiliates, and their respective shareholders, officers, directors, employees, agents, contractors and subcontractors harmless from any and all liabilities, damages, fines, penalties, costs, claims, interest and expenses (including costs of defense, settlement, and reasonable attorney fees) that arise from third party claims, allegations, suits and causes of action for losses, penalties, judgments, awards, or damages of any kind to the extent such claims, allegations, suits and causes of action arise out of (i) the negligence or willful misconduct of Utility or its employees, agents, contractors and subcontractors, or intentional act of Utility or its employees, agents, contractors and subcontractors, or (ii) violations of any Applicable Law by Utility or its agents or subcontractors; except to the extent any such claim, allegation, suit, cause of action, loss, penalty, judgment, or award for damages arises from the breach of this Agreement by, or the negligence, intentional misconduct or other fault of, Customer.
- (b) Customer Indemnification. Customer shall indemnify, defend, and hold Utility and its shareholders, officers, directors, employees, agents, contractors and subcontractors harmless from and against any and all liabilities, damages, fines, penalties, costs, claims, interest and expenses (including costs of defense, settlement, and reasonable attorney fees) that arise from third party claims, allegations, suits and causes of action for losses, penalties, judgments, awards, or damages of any kind to the extent such claims, allegations, suits and causes of action arise out of (i) Customer's breach of this Agreement or any representation or warranty made in this Agreement, (ii) entries upon, occupancy, use, operation, alteration, maintenance, repair or other activities on or about the DER Facilities by Customer or its employees, agents, contractors, or subcontractors, (iii) the negligence or willful misconduct of Customer or its employees, agents, contractors and subcontractors, or the intentional acts of Customer or its employees, agents, contractors and subcontractors, or (iv) violations of any Applicable Law by Customer or its agents or contractors; except to the extent any such claim, allegation, suit, cause of action, loss, penalty, judgment, or award for damages arises from the breach of this Agreement by, or the negligence, intentional misconduct or other fault of, Utility. Notwithstanding any other provision in this Agreement, Utility shall not be liable to Customer for any loss or damage to individuals or property arising from Customer's entries upon, occupancy, use, operation, alteration, maintenance, repair or other activities on or about the Customer Facility or from any damage caused by fire or other casualty or by any individual or entity not employed or controlled by Utility, or as the result of any existing or future condition of the Customer Facility.
- (c) Survival. The provisions of Article 20 shall survive the expiration or earlier termination of this Agreement.

**ARTICLE 21  
HAZARDOUS SUBSTANCES**

- 21.1 Definition of Hazardous Substances. "Hazardous Substances" for purposes of this Agreement shall be interpreted broadly to include any material or substance that is defined, regulated, or classified under any Environmental Law or other Applicable Law and the regulations promulgated thereunder as (a) a "hazardous substance" pursuant to section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601(14), the Federal Water Pollution Control Act, 33 U.S.C. §1321(a)(14), as now or hereafter amended; (b) a "hazardous waste" pursuant to section 1004 or section 3001 of the Resource Conservation and Recovery Act, 42 U.S.C. §§6903(5), 6921; (c) toxic pollutant under section 307(a)(1) of the Federal Water Pollution Control Act, 33 U.S.C. §1317(a)(1); (d) a "hazardous air pollutant" under section 112 of the Clean Air Act, 42 U.S.C. §7412(a)(6), as now or hereafter amended; (e) a "hazardous material" under the Hazardous Materials Transportation Uniform Safety Act of 1990, 49 U.S.C. §5102(2), as now or hereafter amended; (e) toxic or hazardous pursuant to regulations promulgated now or hereafter under the



aforementioned laws or any state or local counterpart to any of the aforementioned laws; or (f) presenting a risk to human health or the environment. “Hazardous Substances” shall also mean any substance that after release into the environment or upon exposure, ingestion, inhalation or assimilation, either directly from the environment or directly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer, or genetic abnormalities and specifically includes asbestos, polychlorinated biphenyls, radioactive materials (including radon and naturally occurring radio nuclides) natural gas, natural gas liquids, liquefied natural gas, synthetic gas, oil, petroleum and petroleum-based derivatives and urea formaldehyde.

21.2 Customer’s Representation and Warranty. Customer warrants and represents to Utility that the Customer Facility and the Premises do not contain any Hazardous Substances and that, to the best of Customer’s knowledge, Customer and its predecessors and their respective agents or employees have not caused or permitted any such Hazardous Substances to be released, discharged or deposited onto or in the vicinity of the Premises. Customer warrants and represents further that (a) to the best of Customer’s knowledge Customer or the Customer Facility and Premises are not subject to any existing, pending or threatened investigation by any Governmental Authority under any applicable federal, state or local law, regulation or ordinance pertaining to soil, groundwater, air and water quality, the handling, transportation, storage, treatment, usage or disposal of Hazardous Substances, air emissions and other environmental matters (collectively, “Environmental Laws”), (b) to the best of Customer’s knowledge any handling, transportation, storage, treatment or use of Hazardous Substances that has occurred on the Customer Facility and Premises has been in compliance with all Environmental Laws, and (c) to the best of Customer’s knowledge, the Customer Facility and Premises, the soil, groundwater, air and water are free of the deposit of Hazardous Substances during the time Customer has owned the Facility and Premises. “Best of Customer’s knowledge” is actual knowledge of Customer’s managerial level employees and information acquired through any source including environmental reports and analyses, all as it relates to environmental matters.

21.3 Customer’s Covenant. Customer shall be responsible at its expense for conducting any clean-up, repair or other work in response to any Hazardous Substances to the extent the Hazardous Substances were accepted by or introduced by Customer or parties claiming under Customer, its agents or contractors on the Premises, the Customer Facility, the DER Facilities, and any surrounding areas (“Remedial Work”). Customer shall perform all Remedial Work in accordance with all Applicable Laws in order to obtain a “No Further Action” determination from the applicable Governmental Authority, to the extent such determination is necessary. Customer shall provide fifteen (15) days’ advance written notice to the Utility Representative of any Remedial Work to be performed on the DER Facilities, the Premises, or the Customer Facility (“Work Notice”), except in the event of an emergency in which case Customer shall proceed without a Work Notice to abate the release and shall provide the Utility Representative with a Work Notice as soon thereafter as practicable. Said Work Notice shall describe the anticipated start and completion dates of Remedial Work, the work to be performed including the cleanup action plan, and the identity of the proposed contractor. The Utility Representative shall respond in writing to the Work Notice within fifteen (15) days of receipt. Utility’s failure to respond within such fifteen (15) day period shall be deemed approval of the Work Notice but only in the event that Customer has obtained written proof that the Work Notice was actually received by the Utility Representative. Unless otherwise agreed to by the Utility Representative, Customer shall be responsible for restoring the DER Facilities to substantially the condition it was in before the commencement of the Remedial Work. Customer shall timely provide the Utility Representative with all monitoring, status, or other reports submitted in furtherance of obtaining a “No Further Action” determination. Customer shall conduct any such Remedial Work not located at the Premises pursuant to a commercially reasonable license agreement.

21.4 Survival. The provisions of Article 21 shall survive the expiration or earlier termination of this Agreement.

**ARTICLE 22**  
**DISPUTE RESOLUTION**

22.1 Dispute Resolution. All claims, disputes and other matters in question between the Parties arising out of or relating to this Agreement or the breach thereof, including contract, tort, property, statutory, or common law claims (“Disputes”) shall be addressed and resolved as follows:

- (a) Negotiation. The resolution of the Dispute shall first be negotiated in good faith by the Parties.
- (b) Mediation. If the Parties are unable to resolve a Dispute through negotiation, the Parties shall first try in good faith to settle the Dispute by mediation administered by the American Arbitration Association under its Commercial Arbitration Rules and Mediation Procedures, or through private mediation upon agreement of the Parties. The mediator’s fees and costs shall be paid equally by the Parties. Any and all mediations arising out of or relating to this Agreement shall include, by consolidation or joinder, any other individual or entity not a party to this Agreement that is substantially involved in a common issue of law or fact and whose involvement in the consolidated mediation is necessary to achieve a final resolution of a matter in controversy therein. The Parties’ obligation to mediate shall be specifically enforceable by any court with jurisdiction thereof.
- (c) Litigation. If the Parties do not settle the Dispute through mediation within forty-five (45) days of the written notice to the other Party requesting mediation, then either Party shall have the right to pursue litigation as provided for herein. In the event of any litigation to enforce or interpret any terms of this Agreement, unless the Parties agree in writing otherwise, such action shall be brought in a Superior Court of the State of California located in the County of \_\_\_\_\_ (or, if the federal courts have exclusive jurisdiction over the subject matter of the dispute, in the U.S. District Court for the \_\_\_\_\_ District of California), and the Parties hereby submit to the exclusive jurisdiction of said courts. In any action in litigation to enforce or interpret any of the terms of this Agreement, the prevailing Party shall be entitled to recover from the unsuccessful Party all costs, expenses (including expert testimony), and reasonable attorneys fees (including fees and disbursements of in-house and outside counsel) incurred therein by the prevailing Party.

**ARTICLE 23**  
**MISCELLANEOUS**

23.1 Integration. This Agreement shall completely and fully supersede all prior undertakings or agreements, both oral and written, between Customer and Utility relating to the subject matter of this Agreement. This Agreement (including the Tariff and the Exhibits) are intended to be read together, and shall be given full force to the maximum extent practicable. In the event of any conflict between this Distributed Energy Resources Services Agreement (including its Exhibits) and the Tariff, the Tariff at the time of interpretation shall control, regardless of whether there is a similar provision herein.

23.2 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California.

23.3 Waiver. No provisions of this Agreement may be waived except in writing by the waiving Party. The waiver of any breach of any term or condition hereof shall not be deemed a waiver of any other or subsequent breach, whether of like or different nature.

23.4 No Benefits to Outside Parties. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon or give to any party other than Customer and Utility any right, remedy, or claim under or by reason of this Agreement; and the covenants and agreements contained herein are and shall be for the sole and exclusive benefit of the Parties and their successors and assigns.

- 23.5 **Binding on Successors.** Subject to any restrictions upon assignments, this Agreement shall inure to the benefit of, and shall be binding upon, Customer, Utility, and their respective successors and assigns.
- 23.6 **Construction.** All references herein to any (i) agreement, law, or tariff shall be to such agreement, law, or tariff as amended, supplemented or modified from time to time, and (ii) Governmental Authority or other organization, shall be to any successor of such Governmental Authority or other organization. The words “herein,” “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular section or subsection of this Agreement. The singular shall include the plural and the masculine shall include the feminine and neuter and vice versa. “Includes” or “including” shall mean “including, without limitation.” The word “or” when used in this Agreement includes the meaning “and” unless the context unambiguously dictates otherwise. **THE PARTIES HEREBY AGREE THAT NO TRADE USAGE, PRIOR COURSE OF DEALING OR COURSE OF PERFORMANCE UNDER THIS AGREEMENT SHALL BE A PART OF THIS AGREEMENT OR SHALL BE USED IN THE INTERPRETATION OR CONSTRUCTION OF THIS AGREEMENT.**
- 23.7 **Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
- 23.8 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission, an Adobe Acrobat file or by other electronic means constitutes effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or by other electronic means will be deemed to be their original signatures for all purposes.
- 23.9 **Subcontracting.** Utility shall be authorized to subcontract its duties and obligations established by this Agreement. Notwithstanding any subcontract, Utility shall not be relieved from fulfilling any provisions of this Agreement, and Utility will be fully responsible for the acts and omissions of its respective subcontractors and of individuals and entities either directly or indirectly employed by such subcontractors.
- 23.10 **Assignment.** This Agreement is personal to the Parties and shall not be transferable or assignable without the written consent of both Parties. Any direct or indirect change of control of a Party (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party, which consent shall not be unreasonably withheld.
- 23.11 **Survival.** The rights and obligations that are intended to survive a termination of this Agreement are all of those rights and obligations that this Agreement expressly provides survive any such termination and those that arise from each 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 of this Agreement.

[Signature Page to Follow]

IN WITNESS WHEREOF, each Party has caused this Agreement to be executed by its authorized representative as of the Effective Date.

**SOUTHERN CALIFORNIA GAS COMPANY**

**[INSERT CUSTOMER'S LEGAL NAME]**

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

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

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

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

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

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

**Exhibit A**  
**Description and Location of the Premises  
and the DER Facilities**

1. DER Facilities Description. *[Provide a detailed description of the DER Facilities, including a description of the type of facility, any equipment, metering, systems, control systems and features, nameplate, related pipelines and other appurtenances. Refer to Feasibility Analysis as necessary. Identify the DER Receipt Point and DER Point of Service Delivery (each as defined in the Tariff).]*
  
2. Location of the Premises and the DER Facilities. *[Provide a legal description of the Premises, including a map of the Premises showing where the DER Facilities will be located, as well as areas for deliveries, lay down and storage.]*

**Exhibit B**  
**Safety and Security Requirements**

*Instructions: Customer will be required to comply with Utility's standard safety and security requirements and policies, which may be included in this Exhibit B, as well as any other safety and security requirements to be included in this Exhibit B that are reasonable or necessary given, among other things, the type of DER Facilities, location of the Premises and the Customer Facility, the scope of services.*

**Exhibit C**  
**[Easement][Lease Agreement]**

*Instructions: As applicable, the Easement or Lease Agreement shall be mutually agreed to by the Parties at the time of execution of this Agreement.*

**Exhibit D**  
**Feasibility Analysis**

[See attached.]



**Exhibit E**  
**Statement of Services and Performance Requirements**

1. Utility shall plan, design, procure, install, construct, engineer, own, operate, and maintain the DER Facilities. Utility shall be responsible for:
  - a. The operation of the DER Facilities and performance of all maintenance for the DER Facilities consistent with the manufacturer's recommendations and the Regulatory Requirements. The DER Facilities' operation and maintenance activities include, but are not limited to, the following: preventative maintenance, corrective maintenance, spare parts and consumables inventory tracking, on-call support, media change-out and disposal, process control and data monitoring, collection, storage and reporting.
  - b. Meeting the following Performance Requirements: **[TBD]**

*Instructions: This Exhibit may be revised to include any additional or more detailed statement of DER Services and Performance Requirements mutually agreed upon by the Parties.*

**Exhibit F**  
**Services Fee**

The Services Fee shall consist of the components as specified below.

	Annual			Services Fee	Monthly Services Fee
	Capital Charge	O&M Charge	[Insert additional charges or costs, if any]		
Year 1					
Year 2					
Year 3					
Year 4					
Year 5					
Year 6					
Year 7					
Year 8					
Year 9					
Year 10					
Year xx**					

*Instructions: The table above is for illustrative purposes only. Upon the mutual agreement of the Parties, the Services Fee, including its components as described in the table above, may be restructured or revised as necessary or appropriate based on the requirements of contemplated transaction, the unique circumstances of the Customer, or in order to maximize the value of the transaction, subject to Regulatory Requirements.*

**Exhibit G**  
**Bill of Sale**

*Instructions: If applicable, the form of the Bill of Sale shall be mutually agreed to by the Parties at the time of execution of this Agreement.*