

INSTRUCTIONS

Security Posting – Escrow Account

The financial security (“Security”) required of an interconnection customer pursuant to the CAISO’s and/or SDG&E’s grid interconnection tariffs or the terms of the Generator Interconnection Agreement (GIA), may be met through, among other forms, a cash deposit. This cash deposit must be made in an interest-bearing escrow account (“Escrow Account”) that is maintained at a bank or financial institution with a credit rating of A or better by Standard & Poor’s and A2 or better by Moody’s, which bank or financial institution is reasonably acceptable to the transmission/distribution provider (here, SDG&E). Control over the Escrow Account is governed by an Escrow and Deposit Account Control Agreement (“Escrow Agreement”) by and among the Interconnection Customer, San Diego Gas & Electric Company and the bank or financial institution. SDG&E’s standard form of Escrow Agreement is provided starting on page 2 of this document. All fields shown in yellow highlighting must be completed.

Using the standard form of the escrow agreement, without modification, will ensure that the terms and conditions of these agreements are acceptable to SDG&E. If the Interconnection Customer or the bank or financial institution seeks modification to any of the conditions, a draft of the Escrow Agreement must be emailed to the Interconnection Customer’s SDG&E Project Manager and to the following email address: sdge_mmcredit@sdge.com. Please allow at least two (2) Business Days (as such term is defined in the Escrow Agreement) for review of the drafts.

The bank or financial institution may be required to obtain certain information directly from the Interconnection Customer, as a condition of creating an Escrow Account. Interconnection customer should contact the bank or financial institution directly to obtain any required forms for other documentation to be completed.

ESCROW AND DEPOSIT ACCOUNT CONTROL AGREEMENT
(Investment in Cash Products – Article 9 of UCC)

SDG&E Contract No.: [Obtain from SDG&E Project Manager]
Project Name: _____
For The Purpose Of: (Phase I IF, Phase I NU, Construction, ITCC, etc.)

THIS ESCROW AND DEPOSIT ACCOUNT CONTROL AGREEMENT (as the same may be amended or modified from time to time pursuant hereto, this “Agreement”) is entered into and effective as of date of last execution (“Effective Date”), by and among [Interconnection Customer’s name], a [organizational structure] (“Interconnection Customer”), San Diego Gas & Electric Company, a California corporation (“SDG&E”, and together with Interconnection Customer, sometimes referred to individually as “Party” or collectively as the “Parties”), and _____, in its capacities as escrow agent and, as applicable, bank (the “Escrow Agent”).

Recitals

- A. Interconnection Customer intends to own, lease and/or control and operate an electric energy generating facility,¹ and to interconnect such generating facility either to SDG&E’s electric system or in such a way that SDG&E’s electric system is affected.
- B. Interconnection Customer is required to post financial security as part of the interconnection process and in accordance with [Obtain from SDG&E Project Manager and state either: the exact name of the tariff, plus the following “as may be amended (“the Tariff”)”; or, the exact title of the generator interconnection agreement, the date the agreement was entered into, plus the following phrase, “as may be amended (“the GIA”)”].
- C. Interconnection Customer has elected to post, and SDG&E has agreed to accept such financial security in the form of a cash deposit in an interest-bearing escrow account, all in accordance with the terms and conditions of this Agreement and [insert either: “the Tariff” or “the GIA”].
- D. At the request of Interconnection Customer, Escrow Agent has established an escrow deposit account, number [provided by the Bank], in the name of Interconnection Customer (the “Escrow Account”).
- E. This Agreement is being entered into to provide for the control of the Escrow Account and SDG&E’s security interest in the funds deposited therein under the requirements of Article 9 of the Uniform Commercial Code and 9301 et seq of the California Uniform Commercial Code.

The Parties and Escrow Agent, intending to be legally bound, agree as follows:

Agreement

- 1. **Appointment.** The Parties hereby appoint Escrow Agent as their escrow agent for the purposes set forth herein, and Escrow Agent hereby accepts such appointment under the terms and conditions set forth herein. It is understood that Escrow Agent has no responsibility with respect to the validity or perfection of the security interest other than to act in accordance with the terms of this Agreement.
- 2. **Fund.**
 - (a) Interconnection Customer agrees to deposit with Escrow Agent the sum of [\$[dollar amount] ([dollar amount] Dollars) on the Effective Date. From time to time, Escrow Agent may receive additional deposits from Interconnection Customer in connection with the required balances needed pursuant to [insert either: “the Tariff” or “the GIA”]. The initial deposit and any additional deposits shall collectively be referred to as the “Escrow Deposit”. Escrow Agent shall hold the Escrow Deposit in one or more demand deposit accounts and, subject to the terms and conditions hereof, shall invest and reinvest the Escrow Deposit and the proceeds thereof and any and all proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of SDG&E (such proceeds, together with the Escrow Deposit, the “Fund”) in the Escrow Account as directed in Section 2(d) below. If there is an investment loss or other

¹ For purposes of this Agreement, SDG&E uses the term electric energy generating facility to encompass energy storage resources.

decrease in the Fund below the amount of the Escrow Deposit, Interconnection Customer must, within two business days of receiving notice from SDG&E, replenish the Fund in an amount required to return the Fund to the amount of the Escrow Deposit.

- (b) Interconnection Customer hereby grants to SDG&E a present and continuing first-priority security interest in, and, lien on (and right to net against) the Escrow Account and the Fund subject to Section 9(c) below (“Security Interest”). Interconnection Customer acknowledges and agrees that it will not have any access to the Escrow Account or the Fund. Additionally, except for the claims and interest of SDG&E under this Agreement (subject to any claim in favor of Escrow Agent permitted under Section 9(c) below), Escrow Agent has no notice of any adverse claim to or interest in the Escrow Account or the Fund, and Escrow Agent will not accept assets as to which it has notice of an adverse claim to or interest.
- (c) Escrow Agent hereby acknowledges the Security Interest granted to SDG&E by Interconnection Customer. Escrow Agent hereby waives and releases all liens, encumbrances, claims and rights of setoff it may have against the Escrow Account or the Fund, except that Escrow Agent shall retain a lien on the Fund for the payment of its Annual Administrative Fees (as set forth in Section 6 below) and for the payment of any amounts credited to the Escrow Account for which payment or reimbursement to Escrow Agent has not been made or received. Escrow Agent will not agree with the Interconnection Customer and/or any third party to comply with such Interconnection Customer’s and/or third party’s direction or order concerning the Escrow Account or the Fund without the prior written consent of SDG&E pursuant to Section 10.
- (d) Escrow Agent shall invest and reinvest the Fund in a [Bank Name] Money Market Deposit Account offered by Escrow Agent. Escrow Agent shall have the right to liquidate any investments held in order to provide funds necessary to make required payments under this Agreement.
- (e) All interest earned under this Agreement shall, during the calendar year that such interest was earned, be allocated to Interconnection Customer and reported, by Escrow Agent to the IRS and/or any other taxing authority, on IRS Form 1099 or 1042S (or other appropriate form) as income earned from the Fund by Interconnection Customer, whether or not said income has been distributed during such year. Escrow Agent shall withhold any taxes it deems appropriate in the absence of proper tax documentation or as required by law, and shall remit such taxes to the appropriate authorities. The Parties hereby represent to Escrow Agent that no other tax reporting of any kind is required given the underlying transaction giving rise to this Agreement.
- (f) Section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (“USA PATRIOT Act”) requires the Escrow Agent to implement reasonable procedures to verify the identity of any person that opens a new account with it. Accordingly, the Parties acknowledge that Section 326 of the USA PATRIOT Act and the Escrow Agent’s identity verification procedures require the Escrow Agent to obtain information which may be used to confirm the Parties identity including without limitation name, address and organizational documents (“identifying information”). The Parties agree to provide the Escrow Agent with and consent to the Escrow Agent obtaining from third parties any such identifying information required as a condition of opening an account with or using any service provided by the Escrow Agent.

3. **Disposition and Termination.**

- (a) Release of the Fund, or a portion thereof, as applicable, shall occur only under the following circumstance: if at any time Escrow Agent receives a written instruction executed by an Authorized Representative (as defined in Section 10 below) from SDG&E requesting a release of the Fund, or a portion thereof, substantially in the form of Schedule 3 attached hereto (“Draw Notice”), Escrow Agent shall comply with such Draw Notice without consent from Interconnection Customer or any other person, and shall pay the Fund or such specified amount(s) to such specified person as directed in such Draw Notice within three (3) Business Days (as defined in Section 3(e) below) after Escrow Agent’s receipt of such Draw Notice.
- (b) In no event shall Escrow Agent accept any instruction from Interconnection Customer nor shall Escrow Agent permit any distribution or release of any part of the Escrow Account or Fund without the prior instruction executed by an Authorized Representative (as defined in Section 10 below) from SDG&E. The Parties agree that Escrow Agent shall act upon and according to the direction of SDG&E and that Interconnection Customer shall have no claim for any inappropriate instructions, orders or notice other than against SDG&E pursuant to the terms of [insert either: “the Tariff” or “the GIA”].

reinvest the same) and to deliver the same to a designated substitute escrow agent, if any, appointed by SDG&E, or in accordance with the directions of a final court order, at which time of delivery, Escrow Agent's obligations hereunder shall cease and terminate. If prior to the effective resignation date, SDG&E has failed to appoint a successor escrow agent, or to instruct Escrow Agent to deliver the Fund to another person as provided above, at any time on or after the effective resignation date, Escrow Agent either (a) may interplead the Fund with a court located in the State of California and the costs, expenses and reasonable attorney's fees which are incurred in connection with such proceeding may be charged against and withdrawn from the Fund; or (b) appoint a successor escrow agent of its own choice. Any appointment of a successor escrow agent shall be binding upon the Parties and no appointed successor escrow agent shall be deemed to be an agent of Escrow Agent. Escrow Agent shall deliver the Fund to any appointed successor escrow agent, at which time Escrow Agent's obligations under this Agreement shall cease and terminate. Any entity into which Escrow Agent may be merged or converted or with which it may be consolidated, or any entity to which all or substantially all the escrow business may be transferred, shall be Escrow Agent under this Agreement without further act.

6. **Compensation and Payment of Costs.** Interconnection Customer shall be solely responsible to pay Escrow Agent any and all fees charged by the Escrow Agent ("Annual Administration Fees"). ***[BANK CAN INCLUDE A SCHEDULE 4 IF NEEDED]*** Other than with respect to the initial Annual Administration Fee, which the Interconnection Customer shall pay on the Effective Date, Escrow Agent shall invoice Interconnection Customer for each Annual Administration Fee at least forty-five (45) days prior to each anniversary of the Effective Date, and Interconnection Customer shall pay such invoice within thirty (30) days of its receipt thereof. Failure by Interconnection Customer to make payment of any invoice by the invoice due date shall constitute a breach of this Agreement.
7. **Breach of this Agreement by Interconnection Customer.** In the event of any breach of this Agreement by Interconnection Customer of Section 6 only: (a) to the extent it has notice, thereof, Escrow Agent shall notify SDG&E within two (2) Business Days after such breach; and (b) Escrow Agent shall hold the Fund for the exclusive benefit of SDG&E, and SDG&E may issue a Draw Notice to Escrow Agent pursuant to Section 3(a) above.
8. **Limitation on Liability.** Escrow Agent shall not be liable for any action taken, suffered or omitted to be taken by it in good faith except to the extent that Escrow Agent's gross negligence or willful misconduct was the cause of any direct loss to either Party. Anything in this Agreement to the contrary notwithstanding, in no event shall Escrow Agent be liable for special, incidental, punitive, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if Escrow Agent has been advised of the likelihood of such loss or damage and regardless of the form of action. Escrow Agent shall have no responsibility or liability to Interconnection Customer for complying with written instructions or other written directives concerning the Escrow Account originated by SDG&E and delivered to Escrow Agent in accordance with this Agreement.
9. **Indemnification and Reimbursement.**
 - (a) The Parties agree jointly and severally to indemnify, defend, hold harmless, pay or reimburse Escrow Agent and its affiliates and their respective successors, assigns, directors, agents and employees (the "Indemnitees") from and against any and all losses, damages, claims, liabilities, penalties, judgments, settlements, litigation, investigations, costs or expenses (including, without limitation, the fees and expenses of outside counsel and experts and their staffs and all expense of document location, duplication and shipment) (collectively "Losses"), arising out of or in connection with (i) Escrow Agent's performance of this Agreement, except to the extent that such Losses are determined by a court of competent jurisdiction through a final order to have been caused by the gross negligence, willful misconduct, or bad faith of such Indemnitee; and (ii) Escrow Agent's following any instructions or directions, whether joint or singular, from the Parties received in accordance with this Agreement.
 - (b) Interconnection Customer agrees to indemnify, defend, hold harmless, pay and/or reimburse SDG&E and its affiliates and their respective successors, assigns, directors, agents and/or employees (collectively, the "SDG&E Indemnitees") from and against any and Losses arising out of or in connection with (i) SDG&E's satisfaction of its obligation to any Indemnitee under Section 9(a) of this Agreement, except to the extent that such Losses are determined by a court of competent jurisdiction through a final order to have been caused by the gross negligence, willful misconduct, or bad faith of such SDG&E Indemnitee, and/or (ii) Escrow Agent validly exercising its rights under Section 9(c) of this Agreement.

(c) The Parties hereby grant Escrow Agent a lien on, right of set-off against and security interest in the Fund for the payment of any claim for indemnification, fees, expenses and amounts due to Escrow Agent or an Indemnatee. In furtherance of the foregoing, Escrow Agent is expressly authorized and directed, but shall not be obligated, to charge against and withdraw from the Fund for its own account or for the account of an Indemnatee any amounts due to Escrow Agent or to an Indemnatee under Section 6 or this Section 9.

(d) The obligations set forth in this Section 9 shall terminate in accordance with or as determined by the State of California Statute of Limitations.

10. **Notices.** All communications (including, without limitation, all Draw Notices or changes to the wire transfer instructions set forth in Section 3(c) above) under this Agreement shall be (a) in writing executed by the appropriate Party(ies), or Escrow Agent as applicable, (b) delivered on a Business Day by confirmed facsimile or as a Portable Document Format (“PDF”) attached to an email, and (c) delivered only at the fax number or email address of the intended recipient of such communication, as set forth in this Section 10. With respect to any communication (including, without limitation, any Draw Notice) permitted under this Agreement delivered by a Party or the Parties to Escrow Agent, such communication shall be evidenced by the signatures of the person(s) signing this Agreement or one of their designated persons as set forth in Schedule 1 for the Interconnection Customer and Schedule 2 for SDG&E (each an “Authorized Representative”). No Draw Notice or other written notice to the Escrow Agent shall be deemed delivered and effective unless the Escrow Agent actually shall have received such Draw Notice or other notice on a Business Day by facsimile or as a PDF attached to an email only at the fax number or email address set forth in this Section 10 and as evidenced by a confirmed transmittal to the sending Party’s transmitting fax number or email address and, in the case of a notice to Escrow Agent, Escrow Agent has been able to satisfy any applicable security procedures as may be required hereunder. Escrow Agent shall not be liable to any Party or other person for refraining from acting upon a Draw Notice or any other written notice if such Draw Notice or any other written notice was delivered to any other fax number or email address, including but not limited to a valid email address of any employee of Escrow Agent. All written communications between the Parties or from the Escrow Agent to a Party shall be deemed delivered and effective on the date evidenced by the sending party’s confirmed fax or email transmittal. The notice information for each party is as follows:

If to Interconnection
Customer:

[Interconnection Customer’s name]
Attention: [title or person’s name]
[Interconnection Customer’s address,
City, state [country], zip [postal code]]
Tel No.: [redacted]
Fax No.: [redacted]
Email Address: [redacted]

If to SDG&E:

San Diego Gas & Electric Company
Att: Major Markets Credit, Mail :CP21D
8326 Century Park Ct
San Diego, CA 92123
Email Address: sdge_mmcredit@sdge.com
Tel No: (619) 676-5330

If to Escrow Agent:

[Escrow Agent’s name]
[Escrow Agent’s address,
City, state , zip [postal code]]
Attention: [title or person’s name]
Tel No.: [redacted]
Fax No.: [redacted]
Email Address: [redacted]

11. **Compliance with Court Orders.** In the event that any of the Fund shall be attached, garnished, levied upon, or otherwise be subject to any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, Escrow Agent shall provide immediate notice thereof to the Parties and an opportunity for the Parties to intervene

or defend against the order or decree, and is hereby expressly authorized, in its sole discretion, to obey and comply with all such orders so entered or issued, which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction, and in the event that Escrow Agent obeys or complies with any such order it shall not be liable to any of the Parties hereto or to any other person by reason of such compliance notwithstanding such order be subsequently reversed, modified, annulled, set aside or vacated.

12. Miscellaneous.

- (a) The provisions of this Agreement may be waived, altered, amended or supplemented only by a writing signed by Escrow Agent and the Parties.
- (b) Neither this Agreement nor any right or interest under this Agreement may be assigned by any party to this Agreement, except as provided in Section 5, without the prior written consent of the Escrow Agent and the other Parties, which consent shall not be unreasonably withheld.
- (c) This Agreement shall be governed by and construed under the laws of the State of California, without regard to its conflicts of law principles. Each Party and Escrow Agent irrevocably waives any objection on the grounds of venue, forum non-conveniens or any similar grounds, and irrevocably consents to service of process by mail or in any other manner permitted by applicable law. Any and all litigation or disputes arising out of or relating to this Agreement shall be litigated in the County of San Diego in the State of California. To the extent that in any jurisdiction either Party may now or hereafter be entitled to claim for itself or its assets, immunity from suit, execution, attachment (before or after judgment) or other legal process, such Party shall not claim, and hereby irrevocably waives, such immunity.
- (d) No party to this Agreement is liable to any other party for losses due to, or if it is unable to perform its obligations under the terms of this Agreement because of, acts of God, fire, war, terrorism, floods, strikes, electrical outages, equipment or transmission failure, or other causes reasonably beyond its control.
- (e) This Agreement shall be valid, binding, and enforceable against a party when executed and delivered by an authorized individual on behalf of the party by means of (i) an original manual signature; (ii) a faxed, scanned, or photocopied manual signature, or (iii) any other electronic signature permitted by the federal Electronic Signatures in Global and National Commerce Act, state enactments of the Uniform Electronic Transactions Act, and/or any other relevant electronic signatures law, including any relevant provisions of the Uniform Commercial Code (collectively, "Signature Law"), in each case to the extent applicable. Each faxed, scanned, or photocopied manual signature, or other electronic signature, shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Each party hereto shall be entitled to conclusively rely upon, and shall have no liability with respect to, any faxed, scanned, or photocopied manual signature, or other electronic signature, of any other party and shall have no duty to investigate, confirm or otherwise verify the validity or authenticity thereof. Notwithstanding the foregoing, with respect to any notice provided for in this Agreement or any instrument required or permitted to be delivered hereunder, any party hereto receiving or relying upon such notice or instrument shall be entitled to request execution thereof by original manual signature as a condition to the effectiveness thereof. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but such counterparts shall, together, constitute one and the same instrument.
- (f) If any provision of this Agreement is determined to be prohibited or unenforceable by reason of any applicable law of a jurisdiction, then such provision shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof, and any such prohibition or unenforceability in such jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.
- (g) The Parties represent, warrant and covenant that each document, notice, instruction or request provided by such Party to Escrow Agent shall comply with applicable laws and regulations.
- (h) Each party to this Agreement represents and warrants to each other party that: (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; (ii) this Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms; (iii) there is not pending, or to its knowledge, threatened against it or any legal proceeding that could materially adversely affect its ability to perform under this Agreement; (iv) it is acting for its own account, and its decision to enter into this Agreement is based upon its own judgment, not in reliance upon the advice or

recommendations of any other party to this Agreement and it is capable of assessing the merits of and understanding, and understands and accepts the terms, conditions and risks of this Agreement; and (v) it has not relied on any promises, representations, statements or information of any kind whatsoever that are not contained in this Agreement in deciding to enter into this Agreement.

- (i) Except as expressly provided in Section 9 above, nothing in this Agreement, whether express or implied, shall be construed to give to any person or entity other than Escrow Agent and the Parties any legal or equitable right, remedy, interest or claim under or in respect of the Fund or this Agreement.

[signature page follows]

IN WITNESS WHEREOF, the parties to this Agreement have caused this Agreement to be duly executed by their respective authorized representatives as of the Effective Date.

[INTERCONNECTION CUSTOMER'S NAME]

By: _____
Name: [Authorized Representative's name]
Title: [Authorized Representative's title]
Date: _____

SAN DIEGO GAS & ELECTRIC COMPANY

By: _____
Name: [Authorized Representative's name]
Title: [Authorized Representative's title]
Date: _____

_____ As Escrow Agent

By: _____
Name: [Authorized Representative's name]
Title: _____
Date: _____

SCHEDULE 1

Interconnection Customer

Telephone Numbers and Authorized Signatures for Person(s) Designated to Give Applicable Instructions and Confirm Funds Transfer Instructions

For Interconnection Customer:

- | | <u>Name</u> | <u>Telephone Number</u> | <u>Signature</u> |
|----|---------------------------------------|---------------------------------|------------------|
| 1. | [IC's Authorized Representative Name] | [IC's Authorized Rep Phone No.] | |
| 2. | [IC's Authorized Representative Name] | [IC's Authorized Rep Phone No.] | |
| 3. | [IC's Authorized Representative Name] | [IC's Authorized Rep Phone No.] | |

For your security, please cross off any unused signature lines on this Schedule 1.

All communications (including but not limited to Wire Transfer Instructions and Draw Notices) must be delivered in accordance with Section 10 of this Agreement.

SCHEDULE 2

SDG&E

Telephone Numbers and Authorized Signatures for Person(s) Designated to Give Applicable Instructions and Confirm Funds Transfer Instructions

For SDG&E:

	<u>Name</u>	<u>Telephone Number</u>	<u>Signature</u>
1.	[SDG&E's Authorized Rep. Name]	[SDG&E's Authorized Rep Phone No.]	
2.	[SDG&E's Authorized Rep. Name]	[SDG&E's Authorized Rep Phone No.]	
3.	[SDG&E's Authorized Rep. Name]	[SDG&E's Authorized Rep Phone No.]	

All communications (including but not limited to Wire Transfer Instructions and Draw Notices) must be delivered in accordance with Section 10 of this Agreement.

SCHEDULE 3
[to be placed on SDG&E's Letterhead]

Draw Notice

Date: _____

RE: ESCROW AND DEPOSIT ACCOUNT CONTROL AGREEMENT made and entered into as of _____, 20____, ("Effective Date") by and among [Interconnection Customer's name] ("Interconnection Customer"), San Diego Gas & Electric Company ("SDG&E") and _____ [Bank Name], in its capacities as escrow agent and, as applicable, bank (the "Escrow Agent").

Pursuant to Section 3(a) of the above-referenced Agreement, SDG&E hereby instructs Escrow Agent to disburse the amount of [\$_____/or the total balance of the Fund (including earnings)] to [SDG&E][the Interconnection Customer], in accordance with the payment instructions provided in Section 3 of the Agreement, and as further provided below:

Bank Name:
Bank Address:
ABA Number:
Account Name:
Account Number:

SAN DIEGO GAS & ELECTRIC COMPANY ("SDG&E")

By: _____
Name: [Authorized Representative's name]
Title: [Authorized Representative's title]
Date: _____