

SCE Form of Master Offset Credit Purchase Agreement

**MASTER OFFSET CREDIT PURCHASE AGREEMENT
(California)**

Between

SOUTHERN CALIFORNIA EDISON COMPANY
(as “Buyer”)

and

(as “Seller”)

MASTER OFFSET CREDIT PURCHASE AGREEMENT

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ATTACHMENT TO THE MASTER OFFSET CREDIT PURCHASE AGREEMENT:

EXHIBIT A Form of Offset Credit Confirmation

EXHIBIT B Form of Guaranty Agreement

EXHIBIT C Form of Letter of Credit

**MASTER OFFSET CREDIT PURCHASE AGREEMENT
(California)**

RECITALS

This Master Offset Credit Purchase Agreement (“Master Agreement,” and collectively, with all written attachments, addenda and supplements, and Confirmations, the “Agreement”) is entered into as of _____ (“the Execution Date”) by and between Southern California Edison Company, a California corporation (“SCE” or “Buyer”) and [_____] a [_____] (“Seller,” and collectively, with Buyer, the “Parties” and individually a “Party”), with reference to the following:

WHEREAS, the Parties desire to enter into one or more Transactions for the purchase or sale of Offset Credits in accordance with the terms and conditions of this Agreement;

NOW THEREFORE, in consideration of the mutual covenants set forth herein, and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

**ARTICLE 1
DEFINITIONS, INTERPRETATION AND TERM**

1.1. Definitions. Capitalized terms not defined in this Master Agreement are defined in the Cap-and-Trade Regulations.

“AB 32” means the California Global Warming Solutions Act of 2006.

“ACH” means the electronic funds transfer system operated by the National Automated Clearing House, or any successor entity.

“Affected Transaction” means a Transaction (a) subject to a change in Law in accordance with Section 3.4(a); (b) subject to a Tracking System Failure in accordance with Section 3.5; or (c) otherwise provided as such in accordance with a Confirmation.

“Affiliate” means, with respect to any person or entity, any other person or entity (other than an individual) that (a) directly or indirectly, through one or more intermediaries, controls, or is controlled by such person or entity or (b) is under common control with such person or entity. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power. Buyer shall be deemed to have no Affiliates, except, for purposes of Article 11 only, Edison International. Seller’s Affiliates shall be [_____] ; for purposes of Article 11 only, Seller’s Affiliates shall be [_____].

“Agreement” is defined in the Recitals.

“Allowance” means a California greenhouse gas emissions allowance as defined in the Cap-and-Trade Regulations, that qualifies as an Allowance as defined under the Cap-and-Trade Regulations, and excludes Offset Credits and Sector-Based Offset Credits.

“ARB” means the California Air Resources Board, or successor entities with similar functions.

“ARB GHG Current Auction Clearing Price” means the ARB announced clearing and settlement price for a GHG “Current” auction.

“Arbitrator” is defined in Section 13.3.

“Bankrupt” means, with respect to any entity, such entity (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, or has any such petition filed or commenced against it, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.

“Bankruptcy Code” is defined in Section 15.2.

“Broker Quotes” means the price determined using the average of the end of day Allowance prices for each Terminated Transaction from three (3) bona fide unaffiliated brokers selected in good faith by the Non-Defaulting Party, which brokers regularly publish and widely distribute price assessments for Allowances and who actively participate in the market for Allowances.

“Business Day” means any day except a Saturday, Sunday, a federally insured bank holiday or the Friday immediately following the U.S. Thanksgiving holiday and shall be between the hours of 8:00 a.m. and 5:00 p.m. local time for the relevant Party’s principal place of business where the relevant Party, in each instance unless otherwise specified, shall be the Party by whom the Notice or payment or Delivery is to be received.

“Buyer” is defined in the Recitals.

“Buyer’s Holding Account” is defined in Section 3.2(b).

“Cal EPA” means the California Environmental Protection Agency.

“Cancellation” is defined in Section 3.4(a).

“Cap-and-Trade Regulations” means “California Cap on Greenhouse Gas Emissions and Market Based Compliance Mechanisms,” California Code of Regulations, Title 17, Subchapter 10 Climate Change, Article 5, Sections 95800, et seq., as amended, supplemented or replaced (in whole or in part) from time to time.

“CEC” means the California Energy Commission, or successor entities with similar functions.

“Claiming Party” is defined in Section 9.8.

“Collateral Threshold” is the value set forth in the table in Section 6.2(d)(iii).

“Compliance Offset Protocols” is defined in the Cap-and-Trade Regulations and which is applicable to the Offset Project.

“Confirmation” means the written documentation of a Transaction between the Parties executed pursuant to Section 2.1 in the form of Exhibit A, or in such other form as mutually agreed by the Parties.

“Contract Price” means the dollars per Offset Credit of Product under each specific Transaction, as specified in the applicable Confirmation.

“Costs” means brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by the Non-Defaulting Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.

“CPUC” means the California Public Utilities Commission, or successor entities with similar functions.

“Credit Rating” means with respect to any entity, the rating then assigned to such entity’s unsecured senior long-term debt or deposit obligations (not supported by third party credit enhancements) by the Ratings Agencies. If such entity does not have a rating for its unsecured senior long-term debt or deposit obligations by the Ratings Agencies, then the rating assigned to such entity as general corporate or long-term issuer rating by the Ratings Agencies. If an entity is rated by more than one Ratings Agency and the ratings are at different levels, then “Credit Rating” means the lowest rating.

“Deadline for Second Verification” means the date specified in each Transaction for completion of Second Verification.

“Defaulting Party” means the Party that is subject to an Event of Default.

“Deliver” or “Delivered” or “Delivery” means the transfer from Seller to Buyer, or from parties designated by Seller and Buyer in the applicable Confirmation, of the Quantity of the Product from Seller’s Holding Account into Buyer’s Holding Account in accordance with the Cap-and-Trade Regulations.

“Delivery Date” means the date specified in each Transaction for Delivery of the Product from Seller to Buyer.

“Delivery Deadline Date” is defined in Section 3.5(b).

“Delivery Period” means the time period from the Effective Date until the Product has been Delivered and has received Second Verification.

“Delivery Security” means the Performance Assurance provided by Seller to Buyer during the Delivery Period as described in Section 6.2(a).

“Delivery Term” means the time period specified in a Transaction for the delivery of Product from Seller to Buyer commencing with the first Delivery Date and ending with the last Delivery Date.

“Disclosing Party” is defined in Article 11.

“Disclosure Order” is defined in Article 11.

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

“Early Action Offset Program” is defined in the Cap-and-Trade Regulations.

“Early Termination Date” is defined in Section 9.3(a)(i).

“Effective Date” means the date a Transaction is entered into by the Parties, as specified in the applicable Confirmation.

“Event of Default” as applicable to either Party is defined in Section 9.1, and as applicable to Seller is also defined in Section 9.2.

“Execution Date” is defined in the Recitals.

“Executive Officer” is defined in the Cap-and-Trade Regulations.

“Federal Funds Effective Rate” means, for any given month, the average of the annual interest rates reported for all weekdays in the month opposite the caption “Federal funds (effective)” as set forth in the H.15 release, or any successor publication, published by the Board of Governors of the Federal Reserve System.

“FERC” means the Federal Energy Regulatory Commission or its successor.

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

“Force Majeure” is defined in Section 9.8.

“Gains” means the present value of the economic benefit, if any (exclusive of Costs), to a Party resulting under then-prevailing circumstances from the termination of its obligations with respect to the Terminated Transactions, determined in a commercially reasonable manner and in accordance with Section 9.4.

“GHG” or “Greenhouse Gas” is defined in the Cap-and-Trade Regulations.

“GHG Emission Reductions” includes “GHG emission reductions” and “GHG removal enhancement”, as those terms are used in the Cap-and-Trade Regulations.

“Government Action” means (a) an action by a Governmental Authority that renders the Tracking System or the Cap-and-Trade Regulations illegal, unconstitutional or unenforceable, including the issuance of an order, decision or other legally binding action that enjoins, stays or otherwise restrains the legal effectiveness and implementation of the Tracking System or Cap-and-Trade Regulations such that either Party is unable to fulfill its obligations to purchase, sell or transfer Products pursuant hereto, (b) the issuance of an order, decision or other legally binding action that enjoins, stays or otherwise restrains the legal ability of ARB to implement the Cap-and-Trade Regulations or that as a result of such restraint on ARB makes it impossible for either Party to fulfill its obligations to purchase, sell, or transfer Products hereunder, other than a sanction or penalty imposed for the failure to comply with AB 32, or (c) the California state legislature or U.S. Congress promulgates or enacts a law that repeals or otherwise amends AB 32 such that Buyer is no longer obligated to comply with the Cap-and-Trade Regulations or ARB is unable to implement or enforce the Cap-and-Trade Regulations.

“Governmental Authority” means any federal, state, local or municipal government department, commission, bureau, agency or instrumentality, or any judicial, regulatory, or administrative body, having jurisdiction as to the matter in question, and includes the Cal EPA, ARB, CEC and CPUC.

“Governmental Charges” is defined in Article 5.

“Guarantor” means the entity defined in Section 6.2(d), if any.

“Guaranty Agreement” is described in Section 6.2(d), substantially in the form of Exhibit B.

“Holding Account” means the holding account issued pursuant to the Cap-and-Trade Regulations to an entity upon registration with ARB or the appropriate Governmental Authority.

“Indemnified Party” is defined in Section 10.5.

“Indemnitor” is defined in Section 10.5.

“Index” means (a) the end of day settlement prices published by the Intercontinental Exchange, Inc., or (b) any other index to which both Parties agree that routinely publishes market prices for Allowances.

“Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the bank prime lending rate as may from time to time be published by the Federal Reserve in their H.15 Statistical Release, Selected Interest Rates (daily) or any successor publication as published by the Board of Governors of the Federal Reserve System, on such date (or if not published on such day on the most recent preceding day on which published), plus two percent (2%), and (b) the maximum rate permitted by Applicable Law.

“Invalidate” means that ARB has made a final determination to invalidate an Offset Credit pursuant to Section 95985 of the Cap-and-Trade Regulations.

“Invalidation Event” is a final determination by ARB to invalidate Offset Credits.

“Invalidation Period” means the period of time during which ARB may Invalidate an Offset Credit under the Cap-and-Trade Regulations.

“Invalidation Security” means Performance Assurance for each Transaction as described and in an amount set forth in Section 6.2(b).

“Invalidation Term” means the period commencing on the Delivery Date of Product through the last day of the Invalidation Period for that Product.

“Investment Grade” means a Credit Rating of “BBB- or above” by S&P, “BBB- or above” by Fitch, and “Baa3 or above” by Moody’s.

“JAMS” is defined in Section 13.2.

“Law” means any applicable federal, provincial, state, local or municipal statute, law, treaty, rule, by-law, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including AB 32 and any of the foregoing that are enacted, amended, or issued after the Execution Date, and which becomes effective during the Term (*provided* that all warranties and representations of the Parties are with respect to the Law as of the Execution Date, unless specifically provided otherwise); and any binding interpretation of the foregoing.

“Letter of Credit” means an irrevocable, nontransferable standby letter of credit, substantially in the form of Exhibit C, provided by Seller from an issuer acceptable to SCE that is either a U.S. financial institution or a U.S. commercial bank or a U.S. branch of a foreign bank with such financial institution or bank having a Credit Rating of at least “A-” from S&P, “A-” from Fitch or “A3” from Moody’s. If such entity is rated by more than one Ratings Agency and the ratings are at different levels, the lowest rating shall be the Credit Rating for this purpose.

“Listing” means that the Offset Project is listed according to the Cap-and-Trade Regulations.

“Losses” means the present value of the economic loss, if any (exclusive of Costs), to a Party resulting under then-prevailing circumstances from the termination of its obligations with respect to the Terminated Transactions, determined in a commercially reasonable manner and in accordance with Section 9.4.

“Market Price” means the settlement price of Allowances with the nearest expiry as such prices are published by an Index, as selected and compiled by Buyer for the ten (10) Business Days preceding the Early Termination Date or date on which the applicable Party failed to Deliver or receive Product under Section 3.6(a) or Section 3.6(b) or the date of the Invalidation Event under Section 3.8, as applicable. If there is no settlement price publication for the days required, then Project Participant shall use end of day Broker Quotes to determine the Market Price. If Broker Quotes are not available, then the price shall be calculated in a commercially reasonable manner.

“Master Agreement” is defined in the Recitals.

“Mediator” is defined in Section 13.2.

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

“Non-Claiming Party” is defined in Section 9.8.

“Non-Defaulting Party” is defined in Section 9.3.

“Notice” is defined in Article 14.

“Notional Value” of a Transaction means the aggregate sum of Contract Price times Quantity, as of the Effective Date. If the Contract Price is quoted as a percentage of the last ARB GHG Current Auction Clearing Price prior to Delivery, the Notional Value shall be that percentage of the last ARB GHG Current Auction Clearing Price prior to the Effective Date times Quantity.

“Offset Credit” or “ARBOC” means ARB Offset Credit as defined in the Cap-and-Trade Regulations.

“Offset Project” is defined in the Cap-and-Trade Regulations and, for the purposes of this Transaction, refers to the project from which the Product is created and must be an Offset Project located within the United States.

“Offset Project Data Report” is defined in the Cap-and-Trade Regulations.

“Offset Project Registry” is defined in the Cap-and-Trade Regulations.

“Party” or “Parties” is defined in the Recitals.

“Payment System Uncontrollable Forces” means an event or circumstance which prevents Buyer from performing its payment obligations hereunder, which event or circumstance (a) was not anticipated, (b) is not within the reasonable control of, or the result of the negligence of, Buyer, and (c) Buyer is unable to overcome or avoid by the exercise of reasonable due diligence.

“Performance Assurance” means all collateral that is provided by Seller to Buyer, whether in the form of cash, Letters of Credit, Guaranty Agreement, or combination thereof, each and all of which is acceptable to Buyer.

“Product” means ARBOCs, as specified under each Transaction, issued in accordance with the Cap-and-Trade Regulations by ARB.

“Project Documents” means those documents and information set forth in the Offset Project Listing requirements of the Compliance Offset Protocol that must be submitted to ARB or an Offset Project Registry, along with any additional information specified in the Cap-and-Trade Regulations.

“Project Participant” means an owner of any interest in the real or personal property involved in the Offset Project.

“Quantity” means the aggregate quantity of Product to be Delivered by Seller to Buyer under a Transaction.

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

“Recordings” is defined in Section 2.2.

“Replacement Product” is defined in Section 3.8(b).

“Replacement Price” means the price at which Buyer, acting in a commercially reasonable manner, purchases Allowances to substitute or replace Product not Delivered by Seller, plus costs reasonably incurred by Buyer in purchasing such Allowances to substitute for or replace Product not Delivered; or, at Buyer’s option, the Market Price.

“Resale Price” means the price at which Seller, acting in a commercially reasonable manner, resells any Product not accepted by Buyer as required hereunder, deducting from such proceeds any costs reasonably incurred by Seller in reselling such unaccepted Product, or at Seller’s option, the Market Price.

“SCE” is defined in the Recitals.

“Second Verification” means ARB’s acceptance of (i) a subsequent Offset Project Data Report, or (ii) the re-verification of the initial Offset Project Data Report, in each case by a different offset Verification Body, within three (3) years of the issuance of the Offset Credit pursuant to the requirements set forth in Section 95985 of the Cap-and-Trade Regulations, as such requirements are amended, supplemented or replaced (in whole or in part) from time to time.

“Security Interest” is defined in Section 6.5.

“Seller” is defined in the Recitals.

“Seller Failure” is defined in Section 3.6(a).

“Seller’s Collateral Threshold” is defined in Section 6.2(d).

“Seller’s Holding Account” is defined in Section 3.2(a).

“Settlement Amount” means the sum of Losses, Gains, and Costs incurred by the Non-Defaulting Party as a result of termination of the Terminated Transactions calculated in accordance with Section 9.4. If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, the Settlement Amount shall be zero.

“S&P” means the Standard & Poor’s Rating Group (a division of The McGraw-Hill Companies, Inc.) or its successor.

“Term” is defined in Section 1.3.

“Terminated Transactions” is defined in Section 9.3.

“Termination Payment” means the net positive sum, if any, owed to a Party of (a) the Settlement Amount owed to the Non-Defaulting Party (if any), and (b) calculated in accordance with Article 4 below, the net positive sum of all other amounts due and owing between the Parties in respect of Product which Seller has sold and Delivered and Buyer has purchased and received as of the Early Termination Date.

“Tracking System” means the Compliance Instrument Tracking System Service (CITSS) or the successor mechanism or third-party resource required by ARB and any other Governmental Authority acting pursuant to AB 32 for accounts recording ownership of the Product and enabling transfer of the Product.

“Tracking System Failure” means a disruption in Delivery caused solely by the Tracking System that (a) is not specific to either Party’s Holding Account, (b) is not subject to Section 3.4, and (c) is not within the control of, or the result of the negligence of, such Party and which could not have been avoided by the exercise of due diligence.

“Transaction” means a particular transaction agreed to by the Parties relating to the sale and purchase of the stated Contract Quantity of Product, as set forth in the Confirmation, pursuant to this Master Agreement, as documented by a Confirmation subject to Section 2.1 of this Master Agreement.

“Verification Bodies” is defined in the Cap-and-Trade Regulations.

“Verification” is defined in the Cap-and-Trade Regulations.

“Verifiers” is defined in the Cap-and-Trade Regulations.

“Vintage Year” (a) with respect to Allowances is defined in the Cap-and-Trade Regulations and (b) with respect to Offset Credits means the year in which the GHG reduction or GHG removal enhancement of one metric ton of CO₂e, as defined in the Cap-and-Trade Regulations, occurred or will occur; *provided* that if the Cap-and-Trade Regulations are amended to provide an express definition, such definition shall apply.

1.2 Rules of Interpretation.

(a) Headings are included for convenience only and are not to be considered in interpretation.

(b) References in the singular include references to the plural and vice versa,

pronouns having masculine or feminine gender include the other, and words denoting natural persons include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities, whether or not having a separate legal personality. Other grammatical forms of defined words or phrases have corresponding meanings.

(c) “Include” or “including” means "including without limitation”.

(d) “Quarter” means, unless otherwise indicated, a three month calendar period beginning on the first day of January, April, July, or October of a given year; “month” means a calendar month unless otherwise indicated, and a “day” is a 24-hour period beginning at 12:00:01 AM and ending at 12:00:00 midnight; *provided* that a “day” may be 23 or 25 hours on those days on which daylight savings time begins or ends.

(e) Unless otherwise specified herein, where the consent of a Party is required, such consent may not be unreasonably withheld, conditioned or delayed.

(f) Unless otherwise specified herein, all references herein to any agreement or other document of any description include all amendments, supplements, modifications and any superseding agreement or documents, including any website, as existing at the applicable time.

(g) A reference to a particular article, section, exhibit, addendum or attachment is, unless specified otherwise, a reference to that article, section, exhibit, addendum or attachment to this Master Agreement. A reference to a particular special provision is, unless otherwise specified, a reference to a special provision of a Confirmation.

(h) References to any natural person, Governmental Authority, publication, website, market price index, regulatory proceeding, corporation, partnership or other legal entity include successors and lawful assigns.

(i) All references to money or dollars are to U.S. dollars.

(j) An “order”, “determination”, “decision” or “interpretation” of the Cal EPA, CPUC, ARB or CEC includes a resolution, advice letter or other action embodying a final decision by it.

(k) “Or” is not necessarily exclusive.

(l) Examples are for purposes of illustration of the applicable concept only and are not intended to constitute a representation, warranty or covenant concerning the example itself or the matters assumed for purposes of such example. If there is a conflict between an example and the text hereof, the text will govern.

(m) All references to hours are Pacific Standard Time or Pacific Daylight Time, as prevailing on the day in question.

(n) “Herein”, “hereunder” and similar terms refer to this Master Agreement in its entirety unless the context requires otherwise.

(o) Each term hereof is to be construed simply according to its fair meaning and not strictly for or against either Party. No term hereof is to be construed against a Party on the ground that the Party is the author or drafter of that provision. Each Party expressly agrees to not utilize in any dispute hereunder any rule of construction that resolves the interpretation of any provision against the drafting

Party.

1.3 Term. This Master Agreement shall be effective as of the Execution Date and remain in effect until terminated by either Party upon thirty (30) days prior Notice; *provided*, however, that this Master Agreement shall remain in effect with respect to Transactions entered into prior to the effective date of termination until both Parties have fulfilled all of their obligations with respect thereto (the “Term”), and any termination shall not affect or excuse the performance of either Party under any provision hereof that by its terms survives termination, including without limitation, the performance of those obligations set forth in Section 3.8 below.

ARTICLE 2 TRANSACTION TERMS

2.1 Execution of Transactions. A Transaction shall be entered into upon mutual agreement of the Parties and shall be evidenced by a Confirmation executed by both Parties.

2.2 Governing Terms. Each Transaction between the Parties shall be governed by the Agreement. This Master Agreement, written attachments, addenda and supplements, and Confirmations form a single integrated agreement between the Parties. In the event of a conflict between a provision in this Master Agreement and a provision of an applicable Confirmation, the provisions of the Master Agreement control except when a fully executed Confirmation (a) sets forth more specific commercial provisions regarding time, place and manner of performance, including price, quantity and procedural terms, or (b) amends specifically referenced Sections of the Master Agreement, in which case the terms of such Confirmation control with respect to that Confirmation.

ARTICLE 3 DELIVERY OBLIGATIONS

3.1 Parties’ Obligations. With respect to each Transaction, Seller shall sell and Deliver to Buyer and Buyer shall purchase and receive, the Quantity of the Product, and Buyer shall pay Seller the Contract Price with respect to the Product Delivered, all in accordance with the terms hereof. Seller shall, at its sole expense, take all actions and execute all documents and instruments necessary to ensure that all Product under each Transaction is properly registered, verified, Delivered, or capable of being Delivered, tracked, and otherwise qualified in all respects under the Cap-and-Trade Regulations as an Offset Credit.

3.2 Holding Account.

(a) Seller’s Holding Account. Prior to the Delivery Date, Seller shall (i) register with the Executive Officer in accordance with the Cap-and-Trade Regulations, (ii) obtain Executive Officer approval of such registration, and (iii) obtain a Holding Account (“Seller’s Holding Account”) in the Tracking System from and into which the Product may be transferred, which account Seller shall maintain until the end of the Delivery Term for all Transactions.

(b) Buyer’s Holding Account. At the time of Delivery Seller shall transfer the Product to the Holding Account designated by Buyer herein (“Buyer’s Holding Account”). Each Party shall be responsible for its own expenses associated with establishing and maintaining its Holding Account. Seller shall be solely responsible for paying expenses associated with the issuance and transfer fees for the Product, and transferring the Product from Seller’s Holding Account to Buyer’s Holding Account. Promptly upon receiving confirmation that each Holding Account has been established, and at least ten (10) days prior to the Delivery Date, each Party shall provide the other with all details of such Holding Account necessary to effectuate a transfer of the Product.

3.3 Transfer of Product. Seller shall ensure that all Product is transferred to Buyer in accordance with the terms of the Transaction, for Buyer's sole benefit. Delivery shall occur when the transfer of the Product into Buyer's Holding Account is complete in accordance with the Cap-and-Trade Regulations, at which time title to the Product will transfer from Seller to Buyer. Without limiting Seller's obligations under Section 3.1, each Party will provide to the other any reasonably requested information or documentation required to implement Delivery, cooperate to cause Delivery to occur, and comply with any and all applicable procedures and requirements of Law relating to the recording and transfer of the Product.

3.4 Change in Law.

(a) Change in Law. If any statutes, rules, regulations or Compliance Offset Protocols are enacted, amended, granted or revoked which have the effect of changing the transfer and sale procedure set forth in this Agreement so that the implementation of this Agreement becomes impossible or impracticable, the Parties hereto agree to negotiate in good faith to amend this Agreement to conform with such new statutes, rules, regulations or Compliance Offset Protocols in order to maintain the original intent of the Parties under this Agreement. If the Parties fail to amend or are unable to amend this Agreement within 30 days following notice of a such change in Law, either Party shall be entitled to terminate and cancel (any such termination and cancellation, a "Cancellation") any and all of their obligations under this Agreement with respect to the Delivery and receipt of the Product. In the event of any such Cancellation, neither Party shall have any further payment or performance obligations under this Agreement; provided that the Parties shall remain liable for any payments due for, and all other obligations that may lawfully be performed respecting, the Product Delivered prior to such Cancellation and Seller shall refund to Buyer any amount previously paid by Buyer for any Product not Delivered prior to such Cancellation. Neither Party shall have any rights to, or obligations or liability for, payment of a Termination Payment for or as a result of any Cancellation.

(b) Government Action. Upon the occurrence of Government Action, either Party shall be entitled to terminate and cancel any and all of their obligations under this Agreement with respect to the Delivery and receipt of the Product. In the event of any such Cancellation, neither Party shall have any further payment or performance obligations under this Agreement; *provided* that the Parties shall remain liable for any payments due for, and all other obligations that may lawfully be performed respecting, the Product Delivered prior to such Cancellation and Seller shall refund to Buyer any amount previously paid by Buyer for any Product not Delivered prior to such Cancellation. Neither Party shall have any rights to, or obligations or liability for, payment of a Termination Payment for or as a result of any Cancellation.

3.5 Tracking System Failure.

(a) Notice. If a Party is unable to Deliver or receive Product due to a Tracking System Failure, the affected Party shall within two (2) Business Days provide the other Party with Notice and full details identifying the cause of the Tracking System Failure and the Affected Transactions. Seller shall use its best efforts to cause Delivery of the Product under the Affected Transactions and give effect to the original intention of the Parties.

(b) Delivery Date Deadline. Seller's Delivery obligations and Buyer's obligations to receive Product under the Affected Transactions shall be postponed until the earlier to occur of (i) the ninetieth (90th) day following the day the Tracking System Failure began or (ii) the next Business Day following the day on which the Tracking System Failure is remedied as evidenced by notice from the administrator of the Tracking System or (iii) successful use of the Tracking System by another Tracking System user (the earliest being the "Delivery Deadline Date"); *provided* that until the Delivery Deadline Date, the Parties shall use good faith efforts each Business Day to affect the Delivery or receipt of

Product. Following the Delivery Deadline Date, either Party may provide Notice to the other Party to terminate only the Affected Transactions.

(c) Failure to Deliver. Neither Party's failure to Deliver or receive Product due solely to a Tracking System Failure constitutes an Event of Default hereunder. If, as of the Delivery Deadline Date, the Parties have not agreed upon an alternate Delivery Date for the Product affected by the Tracking System Failure, then Seller shall be relieved from its obligation to Deliver the Product that would have been Delivered but for the Tracking System Failure, and Buyer shall not be obligated to pay for or later receive such Product. In no event shall Buyer be obligated to pay for Product that it does not receive. Termination of an Affected Transaction pursuant to this Section 3.5 does not forgive amounts payable or paid under Section 4.1 for Product Delivered or pursuant to Section 3.6 for Product not Delivered or received, but no damages or payment shall be due with respect to that portion of the Product that would have been, but will no longer be, Delivered or received under the Affected Transactions.

3.6 Failure to Deliver or Receive Product.

(a) Seller Failure. If Seller fails to (i) Deliver all or part of the Product on or before the Delivery Date set forth in the applicable Confirmation for such Transaction, (ii) satisfy the Delivery obligations that arise under Section 3.8(b) in the event of an Invalidation Event related to the Product, or any portion thereof, or (iii) satisfy any obligations that arise under Section 3.8(c) in the event of an Invalidation Event related to Replacement Product, or any portion thereof, and such failure under Section 3.6(a)(i), (ii) or (iii) is not excused by Buyer's failure to perform under Section 3.4, Section 3.5, or Section 9.8 (any or all of which are considered a "Seller Failure"), then Seller shall pay Buyer, within fifteen (15) days of receiving the invoice, an amount equal to the Replacement Price minus the Contract Price, if and to the extent, the Replacement Price is greater than the Contract Price for the Product not Delivered. The invoice shall include a written statement explaining Buyer's calculation in reasonable detail. If there are further Delivery Dates under the Transaction, or any other Transactions, then Seller shall provide Buyer with adequate assurances of Seller's ability to perform its obligations under the remaining Transaction or Transactions by providing additional documentation as reasonably requested by Buyer.

(b) Buyer Failure. If Buyer fails to affirmatively accept all or part of the Product Delivered pursuant to a Transaction and such failure is not excused under the terms of the applicable Confirmation or by Seller's failure to perform under Section 3.4, Section 3.5, or Section 9.8, then Buyer shall pay Seller, within fifteen (15) days of invoice receipt, an amount equal to the Contract Price minus the Resale Price, if and to the extent, the Resale Price is less than the Contract Price for the Product not Delivered. The invoice shall include a written statement explaining the calculation in reasonable detail.

3.7 Invalidation. Subject to Sections 3.4 and 9.8, on or before the Deadline for Second Verification set forth in the applicable Confirmation, Seller shall i) minimize the Invalidation Period for the Product by obtaining a Second Verification from ARB and ii) provide notice to Buyer with sufficient documentation, in a form acceptable to Buyer in Buyer's reasonable discretion, that Seller has received Second Verification from ARB. Seller shall also provide notice to Buyer with sufficient documentation, in a form acceptable to Buyer in Buyer's reasonable discretion, that the Invalidation Term has concluded. If Sections 3.4 and/or 9.8 do not apply and Seller determines in good faith that it will not be able to meet the Deadline for Second Verification through no fault, cause, negligence, omission or action on Seller's part and provided that Seller has taken all necessary, reasonable and diligent efforts to obtain a Second Verification, then by written request by way of a Notice upon Buyer, Seller may seek to extend the Deadline for Second Verification for a reasonable period of time. Buyer may grant, condition or reject such request in its reasonable discretion.

3.8 Invalidation Event.

(a) Notice of Invalidation. If either Party receives a notice from ARB of an invalidation determination or of an Invalidation Event with respect to the Product, the Party receiving such notice shall provide a copy of such notice to the other Party.

(b) Invalidation of Product. Within thirty (30) days of any notice from ARB of an Invalidation Event with respect to the Product or any portion thereof, Seller shall:

(i) Replace the Product that was invalidated pursuant to such Invalidation Event with similar or better (with respect to Vintage Year and Invalidation Term) Offset Credits and from an Offset Project located within the United States (“Replacement Product”), at no additional cost to Buyer, and subject to Buyer’s sole discretion;

(ii) Replace the Product that was invalidated pursuant to such Invalidation Event with Allowances, of the same or earlier Vintage Year (or, in the case of pre-2014 Vintage Year Offset Credits, 2013 Vintage Year Allowances) at no additional cost to Buyer, in which case Buyer shall return the associated Invalidation Security to Seller; or

(iii) Financially compensate Buyer at the Replacement Price multiplied by the Quantity of Product that was invalidated pursuant to such Invalidation Event, in which case Buyer shall return the associated Invalidation Security to Seller.

(c) Invalidation of Replacement Product. Within thirty (30) days of any notice from ARB of an Invalidation Event with respect to any Replacement Product provided pursuant to Section 3.8(b) above, Seller shall:

(i) Replace the Replacement Product that was invalidated pursuant to such Invalidation Event with Allowances of the same or earlier Vintage Year (or, in the case of pre-2014 Vintage Year Offset Credits, 2013 Vintage Year Allowances) at no additional cost to Buyer, in which case Buyer shall return the associated Invalidation Security to Seller; or

(ii) Financially compensate Buyer at the Replacement Price multiplied by the Quantity of Replacement Product that was invalidated pursuant to such Invalidation Event, in which case Buyer shall return the associated Invalidation Security to Seller.

**ARTICLE 4
INVOICING AND PAYMENT**

4.1 Payment to Seller and Invoicing.

(a) Payments. If the Parties agree to modified payment terms pursuant to the Confirmation or Article 6, including any right of Buyer to apply payments otherwise due to Seller to secure Seller’s collateral requirements as required from Seller, such terms shall take precedence over this Article 4.

(b) Invoicing. Within five (5) Business Days of Seller’s Delivery of Product to Buyer, Seller shall provide to Buyer an invoice, in the format specified by Buyer, for an amount equal to the (i) Contract Price multiplied by (ii) the Quantity of Product Delivered. Buyer shall pay the undisputed amount of such invoice within ten (10) days after receipt of the invoice. If either the invoice date or

payment date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party, as further specified in Section 4.5. Any amounts not paid when due, unless not paid to Seller due to Payment System Uncontrollable Forces, are delinquent and will accrue interest at the Interest Rate, calculated from and including the due date up to but excluding the date the delinquent amount is paid in full. In the event Payment System Uncontrollable Forces prevents payment to Seller, Buyer shall pay on the first Business Day following the resolution of the Payment System Uncontrollable Forces.

4.2 Disputes and Adjustments of Invoices. A Party may adjust any invoice rendered by it under this Agreement to correct any arithmetic or computational error or to include additional charges or claims within twelve (12) months after the close of the month in which the obligations being invoiced arose. A receiving Party may, in good faith, dispute the correctness of any invoice or of any adjustment to any invoice previously rendered to it by providing notice to the other Party on or before the later of (i) twelve (12) months of the date of receipt of such invoice or adjusted invoice, or (ii) twelve (12) months after the close of the month in which the obligation being invoiced arose. Failure to provide such notice within the time frame set forth in the preceding sentence waives the dispute with respect to such invoice. A Party disputing all or any part of an invoice or an adjustment to an invoice previously rendered to it may pay only the undisputed portion of the invoice when due, provided such Party provides notice to the other Party of the basis for and amount of the disputed portion of the invoice that has not been paid. Payment of the disputed amount shall not be required until the dispute is resolved; *provided* that if the disputing Party is Seller and Seller's Credit Rating is below Investment Grade, Seller must post Performance Assurance to the Buyer in an amount equal to the disputed amount owed by Seller to SCE. The Parties shall use good faith efforts to resolve the dispute or identify the adjustment as soon as possible. Upon resolution of the dispute or calculation of the adjustment, any required payment shall be made within fifteen (15) days of such resolution along with interest accrued at the Interest Rate from and including the due date up to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment up to but excluding the date repaid or deducted by the Party receiving such overpayment. If an invoice is not rendered by Seller within twelve (12) months after the close of the applicable Delivery Date the right to payment for such performance is waived.

4.3 Netting. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other as of the same date pursuant to all Transactions through netting, in which case all amounts owed by each Party to the other Party during the monthly billing period under this Agreement, including damages, payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

4.4 Set-off. In addition to any rights of set-off a Party may have under Law or otherwise, upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right (but not the obligation) without prior Notice to the Defaulting Party or any other person to set-off any obligation of the Defaulting Party owed to the Non-Defaulting Party arising hereunder (whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation) against any obligations of the Non-Defaulting Party owing to the Defaulting Party (whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation). If any such obligation is unascertained, the Non-Defaulting Party may in good faith, and exercising commercially reasonable judgment, estimate that obligation and set-off in respect of the estimate, subject to the relevant Party accounting to the other Party when the obligation is ascertained. Except as provided in Article 6, nothing herein will have the effect of creating a charge, pledge, lien or other security interest.

4.5 Payments. All funds paid hereunder shall be rendered in the form of immediately available dollars. Payment, as applicable, shall be made by ACH or in other form reasonably requested, to the following accounts:

Buyer:

Bank: JPMorganChase Bank

ABA No.: 021000021

Account No.: 323-394434

Seller:

Bank: [_____]

ABA No.: [_____]

Account No.: [_____]

ARTICLE 5 TAXES

Seller shall pay all taxes imposed by any Governmental Authority (“Governmental Charges”) with respect to the Product transferred in a Transaction that arise before Buyer receives such Product in Buyer’s Holding Account. Buyer shall pay all Governmental Charges with respect to the Product transferred in a Transaction from and after Buyer receives such Product in Buyer’s Holding Account. Taxes in the form of ad valorem taxes, franchise taxes and income taxes (and any similar taxes imposed on the Parties based upon participation in the Tracking System or income derived from trading the Product) shall be borne by each Party with regard to its respective income obligations.

ARTICLE 6 CREDIT AND COLLATERAL

6.1 Financial Information. If requested by Buyer, the Seller shall deliver:

(a) Annual Reports. Within one hundred twenty (120) days following the end of each fiscal year, a copy of its and its Guarantor’s, if any, annual report containing audited consolidated financial statements for such fiscal year. If only unaudited financial statements are available, they must include an Officer certification attesting to the accuracy of such statements;

(b) Quarterly Reports. Within sixty (60) days after the end of each of its first three (3) fiscal quarters of each fiscal year, a copy of its and its Guarantor’s, if any, quarterly report containing unaudited consolidated financial statements for such fiscal quarter.

(c) Reports. In all cases the reports shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; *provided*, should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the producing Party diligently pursues the preparation, certification and delivery of the statements.

6.2 Seller’s Collateral Requirements.

(a) Delivery Security. Within three (3) Business Days of the Effective Date of each Transaction, Seller shall provide to, and maintain with Buyer throughout the Delivery Period, Delivery

Security in an amount equal to twenty percent (20%) of the Notional Value of the Product Quantity minus the amount of Seller's Collateral Threshold. The unused portion of Delivery Security attributable to Offset Credits that are beyond the Delivery Period shall be returned or credited to Seller, less any amounts due and payable to Buyer as provided herein, if no Event of Default with respect to Seller has occurred and is continuing, and no Early Termination date has occurred or been designated as the result of an Event of Default with respect to Seller.

Seller may, with SCE's consent, authorize Buyer to retain Performance Assurance initially posted as Delivery Security as Invalidation Security posted under Section 6.2(b).

(b) Invalidation Security. Starting with the Delivery Date of the Product, Seller shall provide to, and maintain with Buyer, throughout the entire Invalidation Term, Invalidation Security in an amount equal to twenty percent (20%) of the Notional Value of all Offset Credits that have been Delivered and are within the Invalidation Term minus the amount of Seller's Collateral Threshold. The unused portion of Invalidation Security attributable to Offset Credits that are beyond the Invalidation Term shall be returned or credited to Seller as soon as reasonably practicable after the Invalidation Term has ended so long as (i) Seller has received Second Verification from ARB, (ii) Seller has provided notice to Buyer with sufficient documentation, in a form acceptable to Buyer in Buyer's reasonable discretion, that Seller has received Second Verification from ARB, (iii) Seller has provided notice to Buyer with sufficient documentation, in a form acceptable to Buyer in Buyer's reasonable discretion, that the Invalidation Term has concluded, (iv) Seller has satisfied all monetary obligations with respect to the Product beyond the Invalidation Term; (v) no Event of Default with respect to Seller has occurred and is continuing, and (vi) no Early Termination Date has occurred or been designated as the result of an Event of Default with respect to Seller.

For avoidance of doubt, if the Second Verification of the Product has not been obtained by the Delivery Date, Seller shall post and maintain both Delivery Security and Invalidation Security during the period between the Delivery Date and the date that Second Verification is received.

(c) Additional Performance Assurance. If Seller disputes Buyer's invoice(s) and Seller's Credit Rating is below Investment Grade, Seller shall be required to post additional Performance Assurance in an amount equal to the amount in dispute. Such Performance Assurance shall be returned to Seller after the dispute has been resolved, if no Event of Default with respect to Seller has occurred and is continuing, and no Early Termination date has occurred or been designated as the result of an Event of Default with respect to Seller.

(d) "Seller's Collateral Threshold" is the lowest of:

(i) the amount set forth below opposite the lowest of the Credit Ratings for Seller or, if applicable, Guarantor. If Seller or, if applicable, Guarantor, does not have a Credit Rating, Seller's Collateral Threshold shall be \$0 (zero);

(ii) eighty percent (80%) of the then applicable Guaranty amount, specified in Section 6.2(e); and

(iii) zero dollars (\$) if an Event of Default with respect to Seller has occurred and is continuing;

<u>Collateral Threshold</u> <u>(\$ mm)</u>	<u>Moody's Credit Rating</u>	<u>S&P Credit Rating</u>	<u>Fitch Credit Rating</u>
*	Aa3 or above	AA- or above	AA- or above
*	A1	A+	A+
*	A2	A	A
*	A3	A-	A-
*	Baa1	BBB+	BBB+
*	Baa2	BBB	BBB
*	Baa3	BBB-	BBB-
\$0 (zero)	Ba1 or below	BB+ or below	BB+ or below

(e) Guarantor for Seller is [_____]. Guarantor has provided a Guaranty Agreement dated [_____] in substantially the form set forth in Exhibit B in the amount of [XXX AND XX/100 Dollars](\$ _____), for the benefit of SCE, which may be amended from time to time.

(f) In the event Seller's, or if applicable, Guarantor's Collateral Threshold decreases as a result of a change in Seller's or Guarantor's Credit Rating (whichever applicable), Seller shall within three (3) Business Days of a written demand from Buyer, increase its Performance Assurance amount such that each such Delivery Security and/or Invalidation Security is fully funded using the revised Collateral Threshold.

6.3 Buyer's Collateral Requirements. Under no circumstances shall Buyer be required to post collateral under this Agreement.

6.4 Administration of Performance Assurance.

(a) Buyer shall have the right to use any and all Performance Assurance posted by Seller to satisfy any of Seller's performance or monetary obligations under this Agreement.

(b) Interest Payments on Cash.

Buyer shall calculate and pay to Seller simple interest at the Federal Funds Effective Rate on any Performance Assurance posted in cash, concurrently with the return of such collateral to Seller in accordance with the terms of this Agreement.

On or after the occurrence of an Event of Default by Seller, Buyer shall retain any such interest amount as additional Performance Assurance hereunder for so long as such Event of Default is continuing or the obligations of Seller under this Agreement have not been satisfied and Buyer shall have the rights and remedies set forth in Section 9.3.

(c) Letters of Credit.

(i) Each Letter of Credit shall be maintained for the benefit of SCE.

(ii) Seller shall:

- (A) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit;
- (B) if the issuer of an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide an alternative Performance Assurance acceptable to Buyer at least twenty (20) Business Days prior to the expiration of the outstanding Letter of Credit;
- (C) if the issuer of a Letter of Credit (i) fails to honor Buyer's properly documented request to draw on an outstanding Letter of Credit, or (ii) disaffirms, disclaims, repudiates or rejects, in whole or part, or challenges the validity of the Letter of Credit, or (iii) fails to comply with or perform its obligations under the Letter of Credit, provide a substitute Performance Assurance acceptable to Buyer, in Buyer's sole discretion, within three (3) Business Days after such refusal; and
- (D) if the issuer of an outstanding Letter of Credit fails to maintain a Credit Rating of at least "A-" from S&P, "A-" from Fitch, or "A3" from Moody's as required in the definition of "Letter of Credit", provide a substitute Performance Assurance acceptable to Buyer, within five (5) Business Days.

provided, if Seller fails to perform in accordance with (A), (B), (C) or (D), Seller shall be deemed to have failed to meet its obligation to provide Performance Assurance.

(iii) Upon, or at any time after, the occurrence and continuation of an Event of Default by Seller, then Buyer may draw on the entire undrawn portion of any outstanding Letter of Credit upon submission to the issuer of such Letter of Credit of one or more certificates specifying that such Event of Default has occurred and is continuing. In addition, Buyer will have the right to draw on the Letter of Credit for any of the reasons set forth in such Letter of Credit (or its accompanying draw certificate).

(iv) Cash proceeds received by Buyer from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for Seller's obligations to Buyer, and Buyer shall have the rights and remedies set forth in this Agreement with respect to such cash proceeds. Notwithstanding Buyer's receipt of cash proceeds of a drawing under the Letter of Credit, Seller shall remain liable (A) for any failure to provide sufficient Performance Assurance or (B) for any amounts owing to Buyer and remaining unpaid after the application of the amounts so drawn by Buyer.

(v) In all cases, the costs and expenses of establishing, renewing, substituting, canceling, amending and changing the amount of a Letter of Credit shall be borne by Seller.

(d) Liability Following Application of Collateral. Notwithstanding Buyer's use of cash collateral or receipt of cash proceeds of a drawing under the Letter of Credit or Guaranty, Seller shall remain liable for:

(i) Any failure to provide or maintain the required Performance Assurance if, following such application, the remaining Performance Assurance is less than the amount required hereunder (including failure to replenish cash collateral or a Letter of Credit to the full Performance Assurance amount in the event that Buyer uses the cash collateral or draws against the Letter of Credit or Guaranty for any reason other than to satisfy a Termination Payment); or

(ii) Any amounts owing to Buyer that remain unpaid after the application of the amounts drawn by Buyer.

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

- (a) exercise any of its rights and remedies with respect to all Performance Assurance, including any such rights and remedies under law then in effect;
- (b) draw on any outstanding Letter of Credit issued for its benefit; and
- (c) liquidate all Performance Assurance then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE 7 REPRESENTATIONS AND WARRANTIES

7.1 Mutual Representations and Warranties. Each Party hereby represents and warrants to the other Party as of the Execution Date, and with respect to each Transaction as of the Effective Date and Delivery Date, that:

- (a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) It has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;
- (c) The execution, delivery and performance of this Agreement are within its power, have been duly authorized by all necessary action and does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Laws applicable to it;

(d) This Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defenses;

(e) It is not Bankrupt and there are not proceedings pending or being contemplated by it or, to its knowledge, threatened against it which could result in it becoming Bankrupt;

(f) There is not pending or, to its knowledge, threatened against it or in Seller's case, Guarantor, if applicable, any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement or the Guaranty Agreement, as applicable;

(g) No event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement that would constitute an Event of Default as of the Execution Date;

(h) It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions, and risks of this Agreement;

(i) It is a "forward contract merchant" within the meaning of the United States Bankruptcy Code; and

(j) It has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Product, as applicable, under this Agreement.

7.2 Seller Representations and Warranties. Seller represents and warrants to Buyer as of the Effective Date and upon each Delivery Date for Products for each Transaction that the following are true and correct:

(a) Seller has the right to sell and has and shall convey good and marketable title to the Product to Buyer free and clear of any liens, taxes, claims, security interests or other encumbrances or title defects;

(b) Seller is the sole legal and beneficial owner of the Product to be Delivered;

(c) The Product Delivered is of the Vintage Year claimed by Seller;

(d) The Invalidation Term of the Product Delivered is consistent with the Invalidation Term claimed by Seller;

(e) Seller has not sold the Product or any part or attribute thereof to any other person or entity other than Buyer;

(f) Buyer has the exclusive rights to make all claims, of ownership, use, or control, respecting the Product upon its Delivery by Seller;

(g) The Product, and Delivery and transfer of the Product, comply with all Cap-and-Trade Regulations;

(h) Seller has obtained sufficient written evidence from each Project Participant establishing Seller's right, title and ownership to the GHG Emission Reductions from the Offset Project and the Offset Credits. Neither Seller, nor any of its Affiliates or its customers, have claimed any Offset Credits from the Offset Project or any part thereof, including the GHG Emission Reductions, as part of its own carbon inventory, footprint, or other carbon statement or declaration;

(i) Seller has no knowledge that the Offset Project does not comply with all Laws and the Compliance Offset Protocols (and the Early Action Offset Program, if applicable).

(j) The Product qualifies as an Offset Credit pursuant to the Cap-and-Trade Regulations and the Product and the transfer of Product hereunder complies with all Cap-and-Trade Regulations; and

(k) No Invalidation Event has occurred with respect to the Product. Notwithstanding any other provision to the contrary, Seller makes this representation and warranty in Section 7.2(k) continuously from the Effective Date through the Delivery Date.

7.3 Survival. The Parties' liabilities to one another for the breach of the representations in this Article 7 shall survive any termination or expiration hereof.

ARTICLE 8 SELLER COVENANTS

8.1 Ongoing Compliance. Seller covenants that it shall comply and shall cause all Project Participants from whom it receives Product for sale under this Agreement with all Laws and, if applicable, the Compliance Offset Protocols (as defined in the Cap-and-Trade Regulations), to ensure that the Product and the transfer of Product hereunder comply therewith and with all Cap-and-Trade Regulations. In addition, Seller shall ensure the following:

(a) Costs and Expenses. During the Invalidation Term, Seller shall bear all costs and expenses of the Offset Project maintenance and operation, including all ARB and Verifier fees and expenses, royalties, license fees or other charges for licenses and intellectual property for designs, processes, equipment, technology, published or unpublished data, information or materials in connection with the Offset Project or the Delivery or sale of the Offset Credits.

(b) Double Selling. During the Invalidation Term, Seller shall not sell nor attempt to sell the Offset Credits or GHG Emission Reductions relating to the Offset Credits or any part thereof (by natural gas agreement or otherwise) to any other person or entity, including any Governmental Authority.

8.2 Cooperation and Maintenance of Records. Seller covenants to each of the following:

(a) Seller shall cooperate fully with Buyer to enable Buyer to meet Buyer's obligations to ARB and any other Governmental Authority, which obligations are dependent in whole or in part upon Buyer's receipt of assurances or documents from Seller and any third party with which Seller has contracted to produce or procure Product;

(b) Upon Buyer's request, Seller shall provide copies of its documentation and records including all documents that Buyer is required to maintain or may be required to provide to ARB in accordance with the Cap-and-Trade Regulations. Seller shall maintain adequate records to assist Buyer or ARB in meeting any present or future reporting, Verification, transfer, registration, or retirement requirements associated with the Product;

(c) Seller shall provide Buyer any application, report or other document it files with the ARB or any Governmental Authority relating to the Product, as soon as practicable after filing such documents and in the format and manner reasonably requested by Buyer; and

(d) For Transactions under which Seller is providing Offset Credits as the Product, Seller shall maintain all records for such Offset Credits, for the longer of the Invalidation Term or as required to settle or resolve any pending dispute.

ARTICLE 9 EVENTS OF DEFAULT AND EARLY TERMINATION

9.1 Event of Default. An “Event of Default” shall mean, with respect to either Party as a Defaulting Party, the occurrence of any of the following:

(a) The failure to make, when due, any payment required to be made to the other Party pursuant to this Agreement, if such failure is not remedied within three (3) Business Days after written Notice of such failure is given by the Non-Defaulting Party;

(b) Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature;

(c) The failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default), if such failure is not remedied within ten (10) days of receipt of Notice; or

(d) Such Party or its Guarantor becomes Bankrupt.

9.2 Seller Event of Default. An Event of Default shall mean with respect to Seller (as the Defaulting Party), the occurrence of any of the following (including any default by the Guarantor under Section 9.2(f)):

(a) Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity without Buyer’s written consent, which consent may be granted or withheld in Buyer’s sole discretion;

(b) Seller fails to comply with its obligations under Article 6, including failing to post or maintain the Delivery Security or applicable Invalidation Security, and such failure is not cured within three (3) Business Days after Notice from Buyer of such failure;

(c) Seller fails to obtain Second Verification and thereby reduce the Invalidation Period of the Product consistent with the requirements set forth in Section 3.7 above on or before the Deadline for Second Verification set forth in the applicable Confirmation;

(d) Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, to any party other than Buyer during the Term;

(e) More than one Seller Failure;

(f) With respect to any Guarantor:

(i) Any representation or warranty made by Guarantor in the Guaranty Agreement is false or misleading in any material respect when made or when deemed made or repeated;

(ii) The failure of Guarantor to make, when due, any payment required or to perform any other material covenant or obligation in the Guaranty Agreement, if such failure is not remedied within three (3) Business Days of receipt of Notice;

(iii) Guarantor becomes Bankrupt;

(iv) The Guaranty Agreement fails to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all of Seller's obligations hereunder to which such Guaranty Agreement relates;

(v) Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of, its Guaranty Agreement;

(vi) The occurrence and continuation of a default, event of default or other similar condition or event under one or more agreements or instruments relating to indebtedness for borrowed money, which results in the indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable; or

(g) Seller fails to satisfy its obligations set forth in Section 3.8 upon the occurrence of an applicable Invalidation Event.

9.3 Early Termination.

(a) If an Event of Default has occurred and is continuing, the party asserting an Event of Default has occurred ("Non-Defaulting Party") has the right, in its sole discretion, to do any one or more of the following:

(i) designate a day, no earlier than the day such Notice is given and no later than twenty (20) days after such Notice is given, as an early termination date (the "Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all Transactions (the "Terminated Transactions");

(ii) withhold any payments due to the Defaulting Party hereunder;

(iii) apply any Performance Assurance to the obligations of the Defaulting Party, which shall not waive any deficiency claim or further rights and remedies; and/or

(iv) otherwise suspend its performance hereunder.

(b) If the Event of Default is an Invalidation Event, then Buyer as the Non-Defaulting Party may be entitled to immediately retain for its own benefit those funds held as Invalidation Security.

9.4 Calculation of Settlement Amount. If the Non-Defaulting Party designates an Early Termination Date, then the Non-Defaulting Party shall calculate the Termination Payment and the Settlement Amount, in a commercially reasonable manner.

Gains and Losses for each Terminated Transaction shall be based upon the difference between the Contract Price of the remainder of the quantity of Product for the remainder of the Delivery Term, and the Replacement Price for the quantity of such Product; *provided* that for each Terminated Transaction for which Replacement Price cannot be determined or would not, in the reasonable belief of the Non-Defaulting Party, produce a commercially reasonable result, the Settlement Amount shall be an amount the Non-Defaulting Party reasonably determines in good faith to be its total Gains and Losses, including any loss of a bargain, with reference to such sources of information as reasonably determined appropriate by the Non-Defaulting Party, including firm or indicative quotations for replacement transactions from one or more third parties; relevant prevailing commercial term and credit support conditions; market data; and internal sources used in the regular course of business. In all cases the Gains and Losses shall be based upon replacement transactions (a) for the remaining Quantity of Product not yet Delivered, and (b) for the remainder of the applicable Delivery Term. The Non-Defaulting Party shall not be required to enter into a replacement transaction or arrangement in order to determine Gains or Losses. In no event shall the Defaulting Party be entitled to receive the Settlement Amount.

9.5 Notice of Payment of Termination Payment. Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to the Non-Defaulting Party or to the Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be due to or due from the Non-Defaulting Party, as applicable, within five (5) Business Days after such Notice is effective.

9.6 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 13.

9.7 Rights And Remedies Are Cumulative. The rights and remedies of a Party pursuant to this Article 9 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

9.8 Force Majeure. If a Party hereto is rendered unable, wholly or in part, by Force Majeure to carry out its material obligations with respect hereto, which prevents or delays performance (the "Claiming Party"), then upon Claiming Party's giving oral or informal notice and full particulars of such Force Majeure as soon as reasonably possible after the occurrence of the cause relied upon, but in no event more than five (5) Business Days after such cause has commenced, such notice to be confirmed by Notice to the other Party (the "Non-Claiming Party"), then the obligations of the Claiming Party will, to the extent they are affected by such Force Majeure, be suspended during the continuance of said inability, but for no longer period, and the Claiming Party will not be liable to the Non-Claiming Party for, or on account of, any loss, damage, injury or expense resulting from, or arising out of such event of Force Majeure. The Non-Claiming Party has until the end of the twentieth (20th) Business Day following such receipt, to provide Notice to the Claiming Party that it objects to or disputes the existence of an event of Force Majeure.

(a) Force Majeure. "Force Majeure" means any event or circumstance that wholly or partly prevents or delays the performance of any material obligation arising hereunder, but only if and to the extent (1) such event is not within the reasonable control, directly or indirectly, of the Claiming Party, (2) the Claiming Party has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on its ability to perform its obligations hereunder

and which by the exercise of due diligence the Claiming Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (3) such event is not the direct or indirect result of the negligence or the failure of, or caused by, the Claiming Party. Subject to the foregoing, events that could qualify as Force Majeure include earthquake, explosion, or other catastrophic event; or war (declared or undeclared), riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockage, insurrection, revolution, expropriation or confiscation; *provided*, however, that Force Majeure may not be based on:

- (i) Seller's ability to sell the Offset Credits for more than the Contract Price, or Buyer's ability to purchase the Offset Credits for less than the Contract Price;
- (ii) Seller's inability to obtain Project Documents or approvals of any type for the construction, operation or maintenance of the Offset Project;
- (iii) forest fire, insect infestation or disease affecting trees, plants or livestock, no matter how pervasive or destructive;
- (iv) Seller's inability to obtain sufficient fuel, power or materials to operate the Offset Project, except if Seller's inability to obtain sufficient fuel, power or materials is caused solely by an event of Force Majeure of the specific type described above;
- (v) Seller's failure to obtain additional funds or financing, including funds authorized by a Governmental Authority, to supplement the Offset Project or the Contract Price for the Offset Credits;
- (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, or any contractor or subcontractor thereof or any other third party employed by Seller to work on the Offset Project;
- (vii) any equipment failure unless such equipment failure is caused solely by an event of Force Majeure of the specific type described above; or
- (viii) a general increase in prevailing regional wages.

(b) Force Majeure Does Not Affect Other Obligations. No obligations of either Party that arose before the Force Majeure causing the suspension of performance or that arise after the cessation of the Force Majeure shall be excused by the Force Majeure.

(c) Termination for Force Majeure. The Buyer, as the Non-Claiming Party, may terminate this Agreement by Notice to Seller, as the Claiming Party, without further liability of either Party to the other Party in the event of a Force Majeure which prevents Seller from Delivering the Product for ninety (90) days from the original Delivery Date provided in the Confirmation.

ARTICLE 10 LIMITATION OF LIABILITY

10.1 Limitation of Liability. EXCEPT AS SET FORTH HEREIN, THERE ARE NO WARRANTIES BY EITHER PARTY UNDER THIS AGREEMENT, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY WILL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN

EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE.

SUBJECT TO SECTION 13.4, IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY WILL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

UNLESS EXPRESSLY PROVIDED IN THIS AGREEMENT, INCLUDING WITHOUT LIMITATION THE PROVISIONS OF SECTIONS 10.3, 10.4 AND 10.5, NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

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

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

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

10.2 No Representation by Buyer. Any review by Buyer of the Offset Project, including the design, construction or refurbishment, operation or maintenance of the Offset Project, or otherwise, is solely for Buyer's information. By making such review, Buyer makes no representation as to the economic and technical feasibility, operational capability, or reliability of the Offset Project, and Seller shall in no way represent to any third party that any such review by Buyer of the Offset Project, including, but not limited to, any review of the design, construction or renovation, operation, or maintenance of the Offset Project by Buyer, constitutes any such representation by Buyer. Seller is solely responsible for the economic and technical feasibility, operational capability, and reliability of the Offset Project.

10.3 Buyer's Indemnification Obligations. In addition to any other indemnification obligations Buyer may have elsewhere in this Agreement, which are hereby incorporated in this Section 10.3, Buyer releases, and shall indemnify, defend and hold harmless Seller, and Seller's directors, officers, employees, agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, fine, penalty or expense of any kind or nature (including any direct, damage, claim, cost, charge, demand, or expense, and attorneys' fees (including cost of in-house counsel) and other costs of litigation, arbitration and mediation, and in the case of third-party claims only, indirect and consequential loss or damage of such third-party), arising out of or in connection with any breach made by Buyer of its representations and warranties in Section 7.1.

This indemnity applies notwithstanding Seller's active or passive negligence. However, Seller will not be indemnified hereunder for its loss, liability, damage, claim, cost, charge, demand or expense to the extent caused by its gross negligence or willful misconduct.

10.4 Seller's Indemnification Obligations. In addition to any other indemnification obligations Seller may have elsewhere in this Agreement, which are hereby incorporated in this Section 10.4, Seller releases, and shall indemnify, defend and hold harmless Buyer, and Buyer's directors, officers, employees, agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, penalty, fine or expense of any kind or nature (including any direct, damage, claim, cost, charge, demand, or expense, and attorneys' fees (including cost of in-house counsel) and other costs of litigation, arbitration or mediation, and in the case of third-party claims only, indirect or consequential loss or damage of such third-party), arising out of or in connection with:

- (a) any breach made by Seller of its representations and warranties in Sections 7.1 and 7.2;
- (b) injury or death to persons, including Buyer employees, and physical damage to property, including Buyer property, where the damage arises out of, is related to, or is in connection with, Seller's construction, ownership or operation of the Offset Project (if applicable), or obligations or performance under this Agreement; or
- (c) any breach by Seller of the covenants set forth in Sections 8.1 and 8.2.

This indemnity applies notwithstanding Buyer's active or passive negligence. However, Buyer will not be indemnified under Section 10.4(a), (b) and (c) for its loss, liability, damage, claim, cost, charge, demand or expense to the extent caused by its gross negligence or willful misconduct.

10.5 Indemnification Claims. All claims for indemnification by a Party entitled to be indemnified under this Agreement (an "Indemnified Party") by the other Party (the "Indemnitor") will be asserted and resolved as follows:

- (a) If a claim or demand for which an Indemnified Party may claim indemnity is asserted against or sought to be collected from an Indemnified Party by a third party, the Indemnified Party shall as promptly as practicable give Notice to the Indemnitor; *provided*, failure to provide this Notice will relieve Indemnitor only to the extent that the failure actually prejudices Indemnitor.
- (b) Indemnitor will have the right to control the defense and settlement of any claims in a manner not adverse to Indemnified Party but cannot admit any liability or enter into any settlement without Indemnified Party's approval.
- (c) Indemnified Party may employ counsel at its own expense with respect to any claims or demands asserted or sought to be collected against it; *provided*, if counsel is employed due to a conflict of interest or because Indemnitor does not assume control of the defense, Indemnitor will bear the expense of this counsel.

10.6 Survival. All indemnity rights shall survive the termination of this Agreement.

10.7 Audit. In addition to Seller's obligations under Section 8.2, Buyer has the right, at its sole expense and during normal working hours, to examine Seller's records to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant hereto. If requested, Seller shall provide to Buyer documentation evidencing the quantity of Product delivered

under each Transaction or such other documentation to ensure that Seller has complied with the terms of the Transaction.

ARTICLE 11 CONFIDENTIALITY

Neither Party may disclose the non-public terms or conditions hereof to a third party other than (a) to the Party's Affiliates, the Party's or its Affiliates' respective employees, lenders, investors, counsel, accountants or advisors who have a need to know such information and have agreed in writing to keep such terms confidential, (b) Buyer's Procurement Review Group, as defined in CPUC Decision D. 02-08-071, subject to a confidentiality agreement, (c) to the Cal EPA, ARB, CEC, or CPUC under seal for purposes of review or advice, (d) in order to comply with any Law or any rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party") or applicable regulation, rule, or order of the Cal EPA, ARB, CPUC, CEC, or FERC ("Disclosure Order"). In connection with requests made pursuant to clause (d) of this Section, each Party shall, to the extent practicable, use reasonable efforts: (i) to notify the other Party prior to disclosing the confidential information and (ii) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (x) prohibited from complying with a Disclosure Order or (y) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at Law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The obligations under this Section shall survive termination or expiration of each Transaction for a period of three (3) years.

ARTICLE 12 GOVERNING LAW / WAIVER OF IMMUNITIES

12.1 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

12.2 Waiver of Immunities. Each Party irrevocably waives, to the fullest extent permitted by Law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (a) suit, (b) jurisdiction of any court, (c) relief by way of injunction, order for specific performance or for recovery of property, (d) attachment of its assets (whether before or after judgment) and (e) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by Law, that it will not claim any such immunity in any proceedings before any court or Governmental Authority.

ARTICLE 13 DISPUTE RESOLUTION

13.1 Dispute Resolution. Other than requests for provisional relief under Section 13.4, any and all Disputes which the Parties have been unable to resolve by informal methods after undertaking a good faith effort to do so, must first be submitted to mediation under the procedures described in

Section 13.2 below, and if the matter is not resolved through mediation, *then* for final and binding arbitration under the procedures described in Section 13.3 below.

The Parties waive any right to a jury and agree that there will be no interlocutory appellate relief (such as writs) available. Any Dispute resolution process pursuant to this Article 13 shall be commenced within one (1) year of the date of the occurrence of the facts giving rise to the Dispute, without regard to the date such facts are discovered; *provided*, if the facts giving rise to the Dispute were not reasonably capable of being discovered at the time of their occurrence, then such one (1) year period shall commence on the earliest date that such facts were reasonably capable of being discovered. If the Dispute resolution process pursuant to this Article 13 with respect to a Dispute is not commenced within such one (1) year time period, such Dispute shall be barred, without regard to any other limitations period set forth by law or statute.

13.2 Mediation. Either Party may initiate mediation by providing Notice to the other Party in accordance with Article 14 of a written request for mediation, setting forth a description of the Dispute and the relief requested.

The Parties will cooperate with one another in selecting the mediator (“Mediator”) from the panel of neutrals from Judicial Arbitration and Mediation Services, Inc. (“JAMS”), its successor, or any other mutually acceptable non-JAMS Mediator, and in scheduling the time and place of the mediation.

Such selection and scheduling will be completed within forty-five (45) days after Notice of the request for mediation.

Unless otherwise agreed to by the Parties, the mediation will not be scheduled for a date that is greater than one hundred twenty (120) days from the date of Notice of the request for mediation.

The Parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs (other than each Party’s individual attorneys’ fees and costs related to the Party’s participation in the mediation, which fees and costs will be borne by such Party).

All offers, promises, conduct and statements, whether oral or written, made in connection with or during the mediation by either of the Parties, their agents, representatives, employees, experts and attorneys, and by the Mediator or any of the Mediator’s agents, representatives and employees, will not be subject to discovery and will be confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding between or involving the Parties, or either of them, *provided*, evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

13.3 Arbitration. Either Party may initiate binding arbitration with respect to the matters first submitted to mediation by providing Notice in accordance with Article 14 of a demand for binding arbitration before a single, neutral arbitrator (the “Arbitrator”) within sixty (60) days following the unsuccessful conclusion of the mediation provided for in Section 13.2, above. If Notice of arbitration is not provided by either Party within sixty (60) days following the unsuccessful conclusion of the mediation provided for in Section 13.2 above, the Dispute resolution process shall be deemed complete and further resolution of such Dispute shall be barred, without regard to any other limitations period set forth by law or statute.

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

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

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

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

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

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

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

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

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

- (a) Before discovery commences, the Parties shall exchange an initial disclosure of all documents and percipient witnesses which they intend to rely upon or use at any arbitration proceeding (except for documents and witnesses to be used solely for impeachment);
- (b) The initial disclosure will occur within thirty (30) days after the initial conference with the Arbitrator or at such time as the Arbitrator may order;
- (c) Discovery may commence at any time after the Parties' initial disclosure;
- (d) The Parties will not be permitted to propound any interrogatories or requests for admissions;
- (e) Discovery will be limited to twenty-five (25) document requests (with no subparts), three (3) lay witness depositions, and three (3) expert witness depositions (unless the Arbitrator holds otherwise following a showing by the Party seeking the additional documents or depositions that the documents or depositions are critical for a fair resolution of the Dispute or that a Party has improperly withheld documents);
- (f) Each Party is allowed a maximum of three (3) expert witnesses, excluding rebuttal experts;

(g) Within sixty (60) days after the initial disclosure, or at such other time as the Arbitrator may order, the Parties shall exchange a list of all experts upon which they intend to rely at the arbitration proceeding;

(h) Within thirty (30) days after the initial expert disclosure, the Parties may designate a maximum of two (2) rebuttal experts;

(i) Unless the Parties agree otherwise, all direct testimony will be in form of affidavits or declarations under penalty of perjury; and

(j) Each Party shall make available for cross examination at the arbitration hearing its witnesses whose direct testimony has been so submitted.

Subject to Section 10.1, the Arbitrator will have the authority to grant any form of equitable or legal relief a Party might recover in a court action. The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms of the Agreement, that money damages would not be a sufficient remedy for any breach of these provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to specific performance and injunctive or other equitable relief as a remedy for a breach of Section 3.3, 3.7, 3.8, 6.2, 10.4 and Article 11 of this Master Agreement.

Judgment on the award may be entered in any court having jurisdiction.

The Arbitrator must, in any award, allocate all of the costs of the binding arbitration (other than each Party's individual attorneys' fees and costs related to the Party's participation in the arbitration, which fees and costs will be borne by such Party), including the fees of the Arbitrator and any expert witnesses, against the Party who did not prevail.

Until such award is made, however, the Parties will share equally in paying the costs of the arbitration.

At the conclusion of the arbitration hearing, the Arbitrator shall prepare in writing and provide to each Party a decision setting forth factual findings, legal analysis, and the reasons on which the Arbitrator's decision is based. The Arbitrator shall also have the authority to resolve claims or issues in advance of the arbitration hearing that would be appropriate for a California superior court judge to resolve in advance of trial. The Arbitrator shall not have the power to commit errors of law or fact, or to commit any abuse of discretion, that would constitute reversible error had the decision been rendered by a California superior court. The Arbitrator's decision may be vacated or corrected on appeal to a California court of competent jurisdiction for such error. Unless otherwise agreed to by the Parties, all proceedings before the Arbitrator shall be reported and transcribed by a certified court reporter, with each Party bearing one-half of the court reporter's fees.

13.4 Provisional Relief. The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms of this Agreement, that money damages would not be a sufficient remedy for any breach of these provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to seek a preliminary injunction, temporary restraining order, or other provisional relief as a remedy for a breach of Sections 3.3, 3.7, 3.8, 6.2, 10.4 and Article 11 of this Master Agreement in any court of competent jurisdiction, notwithstanding the obligation to submit all other Disputes (including all claims for monetary damages under this Agreement) to arbitration pursuant to this Article 13. The Parties

further acknowledge and agree that the results of the arbitration may be rendered ineffectual without the provisional relief.

Such a request for provisional relief does not waive a Party's right to seek other remedies for the breach of the provisions specified above in accordance with this Article 13, notwithstanding any prohibition against claim-splitting or other similar doctrine. The other remedies that may be sought include specific performance and injunctive or other equitable relief, plus any other remedy specified in this Agreement for the breach of the provision, or if the Agreement does not specify a remedy for the breach, all other remedies available at law or equity to the Parties for the breach.

13.5 WAIVER OF JURY TRIAL. TO THE FULLEST EXTENT ENFORCEABLE, AND EXCEPT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY CLAIM OR LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY. EACH PARTY HEREBY WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY MATTER ARISING HEREUNDER, OR THEREUNDER, IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED.

13.6 Consolidation of Matters. The Parties shall make diligent good faith efforts to consolidate any provisional relief, mediation, arbitration or other dispute resolution proceedings arising pursuant to this Article 13 that arise from or relate to the same act, omission or issue.

ARTICLE 14 NOTICES

Whenever this Agreement requires or permits delivery of a "Notice" (or requires a Party to "notify"), the Party with such right or obligation shall provide a written communication in the manner specified herein. Notices may be provided by courier, nationally-recognized overnight mail, facsimile or e-mail; *provided* that notice of an Event of Default or Early Termination Date shall be provided by courier or overnight mail. Notices shall be deemed given when received during normal business hours during a Business Day; otherwise the notice or communication is deemed given when received at the beginning of the next Business Day. The address of a Party to which Notice shall be given may be changed from time to time by Notice. This Section shall survive any termination or expiration hereof.

If to Buyer:

Southern California Edison Company
Attn: Director of Energy Contracts
Contract Management
2244 Walnut Grove Ave., G.O.1, Quad 1C
Rosemead, CA 91770

Phone: (626) 302-3240 Fax: (626) 302-3254

Duns: 006908818

Federal Tax ID Number: 95-1240335

Other Contacts:

Credit Risk Contact:

Attn: Manager of Credit Risk
Phone: (626) 302-3672
Credit Risk and Collateral Management
2244 Walnut Grove Ave., G.O.1, Quad 2A
Rosemead, CA 91770

Collateral Contact:

SCECollateral@sce.com

If to Seller:

Attn:

Fax:

Credit and Collections Contact:

Attn: Credit Department

Phone:

Fax:

With a copy of any Notice of an Event of Default or Potential Event of Default to:

Southern California Edison Company
Law Department, Power Procurement
2244 Walnut Grove Ave.
Rosemead, CA 91770
Attn: Director and Managing Attorney
Email: PPLegalNotice@sce.com

Invoices Contact:

Southern California Edison Company
Attn: Settlements & Operations Services – CSO
Phone: (626) 302-3277
Fax: (626) 302-3276

With a copy of any Notice of an Event of Default to:

Attn:

Fax:

Invoices Contact:

Attn:

Phone:

Fax:

**ARTICLE 15
MISCELLANEOUS**

15.1 Recordings. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, provided the Party is informed at the beginning of the telephone conversation that the conversation will be recorded, each Party consents to the creation of a tape or electronic recording (“Recording”) of all telephone conversations between the Parties’ trading and marketing personnel, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or Recording, and agrees to notify its officers and employees of such monitoring or Recording and to obtain any necessary consent of such officers and employees. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence of the Parties’ agreement with respect to a particular Transaction in the event a

Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a Confirmation, such Confirmation shall control in the event of any conflict with the terms of a Recording.

15.2 Safe Harbor. The Parties acknowledge, agree, and intend for purposes of “safe harbor” under the United States Bankruptcy Code (the “Bankruptcy Code”) that, without limitation, as applicable: (a) all Transactions constitute “forward contracts,” “forward agreements,” “emissions forward contract,” or “spot...forward...or other commodity agreement,” within the meaning of Bankruptcy Code Sections 101(25), 101(53B)(A)(i)(VII), 101(53B)(A)(i)(IX), or 101(53B)(A)(i)(II), respectively; (b) all payments made or to be made by one Party to the other Party hereunder with respect to forward contracts constitute “settlement payments,” “margin payments,” or “transfers” within the meaning of the Bankruptcy Code; (c) all transfers of Performance Assurance by one Party to the other Party hereunder constitute “margin payments” within the meaning of the Bankruptcy Code; (d) without limitation, each Party’s rights hereunder constitute a contractual right “to liquidate, terminate, or accelerate” within the meaning of the Bankruptcy Code; (e) this Agreement constitutes a “master netting agreement” and each Party is a “master netting agreement participant” within the meaning of the Bankruptcy Code; and (f) each Party is a “forward contract merchant” within the meaning of the Bankruptcy Code.

15.3 Further Assurances and Cooperation. In addition to Seller’s covenants set forth in Section 8.2, each Party agrees to execute and deliver to the other Party such other instruments, documents, and statements, and to take all other commercially reasonable actions to carry out the purposes hereof.

15.4 Counterparts. The Parties may execute this Agreement in one or more counterparts, including by facsimile transmission or electronic exchange of .pdf signature pages, each of which shall be an original, but all of which shall together constitute one instrument.

15.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion.

15.6 Amendment. This Master Agreement may not be modified, amended, altered or supplemented, except by written agreement signed by the Parties, including, with respect to a particular Transaction, a Confirmation that states it is amending this Master Agreement as provided in Section 2.3.

15.7 Independent Parties; No Third Party Beneficiaries. Nothing herein creates an agency, partnership, employer-employee relationship or corporate association between the Parties. There are no third party beneficiaries hereto and this Agreement does not confer any rights or remedies upon any person or entity not a Party hereto.

15.8 Severability and Waiver of Provisions. Any provision hereof that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions or affecting the validity or enforceability of such provision in any other jurisdiction. The non-enforcement of any provision by either Party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder hereof. No waiver of any term, provision, or conditions hereof, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or shall constitute, a waiver of any other provision hereof, whether or not similar, nor shall such waiver constitute a continuing waiver, and no waiver shall be binding unless executed in writing by the Party making the waiver.

15.9 Miscellaneous. Each Party represents that it has completely read, fully understands, and voluntarily accepts every provision hereof and has had the opportunity to engage counsel to assist in such review.

[SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the Parties have each caused this Master Agreement to be executed by their duly authorized representatives.

BUYER

SOUTHERN CALIFORNIA EDISON
COMPANY, a California corporation

SELLER

[_____, a *(include place of
formation and business type)*]

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

**EXHIBIT A to
MASTER OFFSET CREDIT PURCHASE AGREEMENT**

Form of Offset Credit Confirmation

This Confirmation confirms a Transaction under the Master Agreement by and between Southern California Edison Company (“SCE” or “Buyer”) and [_____] (“Seller”), dated [_____] (the “Master Agreement”) pursuant to which Buyer shall purchase and Seller shall sell Product to Buyer on the Delivery Dates on the terms set forth in the Master Agreement and this Confirmation (collectively the “Transaction Documents”). All capitalized terms are defined in the Master Agreement, or, if not therein, in the Cap-and-Trade Regulations, unless otherwise defined in this Confirmation.

Effective Date:	
Seller:	
Buyer:	Southern California Edison Company
Product:	ARBOCs
Vintage Year(s):	[____], or an earlier Vintage Year
Delivery Date(s):	The date on which Delivery occurs, provided that the Delivery Date must occur no later than [_____]
Contract Quantity (mt):	
Contract Price:	US[_____] (\$_____) per each ARBOC delivered OR [_____] percent] (____%) of the last ARB GHG Current Auction Clearing Price prior to Delivery
Payment:	Payment due within ten (10) Business Days of SCE’s receipt of Seller’s invoice following Delivery
Initial Delivery Security:	
Invalidation Security Amount:	
Anticipated Invalidation Term:	
Deadline for Second Verification:	

Seller shall sell to Buyer, and Buyer shall purchase from Seller, at the Contract Price, the total Contract Quantity of Product, subject to and in accordance with the terms and conditions set forth herein and in the Master Agreement. The signatures below confirm that the foregoing correctly sets forth the terms of the transaction. This Confirmation may be executed in counterparts.

Buyer: Southern California Edison Company

Seller:

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**EXHIBIT B to
MASTER OFFSET CREDIT PURCHASE AGREEMENT**

Form of Guaranty Agreement

FORM OF GUARANTY AGREEMENT (“Guaranty”)

1. **Guaranty.** For valuable consideration, [Guarantor’s legal name], [legal status] (“**Guarantor**”) guarantees payment to Southern California Edison Company, a California corporation (“**Beneficiary**”), its successors and assigns, of all amounts owed to Beneficiary by [Seller’s legal name], [legal status] (“**Principal**”) under that certain Master Offset Credit Purchase Agreement between Beneficiary and Principal dated [date], collectively with all written attachments, addenda and supplements, and Confirmations, as amended from time to time (“**Agreement**”) (said amounts are hereinafter referred to as the “**Obligations**”). Initially capitalized words that are used but not otherwise defined herein shall have the meanings given them in the Agreement. Upon the failure or refusal by Principal to pay all or any portion of the Obligations, the Beneficiary may make a demand upon the Guarantor. Such demand shall be in writing and shall state the amount Principal has failed to pay and an explanation of why such payment is due, with a specific statement that Beneficiary is calling upon Guarantor to pay under this Guaranty. Guarantor shall promptly, but in no event more than ten Business Days following demand by Beneficiary, pay such Obligations in immediately available funds. The obligations of Guarantor hereunder shall not be subject to any counterclaim, setoff, withholding, or deduction unless required by applicable law. A payment demand satisfying the foregoing requirements shall be deemed sufficient notice to Guarantor that it must pay the Obligations.

2. **Guaranty Limit.** Subject to Paragraph 13 of this Guaranty, the liability of Guarantor hereunder shall not exceed [XXX AND XX/100 Dollars](\$_____) in the aggregate, which amount shall include all interest that has accrued on any amount owed hereunder.

3. **Guaranty Absolute.** Subject to Paragraph 4 of this Guaranty, Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees as follows:

- (a) The liability of Guarantor under this Guaranty is a continuing guaranty of payment and not of collectability, and is not conditional or contingent upon the genuineness, validity, regularity or enforceability of the Agreement or the pursuit by Beneficiary of any remedies which it now has or may hereafter have under the Agreement;
- (b) Beneficiary may enforce this Guaranty upon the occurrence of an Event of Default by Principal under the Agreement notwithstanding the existence of a dispute between Beneficiary and Principal with respect to the existence of the Event of Default;
- (c) The obligations of Guarantor under this Guaranty are independent of the obligations of Principal under the Agreement and a separate action or actions may be brought and prosecuted against Guarantor whether or not any action is brought against Principal or any other guarantors and whether or not Principal is joined in any such action or actions;
- (d) Beneficiary may, at its election, foreclose on any security held by Beneficiary, whether or

not the means of foreclosure is commercially reasonable, or exercise any other right or remedy available to Beneficiary without affecting or impairing in any way the liability of Guarantor under this Guaranty, except to the extent the amount(s) owed to Beneficiary by Principal have been paid; and

- (e) Guarantor shall continue to be liable under this Guaranty and the provisions hereof shall remain in full force and effect notwithstanding:
 - (i) Any modification, amendment, supplement, extension, agreement or stipulation between Principal and Beneficiary or their respective successors and assigns, with respect to the Agreement or the obligations encompassed thereby;
 - (ii) Beneficiary's waiver of or failure to enforce any of the terms, covenants or conditions contained in the Agreement;
 - (ii) Any release of Principal or any other guarantor from any liability with respect to the Obligations or any portion thereof;
 - (iv) any release, compromise or subordination of any real or personal property then held by Beneficiary as security for the performance of the Obligations or any portion thereof, or any substitution with respect thereto;
 - (v) Without in any way limiting the generality of the foregoing, if Beneficiary is awarded a judgment in any suit brought to enforce a portion of the Obligations, such judgment shall not be deemed to release Guarantor from its covenant to pay that portion of the Obligations which is not the subject of such suit;
 - (vi) Beneficiary's acceptance and/or enforcement of, or failure to enforce, any other guaranties or any portion of this Guaranty;
 - (vii) Beneficiary's exercise of any other rights available to it under the Agreement;
 - (viii) Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of the Principal and to any corresponding restructuring of the Obligations;
 - (ix) Any failure to perfect or continue perfection of a security interest in any collateral that secures the Obligations;
 - (x) Any defenses, setoffs or counterclaims that Principal may allege or assert against Beneficiary with respect to the Obligations, including, without limitation, failure of consideration, breach of warranty, statute of frauds, statute of limitations and accord and satisfaction; and
 - (xi) Any other act or thing or omission, or delay to do any other act or thing that might in any manner or to any extent vary the risk of Guarantor as an obligor with respect to the Obligations.

4. **Termination; Reinstatement.** The term of this Guaranty is continuous until the earlier of: (i) the date on which all the obligations have been performed or paid in full under the Agreement or (ii) with regard to future transactions, the date on which Guarantor provides Beneficiary with written

notice of termination, with such termination becoming effective sixty (60) calendar days from the date Beneficiary receives such written notice from Guarantor. No such notice or termination shall release Guarantor from any liability as to any amount or performance that is owing under the Agreement as of the termination date. This Guaranty shall be reinstated if at any time following the termination of this Guaranty, any payment by Guarantor under this Guaranty or pursuant hereto is rescinded or must otherwise be returned by the Beneficiary or other person upon the insolvency, bankruptcy, reorganization, dissolution or liquidation of Principal, Guarantor or otherwise, and is so rescinded or returned to the party or parties making such payment, all as though such payment had not been made. If all or any portion of the Obligations are paid by Principal, the obligations of Guarantor hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from Beneficiary as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Obligations for all purposes under this Guaranty.

5. **Bankruptcy; Post-Petition Interest.** So long as any Obligations remain outstanding, Guarantor shall not, without the prior written consent of Beneficiary, commence or join with any other person in commencing any bankruptcy, reorganization or insolvency proceedings of or against Principal. The obligations of Guarantor under this Guaranty shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Principal or by any defense which Principal may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. Any interest on any portion of the Obligations which accrues after the commencement of any such proceeding (or, if interest on any portion of the Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Obligations if said proceedings had not been commenced) shall be included in the Obligations. Guarantor will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person to pay Beneficiary, or allow the claim of Beneficiary in respect of, any such interest accruing after the date on which such proceeding is commenced.

6. **Subrogation.** Guarantor shall be subrogated to all rights of the Beneficiary against Principal with respect to any amounts paid by the Guarantor pursuant to the Guaranty, *provided* that Guarantor postpones all subrogation rights until all Obligations have been irrevocably paid in full to the Beneficiary. If any amount shall be paid to Guarantor on account of such subrogation, reimbursement, contribution or indemnity rights at any time when all the Obligations guaranteed hereunder shall not have been indefeasibly paid in full, Guarantor shall hold such amount in trust for the benefit of Beneficiary and shall promptly pay such amount to Beneficiary.

7. **Subordination.** Any indebtedness of Principal now or hereafter held by Guarantor is hereby subordinated in right of payment to the Obligations. Guarantor assigns all such indebtedness to Beneficiary as security for this Guaranty and the Agreement. Guarantor shall make no claim for such indebtedness until all Obligations of Principal have been fully discharged. Guarantor shall not assign all or any part of such indebtedness unless Beneficiary is given prior notice and such assignment is expressly made subject to the terms of this Guaranty. If Beneficiary so requests, (i) all instruments evidencing such indebtedness shall be duly endorsed and delivered to Beneficiary, (ii) all security for such indebtedness shall be duly assigned and delivered to Beneficiary, (iii) such indebtedness shall be enforced, collected and held by Guarantor as trustee for Beneficiary and shall be paid over to Beneficiary on account of the Obligations but without reducing or affecting in any manner the liability of Guarantor under the other provisions of this Guaranty, and (iv) Guarantor shall execute, file and record such documents and instruments and take such other actions as Beneficiary deems necessary or appropriate to perfect, preserve and enforce Beneficiary's rights in and to such indebtedness and any security therefor. If Guarantor fails

to take any such action, Beneficiary, as attorney-in-fact for Guarantor, is hereby authorized to do so in the name of Guarantor. The foregoing power of attorney is coupled with an interest and cannot be revoked.

8. **Waivers of Guarantor.**

- (a) Guarantor waives, to the fullest extent permitted by law, the benefit of any statute of limitations affecting its liability under this Guaranty or the enforcement of this Guaranty.
- (b) Guarantor waives any right to require Beneficiary to proceed against or exhaust any security held from Principal or any other party acting under a separate agreement.(c) Guarantor waives all of the rights and defenses described in subdivision (a) of Section 2856 of the California Civil Code, including any rights and defenses that are or may become available to the Guarantor by reason of Sections 2787 to 2855 thereof, inclusive, whereby the terms used below shall have the following meaning: “debtor” shall mean Principal, “creditor” shall mean Beneficiary, “guarantor” shall mean Guarantor, and “debt” shall mean Obligations.
 - (i) The guarantor waives all rights and defenses that the guarantor may have because the debtor's debt is secured by real property. This means, among other things:
 - (a) The creditor may collect from the guarantor without first foreclosing on any real or personal property collateral pledged by the debtor;
 - (b) If the creditor forecloses on any real property collateral pledged by the debtor: (1) The amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; (2) The creditor may collect from the guarantor even if the creditor, by foreclosing on the real property collateral, has destroyed any right the guarantor may have to collect from the debtor.
 - (ii) This is an unconditional and irrevocable waiver of any rights and defenses the guarantor may have because the debtor's debt is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.
 - (iii) The guarantor waives all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed the guarantor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the Code of Civil Procedure or otherwise.
- (d) Guarantor assumes all responsibility for keeping itself informed of Principal’s financial condition and all other factors affecting the risks and liability assumed by Guarantor hereunder, and Beneficiary shall have no duty to advise Guarantor of information known to it regarding such risks.
- (e) Guarantor waives any defense arising by reason of the incapacity, lack of authority or any disability or other defense of the Principal, including, without limitation, any defense based on or arising out of the lack of validity or enforceability of the Obligations or by reason of the cessation of liability of the Principal under the Agreement for any reason

but full performance or payment;

- (f) Guarantor waives any defense based upon Beneficiary's errors or omissions in the administration of the Obligations;
- (g) Guarantor waives its right to raise any defenses based upon promptness, diligence, and any requirement that Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto;
- (h) Guarantor waives its right to raise any principles of law, statutory or otherwise, that limit the liability of or exonerate guarantors, provide any legal or equitable discharge of Guarantor's obligations hereunder, or which may conflict with the terms of this Guaranty;
- (i) Other than demand for payment, the Guarantor hereby expressly waives all notices between the Beneficiary and the Principal including without limitation all notices with respect to the Agreement and this Guaranty, notice of acceptance of this Guaranty, any notice of credits extended and sales made by the Beneficiary to Principal, any information regarding Principal's financial condition, and all other notices whatsoever; and
- (j) Guarantor waives filing of claims with a court in the event of the insolvency or bankruptcy of the Principal.

9. **No Waiver of Rights by Beneficiary.** No right or power of Beneficiary under this Guaranty shall be deemed to have been waived by any act or conduct on the part of Beneficiary, or by any neglect to exercise a right or power, or by any delay in doing so, and every right or power of Beneficiary hereunder shall continue in full force and effect until specifically waived or released in a written document executed by Beneficiary.

10. **Assignment, Successors and Assigns.** This Guaranty shall be binding upon Guarantor, its successors and assigns, and shall inure to the benefit of, and be enforceable by, the Beneficiary, its successors, assigns and creditors. The Beneficiary shall have the right to assign this Guaranty to any person or entity without the prior consent of the Guarantor; *provided, however*, that no such assignment shall be binding upon the Guarantor until it receives written notice of such assignment from the Beneficiary. The Guarantor shall have no right to assign this Guaranty or its obligations hereunder without the prior written consent of the Beneficiary.

11. **Representations of Guarantor.** Guarantor hereby represents and warrants that: (a) it is a *[form of legal entity]* duly organized, validly existing and in good standing in all necessary jurisdictions and has full power and authority to execute, deliver and perform this Guaranty; (b) it has taken all necessary actions to execute, deliver and perform this Guaranty; (c) this Guaranty constitutes the legal, valid and binding obligation of Guarantor, enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws effecting creditors' rights generally and to general equitable principles; (d) execution, delivery and performance by Guarantor of this Guarantee does not conflict with, violate or create a default under any of its governing documents, any agreement or instruments to which it is a party or to which any of its assets is subject or any applicable law, rule, regulation, order or judgment of any Governmental Authority; and (e) all consents, approvals and authorizations of governmental authorities required in connection with Guarantor's execution, delivery and performance of this Guaranty have been duly and validly obtained and remain in full force and effect.

12. **Financial Information.** If requested by Beneficiary, Guarantor shall deliver (a) within 120 days following the end of each fiscal year that any obligations under the Agreement are outstanding, a copy of its annual report containing its audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year, setting forth in each case in comparative form the figures for the previous year and (b) within 60 days after the end of each of its first three fiscal quarters of each fiscal year that any obligations under the Agreement are outstanding, a copy of its quarterly report containing its consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year [*if Guarantor is an SEC reporting company*: certified in accordance with all applicable laws and regulations, including without limitation all applicable Securities and Exchange Commission rules and regulations] [*OR if Guarantor is not an SEC reporting company*: certified by a Responsible Officer as being fairly stated in all material respects (subject to normal yearend audit adjustments)], *provided* however, for the purposes of this (a) and (b), if Guarantor's financial statements are publicly available electronically on the Securities and Exchange Commission's or Guarantor's website, then Guarantor shall be deemed to have met this requirement. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles. [*if Guarantor is not an SEC reporting company*: For purposes of this Section, 'Responsible Officer' shall mean the Chief Financial Officer, Treasurer or any Assistant Treasurer of Guarantor or any employee of Guarantor designated by any of the foregoing.]

13. **Attorneys' Fees.** In addition to the amounts for which payment is guaranteed hereunder, Guarantor agrees to pay reasonable attorneys' fees and all other costs and expenses incurred by Beneficiary in enforcing this Guaranty or in any action or proceeding arising out of or relating to this Guaranty. Any costs for which Guarantor becomes liable pursuant to this Paragraph 13 shall not be subject to, and shall not count toward, the guaranty limit set forth in Paragraph 2 above.

14. **Governing Law.** This Guaranty is made under and shall be governed in all respects by the laws of the State of California, without regard to conflict of law principles. If any provision of this Guaranty is held invalid under the laws of California, this Guaranty shall be construed as though the invalid provision has been deleted, and the rights and obligations of the parties shall be construed accordingly.

15. **Construction.** All parties to this Guaranty are represented by legal counsel. The terms of this Guaranty and the language used in this Guaranty shall be deemed to be the terms and language chosen by the parties hereto to express their mutual intent. This Guaranty shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under this Guaranty. No rule of strict construction will be applied against any party.

16. **Amendment; Severability.** Neither this Guaranty nor any of the terms hereof may be terminated, amended, supplemented or modified, except by an instrument in writing executed by an authorized representative of each of Guarantor and Beneficiary. If any provision in or obligation under this Guaranty shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

17. **Third Party Rights.** This Guaranty shall not be construed to create any rights in any parties other than Guarantor and Beneficiary and their respective successors and permitted assigns.

18. **Notices.** Any demand for payment, notice, request, instruction, correspondence or other document to be given hereunder by any party to another shall be made by facsimile to the person and at the address for notices specified below.

Beneficiary:

Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, CA 91770
Attn: **Manager, Credit Risk**
Phone: (626) 302.3672

with a copy to:

Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, CA 91770
Attn: _____
Phone: (626) _____
Facsimile: (626) _____

with an additional copy to:

Southern California Edison Company
2244 Walnut Grove Avenue, GO1, Quad 1C
Rosemead, CA 91770
Attn: **Manager, Power Procurement Section, Law Dept.**
Phone: (626) _____
Facsimile: (626) _____

Guarantor:

[Guarantor]
[Street]
[City, State Zip]
Attn:
Phone:
Facsimile:

Principal:

[Principal]
[Street]
[City, State Zip]
Attn:
Phone:
Facsimile:

Such notice shall be effective upon confirmation of the actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next Business Day after receipt if

receipt is outside of the recipient's normal business hours. Either party may periodically change any address to which notice is to be given it by providing notice of such change as provided herein.

[SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of _____, _____.

_____ *[legal name]*

By: _____
Name: _____
Title: _____

**EXHIBIT C to
MASTER OFFSET CREDIT PURCHASE AGREEMENT**

Form of Letter of Credit

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT

Bank Reference Number: _____

Issuance Date:

Issuing Bank:

[insert bank name and address]

Applicant:

[insert applicant name and address]

Beneficiary:

Southern California Edison Company

2244 Walnut Grove Avenue

GO#1, Quad 2A

Rosemead, CA 91770

Attn: Manager of Credit Risk

Available Amount: [insert amount and spell out]

Expiration Date: [insert date]

Ladies and Gentlemen:

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

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

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

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

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

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

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

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

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

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

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

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

Banking charges shall be the sole responsibility of the Applicant.

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

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

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

AUTHORIZED SIGNATURE for Bank

By _____

Name: [print name]_____

Title: [print title]_____

ATTACHMENT A

DRAWING CERTIFICATE

TO [ISSUING BANK NAME & ADDRESS]

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT
REFERENCE NUMBER: _____

DATE: _____

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

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

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

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

Authorized Signature for Beneficiary:

SOUTHERN CALIFORNIA EDISON COMPANY

By:

Name: [print name]

Title: [print title]

ATTACHMENT B
DRAFT

[INSERT DATE]

TO:
[ISSUING BANK NAME & ADDRESS]

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

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

[INSERT WIRING INSTRUCTION]

AUTHORIZED SIGNATURE
SOUTHERN CALIFORNIA EDISON COMPANY

NAME: [PRINT NAME]

TITLE: [PRINT TITLE]