

2013 LCR PRO FORMA

RESOURCE ADEQUACY PURCHASE AGREEMENT

**between**

**SOUTHERN CALIFORNIA EDISON COMPANY**

**and**

***[SELLER]***

***[Date]***

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**RESOURCE ADEQUCY PURCHASE AGREEMENT**

**between**

**SOUTHERN CALIFORNIA EDISON COMPANY**

**and**

***[SELLER]***

This Resource Adequacy Purchase Agreement, together with the appendices attached hereto (as amended, restated, extended, renewed, modified or supplemented from time to time, collectively, the “Agreement”) is made and entered into as of this *[\_\_\_\_]* day of *[Month]*, *[Year]* (“Effective Date”) by **SOUTHERN CALIFORNIA EDISON COMPANY**, a California corporation (“SCE” or “Buyer”), and *[****SELLER****]*, a *[Seller’s business registration]* (“*[Seller’s Shortname]*” or “Seller”). SCE and Seller are sometimes referred to herein individually as a “Party” and jointly as the “Parties”. All capitalized terms used in this Agreement are used with the meanings ascribed to them in Appendix A to this Agreement.

# RECITALS

#

This Agreement is made with reference to the following facts, among others:

1. SCE is an investor-owned electric utility serving customers in central and southern California.
2. Seller is proposing to construct and own the Project located in *[insert description of location]*, and considered to be within the area described as the *[Western Los Angeles basin or Moorpark sub-area]* in CPUC Decision 13-02-015 as a *[Western LA Basin Project or Moorpark Sub-Area Project].*
3. Seller wishes to sell and deliver exclusively to SCE, and SCE wishes to purchase, the Product under the conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of these recitals and the agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows.

# ARTICLE ONE

# Purchase and Sale of Product

## 1.01 Purchase and Sale of Product.

During the Delivery Period, Seller shall deliver and sell, and SCE shall purchase and receive and have the exclusive right to the Product, subject to the terms and conditions of this Agreement. Moreover, during the Delivery Period Seller shall not substitute or purchase any Resource Adequacy Benefits from any other generating resource or from the market for delivery hereunder.

* 1. Resource Adequacy Benefits. During the Delivery Period, Seller grants, pledges, assigns and otherwise commits to SCE all of the Product which may be used to meet RA Compliance Obligations under any Resource Adequacy Rulings. Seller represents, warrants and covenants to SCE that Seller (i) has not used, granted, pledged, assigned, sold or otherwise committed, and (ii) will not use, grant, pledge, assign, sell or otherwise commit any Product to meet the RA Compliance Obligations of, or confer Resource Adequacy Benefits upon, any entity other than SCE during the Delivery Period, except to the extent such benefits are conferred on another entity pursuant to an order of the CPUC or at the direction of SCE. Notwithstanding anything to the contrary in this Agreement, the Parties shall take all actions that may be necessary to effect the use of the Resource Adequacy Benefits of the Project in accordance with the preceding sentence throughout the Delivery Period, including, without limitation, (i) amending this Agreement and complying with all current and future Tariff provisions and decisions of the CPUC and/or any other Governmental Authority, including all Resource Adequacy Rulings that address Resource Adequacy Benefits and RA Compliance Obligations, including all performance obligations and penalties related thereto, (ii) ensuring that the Project is certified by the CAISO as being fully deliverable as of the Initial Delivery Datefor the purposes of counting all of the Product towards RA Compliance Obligations; and (iii) executing all documents and instruments, but excluding, in each case, any action which is inconsistent with any Applicable Law or any permit applicable to the Project; *provided, however*, that no such action shall require Seller to modify the Project, except to the extent set forth in Article Eight.
	2. Ownership. Seller shall maintain ownership of and demonstrable exclusive rights to the Project throughout the Term.
	3. Exclusive Rights. During the Delivery Period, SCE shall have exclusive rights to the Product and all benefits derived therefrom, including the exclusive right to use, market or sell the Product and the right to all revenues generated from the use, sale or marketing of the Product.

## 1.02 Generating Units.

* 1. CAISO Certification Test Results. Seller shall provide all CAISO Certification test results for each Generating Unit within three (3) Business Days of Seller’s receipt for any initial or subsequent test throughout the Term.
	2. Delivery of Energy. Energy from each Generating Unit shall be delivered to the Energy Delivery Point.
	3. Location of Site. *[Project Address]*, as further described in Appendix 1.03.

## 1.03 Delivery Points.

* 1. Energy Delivery Point. The Energy Delivery Point shall be the *[description],* as specified in Appendix 1.03(A).
	2. Point of Interconnection. The “Point of Interconnection” is *[insert substation name and location]*, as specified in Appendix 1.03(A).
	3. Interconnection Queue Position. *[Number(s) to be inserted]*

# ARTICLE TWO

# TERM; CONDITIONS PRECEDENT AND DELIVERY PERIOD

## Term.

 The “Term” of this Agreement shall commence upon the Effective Date, and shall continue until the expiration of the Delivery Period.

## Approval Date; Termination Related to Failure to Timely Obtain Regulatory Approval.

The “Approval Date” is the date that all the following conditions are satisfied:

1. Final CPUC Approval. Final CPUC Approval shall have been obtained. SCE shall seek Final CPUC Approval expeditiously and in good faith. As requested by SCE, Seller shall use commercially reasonable efforts to support SCE in obtaining Final CPUC Approval. SCE has no obligation to seek rehearing or to appeal a CPUC decision which fails to approve this Agreement or which contains findings required for Final CPUC Approval with conditions or modifications unacceptable to SCE.
2. Delivery of Documents. Seller shall have delivered to SCE all documents and information required under this Agreement to be delivered prior to the Approval Date.

Either Party has the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given, if Final CPUC Approval has not been obtained or waived by SCE in its sole discretion within three hundred sixty-five (365) days after SCE files its request for Final CPUC Approval and a Notice of termination is given on or before the three hundred ninety-fifth (395th) day after SCE files the request for Final CPUC Approval.

If either Party exercises its termination right pursuant to this Section 2.02, no Termination Payment will be due or owing by either Party, and Seller will be entitled to a return of any Delivery Date Security provided to SCE.

## Expected Initial Delivery Date.

Subject to adjustment made under Section 2.06(b), the Expected Initial Delivery Date for the Project is *[Date]*.

## Delivery Period.

The “Delivery Period” shall commence at 12:01 a.m. on the date that the Project achieves its Initial Delivery Date, and shall continue until the earlier of: (i) midnight on the date that is *[number of years]* years after the Expected Initial Delivery Date, (ii) an Early Termination Date designated in accordance with Section 3.03, or (iii) the date this Agreement is otherwise terminated in accordance with its terms.

The “Initial Delivery Date” shall be the first day of the first full month after all the following conditions have been satisfied for the Project:

1. Seller has completed, to SCE’s satisfaction, Seller’s obligations set forth in Sections 5.01(a) through 5.01(f), inclusive, in order to bring the Project into full operation as contemplated by this Agreement;
2. Each Generating Unit has achieved Commercial Operation;
3. Seller has received its Market-Based Rate Authority to sell the Product to SCE under the terms of this Agreement, operate the Project, sell energy from the Project, and has received all other approvals and authorizations required for Seller to perform its obligations under this Agreement;
4. Seller has executed a Participating Generator Agreement, Meter Service Agreement For CAISO Metered Entities, and any other forms or agreements required by the CAISO with respect to the Project (and delivered true and complete copies of all such forms and agreements to SCE);
5. Seller has entered into and complied in all material respects with all obligations under all interconnection agreements required to enable parallel operation of the Project with the PTO’s electric system and CAISO Grid;
6. Seller has deposited with SCE the applicable Performance Assurance pursuant to Section 12.02(c)(i);
7. Seller has executed and delivered to SCE all documents or instruments required under or requested pursuant to Article Twelve;
8. SCE shall have obtained or waived Final CPUC Approval;
9. Seller has provided SCE with certification from an independent, non-Affiliate California registered professional mechanical engineer, that (i) Seller has designed and built the Project to have a thirty (30) year design life in accordance with Accepted Electrical Practices, and (ii) the design and construction of the Project was carried out by the original equipment manufacturer or other competent organization;
10. Seller has delivered to SCE all insurance documents required under Section 22.15;
11. Seller has obtained CAISO Certification for each Generating Unit;
12. Seller has taken all actions necessary to ensure that the Project is fully deliverable, as determined by the CAISO, such that Seller is able to deliver Product in an amount equal to the Contract Capacity for RA Compliance Obligations, and Seller has delivered to SCE a certification or other documentation from the CAISO that evidences that the Project is fully deliverable for the purposes of counting towards RA Compliance Obligations; and
13. Seller has obtained a Unit NQC for each Generating Unit and the Unit NQC for each such Generating Unit is not less than 90% of the Predicted GU Capacity for such Generating Unit; and
14. Seller has obtained a Unit EFC for each Generating Unit and the Unit EFC for each such Generating Unit is not less than 90% of the Predicted GU Flexible Capacity for such Generating Unit.

The Parties agree that, in order for Seller to obtain an Initial Delivery Date, the Parties may have to perform certain of their Delivery Period obligations in advance of that Initial Delivery Date, including without limitation providing Outage Schedules and Supply Plans in advance of the Initial Delivery Date. The Parties shall cooperate with each other in order for SCE to be able to utilize the Product beginning on the Initial Delivery Date and Seller agrees to cause each Generating Unit’s SC to cooperate in order to achieve the same.

Notwithstanding any other provision in this Agreement, the Initial Delivery Date may not occur prior to the Expected Initial Delivery Date, and the Initial Delivery Date may not be later than *[Insert date that is three hundred sixty-five (365) days after the Expected Initial Delivery Date]*.

## Early Initial Delivery Date.

If the Project (or any portion thereof) reaches Commercial Operation prior to its Expected Initial Delivery Date, Seller may dispatch and sell the output of such Generating Units to third parties prior to its Expected Initial Delivery Date, provided that Seller may not sell any Resource Adequacy Benefits with respect to the Delivery Period. Seller shall have the right to all revenues generated from such sale, and will be responsible for any costs, charges, fees, fines, or penalties associated with such sale. Once the Project reaches its Initial Delivery Date, then Seller shall not provide, convey or market the Product or any Resource Adequacy Benefits associated with the Project, in each case associated with the Delivery Period, to any third party.

## Delayed Initial Delivery Date.

1. Daily Delay Damages. If Seller has not satisfied the conditions set forth in Section 2.04 for the Initial Delivery Date of the Project by the Expected Initial Delivery Date, Seller shall owe and pay to SCE the applicable Daily Delay Damages for each day of delay beyond the Expected Initial Delivery Date, up to the number of remaining days until *[Insert date that is three hundred sixty-five (365) days after the Expected Initial Delivery Date]*. [TBD Based on technology] SCE shall be entitled to recover the Daily Delay Damages owed by Seller by drawing on and/or retaining any Delivery Date Security.
2. Delays Due to Force Majeure. Subject to Section 3.02(f) and Seller’s compliance with its obligations as the Claiming Party under Section 15.02, if Seller has not satisfied the conditions set forth in Section 2.04 for the Initial Delivery Date of the Project by the Expected Initial Delivery Date due to Force Majeure, then the Expected Initial Delivery Date will be extended on a day-for-day basis for the duration of the Force Majeure.

## No Liability of SCE.

SCE shall have no liability to Seller, regardless of cause (including any act or omission of SCE, including as buyer under this Agreement or as a PTO) for (a) any delay or failure by Seller to achieve the Initial Delivery Date by the Expected Initial Delivery Date, (b) any costs or damages incurred by Seller as a result thereof or any reduction in Seller’s Monthly Capacity Payments for any Generating Unit resulting from any delay in achieving the Initial Delivery Date by the Expected Initial Delivery Date, or (c) a reduction in the Term or the Delivery Period.

## Seller’s Queue Position.

Seller must not withdraw the Interconnection Queue Position identified in Section 1.03(c) or assign or transfer that Interconnection Queue Position to any entity or for the benefit of any other agreement other than this Agreement without SCE’s prior written consent.

# ARTICLE THREE

# EVENTS OF DEFAULT; REMEDIES; TERMINATION

## Events of Default.

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

1. 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;
2. 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;
3. The failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default and except for any failure to obtain all Required Permits on or before the Required Permit Date), if such failure is not remedied within five (5) Business Days of receipt of Notice; or
4. Such Party becomes Bankrupt.

## Seller Events of Default.

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

1. Seller fails to comply with any of its affirmative covenants under Sections 16.02 and 16.03 or its negative covenants under Section 16.04, unless such failure to comply is cured within a period specifically provided elsewhere in this Agreement applicable to such failure to comply;
2. Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity without SCE’s written consent, which consent may be granted or withheld in SCE’s sole discretion;
3. Seller fails to comply with its obligations under Article Twelve, including failing to post or maintain the Delivery Date Security or applicable Performance Assurance, within three (3) Business Days after receipt of Notice by SCE of the failure;
4. Seller makes any material misrepresentation or omission in any report, including any status report, or the Milestone Schedule (including the log, records and reports required under Sections 8.01(b), 8.01(c), 8.01(d), 16.03(h) and 16.03(i), Appendix 6.01(A), and Appendix 6.01(B)) required to be made or furnished by Seller pursuant to this Agreement;
5. Except as described in Section 1.01(a), 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 SCE during the Delivery Period;
6. Seller fails to achieve the Initial Delivery Date for the Project by *[Date that is three hundred sixty-five days after the Expected Initial Delivery Date]*, whether due to Force Majeure or otherwise;
7. A termination of, or cessation of service under, any agreement necessary for Seller to (i) interconnect the Project to the PTO’s electric system, (ii) transmit the electric energy on the PTO’s electric system, (iii) comply with the Tariff; *provided*, if termination of, or cessation of service under, any such agreement is not due to the fault of Seller, Seller shall have ten (10) days from such termination or cessation to cure such default;
8. The stock or equity ownership interests in Seller or assets of Seller are directly or indirectly pledged or assigned, or caused or permitted to be pledged or assigned, as collateral to any party other than Lender, without SCE’s prior written consent, which consent may be granted or withheld in SCE’s reasonable discretion;
9. Seller fails to maintain its PGA or MSA during the Delivery Period and such failure is not cured within ten (10) days of termination of the PGA or MSA, as applicable;
10. By the Required Permit Date, Seller fails to obtain all of the Required Permits, or all applicable appeal periods for such approvals or permits have not expired;
11. Seller fails to comply with any of its obligations under Sections 8.02(b), 8.02(c), or 8.02(f);
12. Seller fails to comply with any of its obligations under Sections 8.02(d);
13. Subject to the terms of a Collateral Assignment Agreement, 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 of Seller, which results in the indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable;
14. Except as permitted under Article Thirteen, Seller does not own or otherwise have control of the Project;
15. Seller intentionally or knowingly delivers, or attempts to deliver Resource Adequacy Benefits for sale under this Agreement that are not associated with the Project;
16. Seller removes from the Site equipment upon which the Contract Capacity has been based, except for the purposes of replacement, refurbishment, repair or maintenance, and the equipment is not returned within five (5) Business Days after Notice from SCE;
17. Seller fails to take any actions necessary to dedicate, convey or effectuate the use of any and all Resource Adequacy Benefits as specified under Section 1.01(a); or
18. Seller violates SCE’s Generating Unit Removal Right by marketing, dispatching, providing, or conveying output from the affected Generating Units.

## 3.03. Early Termination Date.

If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the “Non-Defaulting Party”) shall have the right, by delivery of Notice to the Defaulting Party, to (a) designate a day, no earlier than the day such Notice is effective and no later than twenty (20) days after such Notice is effective, as an “Early Termination Date,” and to terminate this Agreement as of the Early Termination Date, (b) accelerate all amounts owing between the Parties under this Agreement, (c) withhold any payments due to the Defaulting Party under this Agreement, and (d) suspend performance pending termination of this Agreement. The Non-Defaulting Party shall also have the right to pursue any other remedies available at law or in equity, including, where appropriate, specific performance or injunctive relief to the extent permitted under Article Nineteen.

## 3.04. Calculation of Termination Payment.

If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the “Termination Payment” in accordance with this Section 3.04.

1. Termination Payment Prior to Initial Delivery Date. If the Early Termination Date occurs before the Initial Delivery Date, then the Termination Payment shall be calculated in accordance with this Section 3.04(a).
	* 1. If Seller is the Defaulting Party, then the Termination Payment shall be owed to SCE and shall be equal to the entire Delivery Date Security amount. SCE shall be entitled to immediately retain for its own benefit those funds held as Delivery Date Security, and any amount of Delivery Date Security that Seller has not yet posted with SCE will be immediately due and payable by Seller to SCE. There will be no amounts owed to Seller. The Parties agree that SCE’s damages in the event of an Early Termination Date prior to the Initial Delivery Date caused by Seller’s default would be difficult or impossible to determine and that the damages set forth in this Section 3.04(a)(i) are a reasonable approximation of SCE’s harm or loss.
		2. If SCE is the Defaulting Party, then the Termination Payment shall be owed to Seller and shall equal the sum of the actual, documented and verifiable costs incurred by Seller between the Effective Date and the Early Termination Date in connection with the Project, less the fair market value (determined in a commercially reasonable manner) of (A) all the Project’s assets individually, or (B) the entire Project, whichever is greater, regardless of whether or not any Project asset or the entire Project is actually sold or disposed of; provided, in no case shall such Termination Payment be greater than [SCE Note: $TBD] or be less than zero dollars ($0). There will be no amount owed to SCE. The Parties agree that Seller’s damages in the event of an Early Termination Date prior to the Initial Delivery Date caused by SCE’s default would be difficult or impossible to determine and that the damages set forth in this Section 3.04(a)(ii) are a reasonable approximation of Seller’s harm or loss.
2. Termination Payment After The Initial Delivery Date Occurs. If the Early Termination Date occurs after the Initial Delivery Date, then the Termination Payment shall be calculated in accordance with this Section 3.04(b). The Termination Payment shall equal the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement, including a Forward Settlement Amount (if any), less any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date.

In addition, if SCE is the Non-Defaulting Party and SCE reasonably expects to incur penalties, fines or costs from the CPUC, the CAISO, or any other Governmental Authority having jurisdiction, because SCE will not be able to include the Product in any applicable RA Compliance Showing or towards its RA Compliance Obligations as a result of Seller’s Event of Default, then SCE may, in good faith, estimate the amount of those penalties, fines and costs and include this estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines and costs are finally ascertained. SCE shall use commercially reasonable efforts to minimize such fines and penalties; *provided*, in no event will SCE be required to use or change the utilization of its owned or controlled assets or market positions to minimize the fines and penalties. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, shall survive the termination of this Agreement and shall continue until after those penalties, fines and costs are finally ascertained.

## 3.05. Notice of Termination Payment.

As soon as practicable after an Early Termination Date is declared, the Non-Defaulting Party shall provide Notice to the Defaulting Party of the Termination Payment.

The Notice must include a written statement setting forth, in reasonable detail, the calculation of such Termination Payment, together with appropriate supporting documentation.

If the Termination Payment is owed to the Non-Defaulting Party, then the Defaulting Party shall pay such amount to the Non-Defaulting Party within five (5) Business Days after the Notice is provided. If the Termination Payment is owed to the Defaulting Party, then the Non-Defaulting Party shall pay such amount to the Defaulting Party within thirty (30) days after the Notice is provided.

The Parties shall negotiate in good faith to resolve any Disputes regarding the calculation of the Termination Payment. Any Disputes which the Parties are unable to resolve through negotiation may be submitted for resolution through mediation and arbitration as provided in Article Nineteen.

##  3.06. Limitation on Seller’s Ability to Make or Agree to Third Party Sales from the Project after Early Termination Date.

If the Agreement is terminated by SCE prior to the Initial Delivery Date due to Seller’s Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product or Resource Adequacy Benefits associated with or attributable to any Generating Unit or the Project to a party other than SCE for a period of two (2) years following the Early Termination Date due to Seller’s Event of Default, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than SCE, Seller or Seller’s Affiliates provides SCE with a written offer to sell the Resource Adequacy Benefits and Product to SCE which provides SCE the right to select in its sole discretion to purchase such Resource Adequacy Benefits and Product on either the terms and conditions materially similar to the terms and conditions contained in this Agreement or the terms and conditions to which the third party agreed, and SCE fails to accept such offer within forty-five (45) days of SCE’s receipt thereof.

Neither Seller nor Seller’s Affiliates may sell or transfer the Project, or any part thereof, or land rights or interests in the Site (including the Interconnection Queue Position) so long as the limitations contained in this Section 3.06 apply, unless the transferee agrees to be bound by the terms set forth in this Section 3.06 pursuant to a written agreement approved by SCE.

Seller shall indemnify and hold SCE harmless from all benefits lost and other damages sustained by SCE as a result of any breach by Seller of its covenants contained within this Section 3.06.

## 3.07. Effect of Termination.

Termination of this Agreement shall not operate to discharge any liability which has been incurred by either Party prior to the effective date of such termination.

# ARTICLE FOUR

TRANSMISSION

## 4.01. Interconnection Studies.

Seller represents and warrants that, as of the Effective Date, Seller has provided SCE with true and correct, up-to-date copies of all of the Interconnection Studies to enable delivery of the Generating Units’ output to the Point of Interconnection pursuant to Applicable Law and to enable Seller to provide the Product to Buyer. Seller shall be responsible for all fees and costs associated with the following:

1. Obtaining all Interconnection Studies;
2. Maintaining, complying with and performing Seller’s obligations under the interconnection agreement and related documents throughout the Delivery Period;
3. Funding for any Network Upgrades associated with or attributable to the Project (any refund of such fees and costs will be consistent with the Tariff);
4. Any Interconnection Facilities that are installed for the purpose of interconnecting the Project with existing transmission or distribution systems; and
5. All costs (including interconnection costs and transmission losses) arising from, relating to or associated with any WDAT interconnection agreement between Seller and SCE under which Energy from the Project is transmitted to the CAISO Grid.

## 4.02. Termination Rights of SCE.

SCE has the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given to Seller, on or before the date that is sixty (60) days after Seller provides to SCE the results of any Interconnection Study or the interconnection agreement tendered to Seller by the PTO if:

1. Such Interconnection Study or agreement as of the date of the termination Notice, estimates, includes, specifies or reflects that the maximum total cost of transmission upgrades or new transmission facilities to SCE, or any PTO under the jurisdiction of the CAISO, including costs reimbursed by SCE, or any PTO under the jurisdiction of the CAISO, to Seller (“Aggregate Network Upgrade Costs”), may in the aggregate exceed *[dollar amount text]* dollars ($*[Number]*) (“Network Upgrades Cap”), irrespective of any subsequent amendments of such Interconnection Study or agreement or any contingencies or assumptions upon which such Interconnection Study or agreement is based; or *{SCE Note: Monetary threshold to be based upon transmission-related costs allocated to the Project that SCE would incur as estimated in the most recent Interconnection Study.}*

Notwithstanding anything to the contrary in this Section 4.02, SCE shall have no right to terminate this Agreement under this Section 4.02, if Seller, concurrently with its provision of the relevant Interconnection Study or agreement pursuant to Section 6.02(a), irrevocably agrees that Seller shall owe to SCE the amount by which the Aggregate Network Upgrade Costs exceed the Network Upgrades Cap (“Excess Network Upgrade Costs”). If Seller elects to pay, without reimbursement, for the Excess Network Upgrade Costs pursuant to this Section 4.02, in no event shall Seller have any interest in or rights or title to any Network Upgrades or Congestion Revenue Rights in connection with the development of the Project or the delivery of Product to SCE pursuant to this Agreement.

If SCE exercises its termination right pursuant to this Section 4.02, no Termination Payment will be due or owing by either Party and Seller will be entitled to a return of any Delivery Date Security provided to SCE.

## 4.03. Acknowledgment.

Seller acknowledges and agrees that (a) nothing in this Article Four is intended to abrogate, amend or modify the terms of any other agreement between it and SCE, including without limitation, the interconnection agreement, and (b) no breach under such other agreement shall excuse a Party’s nonperformance under this Agreement, unless the breach of such other agreement is also an Event of Default under this Agreement.

# ARTICLE FIVE

# DESIGN AND CONSTRUCTION OF GENERATING UNITS

[Subject to change based on technology]

## 5.01. Seller’s Obligations.

At no cost to SCE, Seller shall:

1. Design and construct, or refurbish the Project as required for Seller to perform its obligations under this Agreement;
2. Within *[number] [#]* days prior to the Expected Initial Delivery Date, Seller shall file all applications or other appropriate requests to acquire and maintain all permits, licenses, certifications and approvals necessary for the construction or refurbishment, operation and maintenance of the Project (the “Required Permits”), including (a) permits to construct from the applicable Air Pollution Control District, or a Facility and Site Certification from the California Energy Commission (pursuant to California Public Resources Code Sections 25500-25543), as applicable, and (b) Emission Reduction Credits and Marketable Emission Trading Credits (including any PM10, Sox and CO emission offsets pursuant to South Coast Air Quality Management District Rule 1309.1 – Priority Reserve as amended on September 8, 2006), and obtain all Required Permits on or before *[Date]* (the “Required Permit Date”);
3. As applicable, complete all environmental impact assessments or studies conducted by or for Governmental Authorities pursuant to regulatory programs approved and certified under the California Environmental Quality Act, or environmental impact statements or studies conducted pursuant to the National Environmental Policy Act including obtaining public review and certification of any final documents relating to any environmental impact assessment or studies;
4. As required to achieve Commercial Operation for each Generating Unit, furnish and install all Protective Apparatus as SCE reasonably determines to be necessary for proper and safe operation of the Project in parallel with the PTO’s electric system or CAISO Grid;
5. Pay all costs related to acquiring rights of way and upgrades to transportation facilities and construction of facilities required to interconnect each Generating Unit to the natural gas transportation system, if applicable, consistent with all standards and provisions set forth by the FERC, CPUC, California Department of Transportation or any other applicable Governmental Authority and the interconnecting gas transportation owner, or other utility services described in Section 6.03(c);
6. Provide to SCE, prior to commencement of any construction activities on the Site, a report from an independent engineer (acceptable to both SCE and Seller) certifying that Seller has a written plan for the safe construction and operation of the Project in accordance with Accepted Electrical Practices; and
7. Throughout the Delivery Period, maintain all permits, licenses, certifications and approvals necessary for the operation and maintenance of the Project.

## 5.02. Changes in Operational Characteristics.

Seller shall provide to SCE, Notice of any changes in the operational characteristics of the Project for SCE’s review as far in advance as practicable, but in no event less than thirty (30) days before the changes are to be made. Seller acknowledges that provision of Notice under this Section 5.02 is for SCE’s information only and that by receiving such Notice, SCE makes no representation as to the economic or technical feasibility, operational capacity or reliability of any changes in the operational characteristics of the Project.

## 5.03. EPC Contractor.

Seller shall provide SCE with Notice of the name and address of Seller’s EPC Contractor on the later of the Effective Date or the first (1st) Business Day after Seller enters into a contract with an EPC Contractor. If Seller does not have an EPC Contractor selected by the Approval Date, Seller shall provide SCE with a shortlist of candidates by the Approval Date.

# ARTICLE SIX

# CONSTRUCTION PERIOD AND MILESTONES

[Subject to change based on technology]

## 6.01. Milestone Schedule.

In order to meet the Expected Initial Delivery Date, Seller shall use reasonable efforts during the construction period to meet the various Project related milestones set forth in Appendix 6.01(A) (“Milestone Schedule”) and avoid or minimize any delays in meeting such Milestone Schedule. No later than the tenth (10th) day of each month while the Project has not yet met its Initial Delivery Date, or within five (5) days of SCE’s request, Seller shall deliver to SCE a monthly progress report, substantially in the form set forth in Appendix 6.01(B) (“Construction Report”), describing its progress in relation to the Milestone Schedule, including projected time to completion of any milestones, for each Generating Unit and the Project. Seller shall include in any Construction Report a list of all letters, notices, applications, approvals, authorizations and filings referring or relating to Required Permits, and shall provide any such other documents as may be reasonably requested by SCE. In addition, Seller shall advise SCE, as soon as reasonably practicable, of any problems or issues of which Seller is aware which could materially impact its ability to meet the Milestone Schedule.

## 6.02. Provision of Information.

During the Term, Seller shall promptly provide SCE copies of:

1. Within ten (10) Business Days of receipt thereof, any Interconnection Study or the interconnection agreement tendered to Seller by the PTO and, concurrently with the provision of the first Interconnection Study or interconnection agreement tendered to Seller by the PTO that may give rise to a termination right of SCE under Section 4.02, Seller shall also provide SCE a Notice of Seller’s irrevocable election to exercise or not exercise its right to assume financial responsibility for any Excess Network Upgrade Costs pursuant to Section 4.02, with a failure to provide such an election deemed to be an election not to exercise such rights;
2. All agreements with providers of engineering, procurement, or construction services for the Project and all amendments thereto, including any EPC Contract (which may be redacted by Seller to eliminate any portions reasonably believed by Seller to contain confidential information);
3. Any reports, studies, or assessments done for Seller by an independent engineer; and
4. No later than twenty (20) days after each semi-annual period ending on June 30th and December 31st, a report listing all WMDVBEs that supplied goods or services to Seller during such period, including any certifications or other documentation of such WMDVBEs’ status as such and the aggregate amount paid to WMDVBEs during such period.
5. SCE has the right to disclose to the CPUC all such information provided by Seller pursuant to this Section 6.02(d).
6. Seller shall make reasonable efforts to accommodate requests by the CPUC (or by SCE in response to a request by the CPUC) to audit Seller in order to verify data provided by Seller pursuant to this Section 6.02(d).

## 6.03. Inspection Rights.

SCE shall have the right at any time during the Term to enter onto the Site during normal business hours on any Business Day to inspect the Project and otherwise inspect or audit Seller’s EPC Contracts and its books and records in order to verify Seller’s compliance with the Milestone Schedule and other obligations under this Agreement. Seller shall, or shall cause its EPC Contractors to, provide SCE with access to the Site and all applicable documents and records in order to permit SCE to determine whether:

1. Seller has obtained and maintained all Required Permits, and that such Required Permits do not contain Permit Requirements that might restrict SCE’s ability to obtain the benefits of the Product;
2. All contracts described in Section 6.02(a) and 6.02(b) have been entered into and become effective on a timely basis and Seller is not in default thereunder; and
3. All contracts or other arrangements necessary to interconnect the Project (including transmission arrangements as contemplated in Article Four, electrical, gas, water supply and waste disposal) have been entered into and become effective on a timely basis pursuant to the Milestone Schedule and Seller is not in default thereunder.

# ARTICLE SEVEN

# COMMISSIONING AND TESTING

##  7.01. RA Capacity Qualification Testing.

(a) Initial and Periodic Testing.

(i) Initial Delivery Date Testing. Prior to the Initial Delivery Date, Seller shall, or shall cause each Generating Unit’s SC to, schedule and complete, at Seller’s cost, all RA Capacity Qualification Tests for each Generating Unit and provide all information required by CAISO, the CPUC or any other applicable Governmental Authority pursuant to any Applicable Laws, including without limitation the Tariff, in order for each Generating Unit to obtain a Unit NQC and Unit EFC. Seller shall use commercially reasonable efforts to undertake such activities in sufficient time to achieve the Initial Delivery Date by the Expected Initial Delivery Date.

(ii) Seller Periodic Testing. During the Delivery Period Seller (A) may itself elect to schedule and complete RA Capacity Qualification Tests at any time and (B) shall schedule and complete any RA Capacity Qualification Tests required by CAISO, the CPUC or any other applicable Governmental Authority pursuant to any Applicable Laws.

(iii) SCE Periodic Testing. Once per Contract Year after the initial Contract Year, upon SCE’s request, Seller shall, or shall cause each Generating Unit’s SC to, schedule and complete, at Seller’s cost, an RA Capacity Qualification Test for each Generating Unit and provide all information required by CAISO, the CPUC or any other applicable Governmental Authority pursuant to any Applicable Laws, including without limitation the Tariff, in order for each Generating Unit to obtain an updated Unit NQC and Unit EFC. In connection with such a request SCE may request that Seller shall cause each Generating Unit’s SC to propose to the CAISO that the Unit NQC or Unit EFC for any Generating Unit be changed. Seller agrees that in such a case Seller shall, or shall cause each Generating Unit’s SC to, take all actions required under the Tariff to obtain a new Unit NQC and Unit EFC for such Generating Units, including providing any documentation necessary to justify and support such request in accordance with the Tariff.

(b) Testing Costs. Seller is responsible for all costs associated with all RA Capacity Qualification Tests conducted pursuant to this Article Seven and all costs associated with providing any information required to be provided under this Article Seven.

(c) Testing Notification and Attendance. Seller shall provide SCE with at least seven (7) Business Days’ Notice of Seller’s proposed dates for all RA Capacity Qualification Tests, including any RA Capacity Qualification Tests required by CAISO, the CPUC or any other applicable Governmental Authority pursuant to any Applicable Laws. SCE shall be entitled to have at least one (1) representative from SCE and one (1) independent third party witness present to witness each RA Capacity Qualification Test and such persons shall be allowed unrestricted access to the area from where the plant is being controlled (e.g., plant control room), and unrestricted access to inspect the instrumentation necessary for test data acquisition prior to commencement of any test. SCE shall be responsible for all costs, expenses and fees payable or reimbursable to the SCE representative and the third party, if any.

(d) Testing Results Notification. Seller shall provide all RA Capacity Qualification Tests results for each Generating Unit within three (3) Business Days of Seller’s receipt for any such test throughout the Term. Within fifteen (15) Business Days after the completion of any RA Capacity Qualification Test, Seller shall prepare and submit to SCE a written report of such test. At a minimum, the report shall include: (i) a record of any unusual or abnormal conditions or events that occurred during such test and any actions taken in response thereto, and (ii) the measured data.

(e) Updated Unit NQC or Unit EFC. Seller shall notify SCE within three (3) Business Days after it, or the Generating Unit’s SC, receives notice from the CAISO, or Seller or the Generating Unit’s SC becomes aware, that the Unit NQC or Unit EFC of any Generating Unit has changed, regardless of whether there is an increase or decrease in any such Unit NQC or Unit EFC.

## 7.02. CAISO Certification.

Pursuant to Section 2.04(k), Seller is required to obtain CAISO Certification for each Generating Unit; *provided*, nothing in this Agreement, including the appendices hereto, shall be amended to reflect the outcome of any CAISO Certification.

# ARTICLE EIGHT

# SELLER’S OPERATION, MAINTENANCE AND REPAIR OBLIGATIONS

[Subject to change based on technology]

## 8.01. Seller’s Operation Obligations.

1. Seller shall operate the Project in accordance with Accepted Electrical Practices, Applicable Laws, Permit Requirements and applicable California utility industry standards, including the standards established by the California Electricity Generation Facilities Standards Committee pursuant to Public Utilities Code Section 761.3 and enforced by the CPUC, and CAISO mandated standards (collectively, “Industry Standards”).
2. Seller shall maintain all records applicable to each Generating Unit, including, without limitation, a daily log of maintenance performed, outages, changes in operating status, inspections and any other significant events related to the operation of each Generating Unit. Information maintained pursuant to this Section 8.01(b) shall be provided to SCE, within fifteen (15) days of SCE's request.
3. Seller shall maintain and provide to SCE, within fifteen (15) days of SCE’s request, accurate records with respect to all RA Capacity Qualification Tests, including the outcomes of such tests.
4. Seller shall maintain and make available to SCE and the CPUC, or any division thereof, records including logbooks, demonstrating that the Project is operated and maintained in accordance with Accepted Electrical Practices, Applicable Laws, Permit Requirements and Industry Standards, including CPUC General Order 167. Seller shall comply with all reporting requirements and permit on-site audits, investigations, tests and inspections permitted or required under any Applicable Laws, Permit Requirements, or Industry Standards.
5. SCE or the CAISO may require Seller, at Seller’s expense, to demonstrate to SCE’s reasonable satisfaction the correct calibration and operation of Seller’s Protective Apparatus any time SCE or the CAISO has reason to believe that said Protective Apparatus may impair the integrity of the PTO’s electric system or CAISO Grid.

## 8.02. Seller’s Maintenance and Repair Obligations.

1. Seller shall inspect, maintain and repair the Project in accordance with applicable Industry Standards. Seller shall maintain, and deliver to SCE upon request, maintenance and repair records of each Generating Unit.
2. Subject to Section 8.02(c), Seller shall promptly make all necessary repairs to the Project and take all actions necessary in order to provide the Product to SCE in accordance with the terms of this Agreement.
3. In the event that the currently effective Unit NQC of any single Generating Unit is at any time, less than or equal to seventy-five percent (75%) of the applicable GU Capacity for such Generating Unit or the currently effective Unit EFC of any single Generating Unit is at any time, less than or equal to seventy-five percent (75%) of the applicable GU Flexible Capacity for such Generating Unit, then, in each such case, Seller shall repair such Generating Unit in accordance with Accepted Electrical Practices and the procedure set forth in this Section 8.02. Within fourteen (14) days of any such failure, Seller shall complete a Successful Repair or present to SCE a description of the reason for the failure and a plan and schedule for completing a Successful Repair (the “Repair Plan”).
4. If SCE and Seller disagree about the Repair Plan, SCE may, at its expense, hire an independent third party engineering firm reasonably acceptable to Seller (the “Independent Engineer”, or “IE”), to perform an on-site assessment of the situation and make recommendations for completing a Successful Repair. Upon two (2) Business Days’ Notice by SCE, Seller shall grant the IE and SCE personnel access to the Generating Units and all relevant information including log books, maintenance records and reports, and other applicable materials. If, after seven (7) days of the delivery to Seller of the IE’s engineering report, Seller fails, in any material respect to meet the IE’s recommendations (as such recommendations may be updated from time to time by the IE) for the Successful Repair, or make sufficient progress in effecting same, in each case as determined and reported by the IE, consistent with Industry Standards, SCE shall have the right in its sole discretion to (i) exercise its Generating Unit Removal Right; or (ii) declare an Event of Default pursuant to Section 3.02(l).
5. If an Event of Default pursuant to Section 3.02(k) has occurred, then SCE shall have the right in its sole discretion to (i) exercise its Generating Unit Removal Right; or (ii) declare an Event of Default pursuant to Section 3.02(k).
6. Seller shall not allow (i) the Unit NQC of any Generating Unit to fall below seventy-five percent (75%) of the applicable GU Contract Capacity for such Generating Unit on average for a period of six (6) months (or such longer cure period identified as reasonable under the circumstances in the written report of an IE engaged by SCE) due to Force Majeure if the IE has determined in its written report that Seller should reasonably have been able to achieve a Successful Repair of the Generating Unit prior to the expiration of such six (6) month period (or longer cure period identified in the IE’s written report), or (ii) the Unit EFC of any Generating Unit to fall below seventy-five percent (75%) of the applicable GU Flexible Capacity for such Generating Unit on average for a period of six (6) months (or such longer cure period identified as reasonable under the circumstances in the written report of an IE engaged by SCE) due to Force Majeure if the IE has determined in its written report that Seller should reasonably have been able to achieve a Successful Repair of the Generating Unit prior to the expiration of such six (6) month period (or longer cure period identified in the IE’s written report).

# ARTICLE NINE

# Product delivery obligations

## 9.01. Product.

Seller shall provide Buyer with the Product each day of each Showing Month that is part of the Delivery Period.

## 9.02. Adjustments to Product Provided.

(a) Planned Outages: Seller’s obligation to deliver the Product for each day of each Showing Month may be reduced by the amount of any Planned Outages which exist with respect to any portion of any Generating Unit during the applicable Showing Month for the applicable days of such Planned Outages. Seller shall notify, no later than fifteen (15) Business Days before the relevant deadlines for the corresponding RA Compliance Showings applicable to that Showing Month, of the amount of Product (in MWs) from the Generating Units that Buyer is permitted to include in Buyer’s RA Compliance Showings applicable to that month as a result of such Planned Outage.

(b) Reductions in Unit NQC: Subject to Section 8.02, Seller’s obligation to deliver the Product for each Showing Month may also be reduced in the event any of the Generating Units experiences a reduction in Unit NQC after the Initial Delivery Date as determined by the CAISO.

## 9.03. Delivery of Product.

Seller shall provide Buyer with the Expected Contract Quantity for each day of each Showing Month consistent with the following:

(a) Seller shall, on a timely basis, submit, or cause the Generating Unit’s SC to submit, Supply Plans in accordance with the Tariff, and any other decisions or orders of the CPUC associated with providing the Product under this Agreement, to identify and confirm the Expected Contract Quantity provided to Buyer for each day of each Showing Month so that the total amount of Expected Contract Quantity identified and confirmed for each day of such Showing Month equals the Expected Contract Quantity for such day of such Showing Month.

(b) Seller shall or shall cause the Generating Unit’s SC to (i) submit written notification to Buyer, no later than fifteen (15) Business Days before the applicable RA Compliance Showing deadlines for each Showing Month, that Buyer will be credited with the Expected Contract Quantity for each day of such Showing Month in the Generating Unit’s SC Supply Plan so that the credited Expected Contract Quantity for each day of the Showing Month equals the Expected Contract Quantity for such day of such Showing Month.

## 9.04. Indemnities for Failure to Deliver Expected Contract Quantity.

Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

(a) Seller’s failure to provide any portion of the Expected Contract Quantity for any portion of the Delivery Period;

(b) Seller’s failure to provide notice of the non-availability of any portion of the Expected Contract Quantity for any portion of the Delivery Period as required under Section 9.03; or

(c) A Generating Unit’s SC’s failure to timely submit Supply Plans that identify Buyer’s right to the Expected Contract Quantity purchased hereunder for each day of the Delivery Period;

(d) A Generating Unit SC’s failure to submit accurate Supply Plans that identify Buyer’s right to the Expected Contract Quantity purchased hereunder for each day of the Delivery Period.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Agreement.

## 9.05. Buyer’s Re-Sale of Product.

Buyer may re-sell all or a portion of the Product and any associated rights, in each case, acquired under this Agreement. In the event Buyer re-sells all or a portion of the Product and any associated rights acquired under this Agreement (“Resold Product”) Seller agrees, and agrees to cause the Generating Unit’s SC, to follow Buyer’s instructions and the Tariff with respect to providing such Resold Product to subsequent purchasers of such Resold Product. Seller further agrees, and agrees to cause the Generating Unit’s SC, to take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product. Seller acknowledges and agrees that with respect to any Resold Product, if Buyer incurs any liability to any purchaser of such Resold Product due to the failure of Seller or the Generating Unit’s SC to comply with the terms of this Agreement, and Seller would have had liability to Buyer under this Agreement for such failure had Buyer not sold the Resold Product to a subsequent purchaser, then Seller shall be liable to Buyer under this Agreement, including without limitation, pursuant to Section 9.04, for the amounts it would have been liable to Buyer for had such Resold Product not been sold to a subsequent purchaser.

## 9.06. Post-Showing Replacement Capacity.

In the event CAISO determines, in accordance with the Tariff, that any portion of the Expected Contract Quantity for any portion of a Showing Month which was shown by Buyer in its RA Compliance Showings requires outage replacement in accordance with Section 40.7 of the Tariff (“Shortfall Capacity”), Seller’s Monthly Capacity Payment will be reduced in accordance with Section 10.01 below and, neither Seller, nor the Generating Unit’s SC (unless the Generating Unit’s SC is Buyer), shall have the right to provide Buyer with RA Replacement Capacity with respect to such Shortfall Capacity.

## 9.07. Holdback Capacity.

No later than five (5) Business Days before the relevant deadline for the initial RA Compliance Showing with respect to a particular Showing Month, Buyer may request that Seller not list, or cause the Unit’s SC not to list, a portion or all of a Unit’s applicable Expected Contract Quantity for any portion(s) of such Showing Month on the Supply Plan. The amount of Expected Contract Quantity that is the subject of such a request shall be deemed Expected Contract Quantity provided consistent with Section 9.03 for purposes of calculating a Monthly Capacity Payment pursuant to Section 10.01 and calculating any amounts due pursuant to Section 9.04. Seller shall, or shall cause each Generating Unit’s SC to, comply with Buyer’s request under this Section 9.07.

# ARTICLE TEN

# COMPENSATION AND ADJUSTMENTS TO Monthly CAPACITY PAYMENT

## 10.01. Monthly Capacity Payment.

 SCE shall make a Monthly Capacity Payment, calculated as set forth below in this Section 10.01, payable monthly after the applicable Showing Month, in arrears, in accordance with Article Eleven, to Seller for each month of the Delivery Period, provided that the Monthly Capacity Payment is subject to reduction in accordance with the other terms of this Agreement.

#### “Monthly Capacity Payment” = (A x B x 1,000)

where:

*A* = applicable Monthly Capacity Price for that Showing Month

*B =* $\sum\_{i}^{n}[(C\_{i}-D\_{i}) ×(\frac{1}{n})]$

 *C* = Expected Contract Quantity provided by Seller to SCE pursuant to and consistent with Section 9.03 for the applicable day of the Showing Month, provided that, solely for purposes of calculating this item “C”, the amount of Product (in MWs) provided on any particular day of any Showing Month may not exceed the IDD Capacity during such day

D = Aggregate megawatts of Shortfall Capacity associated with the applicable day of the Showing Month

i = Each day of Showing Month

n = number of days in the Showing Month

The Monthly Capacity Payment calculation shall be rounded to two decimal places.

## 10.02. Allocation of Other Payments and Costs.

 (a) Seller shall retain any revenues it may receive from and pay all costs charged by the CAISO or any other third party with respect to the Generating Units for (i) start-up, shutdown, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, and (iv) any revenues for black start or reactive power services.

(b) Buyer shall be entitled to receive and retain all revenues associated with the Product (including any capacity revenues from (i) RMR Contracts for the Generating Units, (ii) the Capacity Procurement Mechanism, or its successor, associated with the Generating Units, and (iii) RUC Availability Payments, or its successor, but excluding payments described in Section 10.02(a)(i)-(iv)).

(c) In accordance with Section 10.01 of this Agreement and Article Eleven of this Agreement,

(i) all such Buyer revenues described in this Section 10.02, but received by Seller, or a Generating Unit’s SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Generating Unit’s SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues pursuant to Article Eleven of this Agreement against any future amounts Buyer may owe to Seller under this Agreement. In order to verify the accuracy of such revenues, Buyer shall have the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Product; and

(ii) all such Seller, or a Generating Unit’s SC, owner, or operator revenues described in this Section 10.02, but received by Buyer shall be remitted to Seller.

(d) If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product for each day of each Showing Month provided to Buyer pursuant to this Agreement for re-sale in such market, and retain and receive any and all related revenues.

(e) Seller agrees that the Project and each Generating Unit is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under Section 40.9 of the Tariff. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller’s account and that any Non-Availability Charges are the responsibility of the Seller and for Seller’s account.

(f) If a Generating Unit is designated as a Resource Adequacy Resource and (b) the Tariff or other Applicable Law requires that, during periods that a Generating Unit is on a Planned Outage, the SC for a Resource Adequacy Resource is required to (i) replace the Generating Unit with a resource that is not a Resource Adequacy Resource or (ii) face the imposition of a charge, cost, sanction and/or penalty for failing to replace that Generating Unit, then Seller is responsible for (x) replacing the Generating Unit with a resource that is not a Resource Adequacy Resource, and (y) any and all charges, costs, sanctions and/or penalties for failing to replace all or a portion of the Generating Unit. Seller agrees that SCE is not required to take any action, or use or change its utilization of its owned or controlled assets or market positions, to allow Seller to replace the Generating Unit with a resource that is not a Resource Adequacy Resource and that SCE shall have no liability for any of the obligations described in this Section 10.02(f).

# ARTICLE ELEVEN

# PAYMENT AND BILLING

## 11.01. Billing Period.

The calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month, provided that the Monthly Capacity Payment related to a Showing Month will not be deemed to be incurred until such Showing Month has concluded, (the “Obligation Month”), together with all supporting documentation and calculations reasonably necessary to evidence all amounts charged thereunder. An invoice can only be adjusted or amended after it was originally rendered within the time frames set forth in Section 11.03, below. If an invoice is not rendered within twenty-four (24) months after the close of the Obligation Month, the right to any payment for that Obligation Month under this Agreement is waived.

## 11.02. Timeliness of Payment.

All invoices under this Agreement shall be due and payable in accordance with each Party’s invoice instructions on or before the later of the twentieth (20th) day of the month in which the owing Party receives the invoice, or the tenth (10th) day after the owing Party’s receipt of the invoice, or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable methods, to the account designated by the other Party. Any amounts not paid by the due date, including amounts in dispute pursuant to Section 11.03, will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

## 11.03. Disputes and Adjustments of Invoices.

A Party may adjust any invoice rendered by it for an Obligation Month to correct any arithmetic or computational error or to include additional charges or claims within twelve (12) months after the close of such Obligation Month. 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 within 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 Obligation Month. Failure to provide such Notice within the time frames 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 shall pay the undisputed portion of the invoice when due, but shall have the option, in its sole discretion, to withhold payment of the disputed amount; *provided,* such Party must provide Notice to the other Party of the basis for and amount of the disputed portion of the invoice that has not been paid. The disputed portion of the invoice must be paid within two (2) Business Days of resolution of the dispute, along with interest accrued at the Interest Rate from and including the original due date of the invoice to but excluding the date the disputed portion of the invoice is paid in full. 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 but excluding the date repaid or deducted by the Party receiving such overpayment.

## 11.04. Netting Rights.

SCE reserves the right to net amounts that would otherwise be due to Seller under this Agreement against payment of any amounts owed to SCE by Seller arising out of, or related to, this Agreement, any other SCE agreement, tariff, obligation or liability. Nothing in this Section 11.04 limits SCE’s rights under applicable tariffs, other agreements or Applicable Law.

# ARTICLE TWELVE

# CREDIT AND COLLATERAL

## 12.01. Financial Information.

If requested by one Party, the other Party shall deliver the following financial statements, which in all cases must be for the most recent accounting period and prepared in accordance with GAAP:

1. Within one hundred twenty (120) days following the end of each fiscal year, a copy of its annual report containing audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year, setting forth in each case, in comparative form, the figures for the previous year; and
2. Within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its quarterly report containing 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.

In all cases the statements shall be for the most recent accounting period and prepared in accordance with GAAP. In each case, the financial statements specified above must be certified in accordance with all Applicable Laws and regulations, including all applicable SEC rules and regulations, if such Party is an SEC reporting company, or certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year end audit adjustments) if such Party is not an SEC reporting company.

If a Party’s financial statements are publicly available electronically on the website of that Party or the SEC, then the Party shall be deemed to have met the delivery requirements of this Section 12.01. 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.

## 12.02. Seller’s Credit Requirements.

1. Credit Requirement After Effective Date. Seller shall post and thereafter maintain delivery date security collateral (“Delivery Date Security”) equal to [\_\_\_[TBD based on technology]\_\_\_\_\_ dollars ($[\_\_])] for each kilowatt of the total Predicted Capacity. Seller shall post the Delivery Date Security in accordance with the following terms and conditions:
	* 1. Seller shall post one-half of the Delivery Date Security within two (2) Business Days following the Effective Date, with the remainder to be posted within two (2) Business Days after Final CPUC Approval is obtained or waived by SCE in its sole discretion;
		2. The Delivery Date Security shall be held by SCE as collateral security for Seller’s obligation to meet the Expected Initial Delivery Date;
		3. The Delivery Date Security must be in the form of either a cash deposit with SCE or a Letter of Credit;
		4. If Seller posts any Delivery Date Security in cash, Seller will receive Simple Interest payments in accordance with the procedure specified in Section 12.03(a) of this Agreement; and
		5. If Seller provides the Delivery Date Security by means of a Letter of Credit, such Letter of Credit must be provided substantially in the form of Appendix 12.03(b).

In the event SCE draws Daily Delay Damages from the Delivery Date Security, Seller shall not be required to replenish the drawn amount.

1. Return of Delivery Date Security. Within five (5) Business Days following the Initial Delivery Date, or upon termination of this Agreement pursuant to Section 2.02 or Section 4.02, SCE shall return to Seller the Delivery Date Security, less any Daily Delay Damages SCE has retained if the Initial Delivery Date is after the Expected Initial Delivery Date. If Seller achieves an Initial Delivery Date for the Project by the Expected Initial Delivery Date, SCE shall return to Seller the entire amount of the Delivery Date Security held by SCE.
2. Credit Requirements During Delivery Period.
	* 1. During the Delivery Period, Seller shall post and maintain Performance Assurance to SCE in an amount equal to 20% of the sum of the expected Monthly Capacity Payments for the current month and (A) the next thirty-five (35) months of the Delivery Period, or (B) the remaining months in the Delivery Period, if the total time remaining in the Delivery Period is less than thirty-six (36) months (the “Expected MCPS”), provided that, for purposes of the foregoing calculation, “Monthly Capacity Payment” shall be calculated using “IDD Capacity” rather than “Expected Contract Quantity” in item “C” of such formula, and provided further, that the Monthly Capacity Payment associated with any Showing Month shall not be considered part of the “Expected MCPS” in the foregoing calculation if (i) the Expected Contract Quantity associated with such Showing Month was included by Buyer in Buyer’s RA Compliance Showing for such Showing Month, and (ii) the CAISO has finally determined, without having any further opportunity pursuant to rules set forth in the Tariff to come to a different conclusion, that no Shortfall Capacity exists with respect to such Showing Month.
		2. Seller shall post such Performance Assurance in accordance with the following terms and conditions:

(A) Performance Assurance must be in the form of either a cash deposit or a Letter of Credit;

(B) Performance Assurance shall be posted to SCE and maintained at all times during the Term and thereafter until such time as Seller has satisfied all monetary obligations which survive any termination of this Agreement;

(C) If Seller posts any Performance Assurance in cash, Seller will receive Simple Interest payments in accordance with the procedure specified in Section 12.03(a) of this Agreement; and

(D) If Seller provides Performance Assurance by means of a Letter of Credit, such Letter of Credit must be provided substantially in the form of Appendix 12.03(b).

* + 1. Notwithstanding any other provision in this Agreement, SCE is not required to provide Performance Assurance to Seller.

## 12.03. Administration of Performance Assurance.

1. Interest Payments on Cash. Delivery Date Security or Performance Assurance posted in cash shall earn Simple Interest. Seller shall provide a monthly invoice to SCE that sets forth the calculation of the interest amount due and SCE shall make payment thereof by the later of the third (3rd) Business Day (so long as no Event of Default has occurred and is continuing with respect to Seller):
	* 1. of the first (1st) month after the month to which the invoice relates; or
		2. after the day on which such invoice is received.

On or after the occurrence of an Event of Default by Seller, SCE 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.

1. Letters of Credit. Delivery Date Security or Performance Assurance provided in the form of a Letter of Credit shall be substantially in the form set forth in Appendix 12.03(b) and subject to the following provisions:
	* 1. Each Letter of Credit shall be maintained for the benefit of SCE. Seller shall:
2. renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit;
3. if the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide a substitute Letter of Credit or alternative Performance Assurance acceptable to SCE at least twenty (20) Business Days prior to the expiration of the outstanding Letter of Credit; and
4. if the bank issuing a Letter of Credit fails to honor SCE’s properly documented request to draw on an outstanding Letter of Credit, provide a substitute Letter of Credit or alternative Performance Assurance acceptable to SCE, in its sole discretion, within one (1) Business Day after such refusal;

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

* + 1. Upon the occurrence of a Letter of Credit Default, Seller shall provide to SCE either a substitute Letter of Credit or alternative Performance Assurance acceptable to SCE, in each case on or before the first (1st) Business Day after the occurrence thereof (or the fifth (5th) Business Day after the occurrence thereof if only clause (a) under the definition of Letter of Credit Default applies);
		2. Upon, or at any time after SCE has determined that Seller (A) has forfeited all or part of its Delivery Date Security, or (B) owes Daily Delay Damages pursuant to Section 2.06(a), then SCE may draw on any undrawn portion of any outstanding Letter of Credit. Cash proceeds received by SCE from drawing upon the Letter of Credit shall be for the account of SCE.
		3. Upon, or at any time after, the occurrence and continuation of an Event of Default by Seller, then SCE may draw on the entire undrawn portion of any outstanding Letter of Credit upon submission to the bank issuing such Letter of Credit of one or more certificates specifying that such Event of Default has occurred and is continuing. Cash proceeds received by SCE from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for Seller’s obligations to SCE under this Agreement and SCE shall have the rights and remedies set forth in Section 12.04 with respect to such cash proceeds. Notwithstanding SCE’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 and (B) for any amounts owing to SCE and remaining unpaid after the application of the amounts so drawn by SCE.
		4. In all cases all costs associated with a Letter of Credit, including, without limitation, the costs and expenses of establishing, renewing, substituting, canceling, amending and increasing the amount of a Letter of Credit, shall be borne by Seller.

## 12.04. 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 the 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 SCE reasonably requires in order to perfect SCE’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, SCE may do any one or more of the following:

1. exercise any of its rights and remedies with respect to all Performance Assurance, including any such rights and remedies under law then in effect;
2. exercise any of its rights of setoff against any and all property of Seller in SCE’s possession;
3. draw on any outstanding Letter of Credit issued for its benefit; and
4. liquidate all Performance Assurance then held by or for the benefit of SCE free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

SCE 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 SCE after such application), subject to SCE’s obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

## 12.05. Uniform Commercial Code Waiver.

This Agreement sets forth the entirety of the agreement of the Parties regarding credit, collateral, financial assurances and adequate assurances. Except as expressly set forth in this Agreement, including, but not limited to, those provisions set forth in Article Twelve and Article Three, neither Party:

1. has or will have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, or
2. will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of Article Twelve and Article Three of this Agreement; and all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived.

# ARTICLE ThirTEEN

# COLLATERAL ASSIGNMENT

## 13.01. Consent to Collateral Assignment.

Subject to the provisions of this Article Thirteen, Seller shall have the right to assign this Agreement to Lender as collateral for any financing or refinancing of the Project; *provided*, Seller shall be responsible for SCE’s reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any such assignment, including without limitation attorneys’ fees. SCE shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement (“Collateral Assignment Agreement”). The Collateral Assignment Agreement shall be in form and substance agreed to by SCE, Seller and Lender, and shall include, among others, the following provisions:

1. SCE shall give Notice of an Event of Default by Seller, to the persons to be specified by Lender in the Collateral Assignment Agreement, prior to exercising its right to terminate the Agreement as a result of such Event of Default.
2. Following an Event of Default by Seller under this Agreement, SCE may require Seller or Lender to provide to SCE a report setting forth:
	1. the status of efforts by Seller or Lender to develop a plan to cure the Event of Default;
	2. impediments to the cure plan or its development;
	3. if a cure plan has been adopted, the status of the cure plan’s implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and
	4. any other information which SCE may reasonably require related to the development, implementation and timetable of the cure plan.

Seller or Lender shall provide the report to SCE within ten (10) Business Days of Notice from SCE requesting the report. SCE shall have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured.

1. Lender shall have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to SCE prior to the end of any cure period indicating Lender’s intention to cure. Lender must remedy or cure the Event of Default within the cure period under the Agreement; *provided,* such cure period may, in SCE’s sole discretion, be extended by no more than an additional one hundred eighty (180) days.
2. Lender shall have the right to consent prior to any termination of the Agreement which does not arise out of an Event of Default.
3. Lender shall receive prior Notice of, and the right to approve, material amendments to the Agreement, which approval shall not be unreasonably withheld, delayed or conditioned.
4. In the event Lender, directly or indirectly, takes possession of, or title to the Project (including possession by a receiver or title by foreclosure or deed in *lieu* of foreclosure), Lender shall assume all of Seller’s obligations arising under the Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, SCE and Lender as set forth in the Collateral Assignment Agreement). Lender shall have no personal liability for any monetary obligations of Seller under the Agreement which are due and owing to SCE as of the assumption date; *provided,* if, prior to such assumption, SCE advises Lender that SCE will require that Lender cure (or cause to be cured) any Event of Default existing as of the assumption date in order to avoid the exercise by SCE (in its sole discretion) of SCE’s right to terminate the Agreement in respect of such Event of Default, then Lender, at its option and in its sole discretion, may elect to either (i) cause such Event of Default to be cured, or (ii) assume Seller’s obligations under the Agreement and all related agreements, including the pre-assumption payment obligations that are otherwise excluded.
5. If Lender elects to sell or transfer the Project (after Lender directly or indirectly, takes possession of, or title to the Project), or sale of the Project occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender must cause the transferee or buyer to assume all of Seller’s obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity with financial qualifications (including, collateral support and any other additional security as may be required by SCE) and operating experience at least equivalent to Seller as of the Effective Date, as determined by SCE in its sole discretion.
6. If this Agreement is rejected in Seller’s bankruptcy or otherwise terminated in connection therewith and if Lender or its designee, directly or indirectly, takes possession of, or title to, the Project (including possession by a receiver or title by foreclosure or deed in *lieu* of foreclosure), Lender shall or shall cause its designee to promptly enter into a new agreement with SCE having substantially the same terms as this Agreement. Notwithstanding the foregoing, SCE shall not be required to enter into such agreement with Lender or such designee if there has been a change in circumstances resulting from actions of Seller in its bankruptcy case that would, in SCE’s judgment, materially impact the rights or obligations of SCE under such agreement.
7. Seller shall reimburse, or shall cause Lender to reimburse, SCE for all reasonable and direct third party expenses (including the reasonable fees and expenses of counsel of SCE’s choice) incurred by SCE in the preparation, negotiation, execution and/or delivery of any documents required under this Article Thirteen, or otherwise requested by Seller or Lender in connection with this Article Thirteen.

# ARTICLE FourTEEN

# GOVERNMENTAL AND ENVIRONMENTAL CHARGES

## 14.01. Indemnification.

Seller is solely responsible for all Environmental Costs, all GHG Charges, Seller’s AB 32 Compliance Obligation, and all other costs associated with the implementation and regulation of Greenhouse Gas emissions (whether in accordance with AB 32 or any other federal, state or local legislation to offset or reduce any Greenhouse Gas emissions implemented and regulated by an authorized Governmental Authority) with respect to the Project and/or Seller. Seller shall indemnify, defend and hold SCE harmless from and against all liabilities, damages, claims, losses, costs and/or expenses (including, without limitation, attorneys’ fees) incurred by or brought against SCE in connection with such Environmental Costs, GHG Charges, AB 32 Compliance Obligation, and other such costs.

# ARTICLE Fifteen

# FORCE MAJEURE

## 15.01. No Default for Force Majeure.

Subject to Section 8.02(f), neither Party will be considered to be in default in the performance of any of its obligations set forth in this Agreement (except for obligations to pay money) when and to the extent failure of performance is caused by Force Majeure; *provided*, (a) a failure to make payments when due that accrued prior to the Force Majeure event shall not be excused.

## 15.02. Force Majeure Claim.

Subject to Section 8.02(f), if, because of a Force Majeure, either Party is unable to perform its obligations under this Agreement, such Party shall be excused from whatever performance is affected by the Force Majeure only to the extent so affected; *provided*:

1. the Claiming Party, no more than five (5) Business Days after the initial occurrence of the claimed Force Majeure, gives the other Party Notice describing the particulars of the occurrence;
2. the Claiming Party, within five (5) Business Days, of providing Notice of occurrence of the Force Majeure, provides evidence reasonably sufficient to establish that the occurrence constitutes a Force Majeure as defined in this Agreement;
3. the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure; and
4. as soon as Claiming Party is able to resume performance of its obligations under this Agreement, it shall do so and shall promptly give the other Party Notice of this resumption.

# ARTICLE sixteen

# REPRESENTATIONS, WARRANTIES AND COVENANTS

## 16.01. Representations and Warranties of Both Parties.

As of the Effective Date and the Approval Date, each Party represents and warrants to the other Party that:

* 1. It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
	2. Except as provided in Section 2.02 and Article Five, it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;
	3. The execution, delivery and performance of this Agreement are within its power, have been duly authorized by all necessary action (other than regulatory approval as set forth in Section 2.02 and Article Five) and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Laws applicable to it;
	4. This Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;
	5. 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;
	6. There is not pending or, to its knowledge, threatened against it any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
	7. No Event of Default with respect to it has occurred and is continuing and no such Event of Default would occur as a result of its entering into or performing its obligations under this Agreement;
	8. 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;
	9. It is a “forward contract merchant” within the meaning of the United States Bankruptcy Code; and
	10. 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.

## 16.02. Representations, Warranties and Covenants of Seller.

Seller represents, warrants and covenants to SCE that:

1. As of the Approval Date, Seller has Site Control and covenants that it will maintain Site Control for the remainder of the Term.
2. As of the Effective Date and the Approval Date, to the best of Seller’s knowledge, each specification and description of each Generating Unit and the Project and the Product in Article One (and related appendices) is true and correct. Seller covenants that, throughout the Term, Seller will promptly provide SCE with Notice of any change in any of the specifications or descriptions set forth in Article One (and related appendices).
3. The Project is a New Resource.
4. Throughout the Delivery Period:

#### Seller owns or has the exclusive right to the Product, and shall furnish Buyer, CAISO, CPUC and each applicable Governmental Authority with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right.

#### No portion of the Product has been committed by Seller to any third party in order to satisfy RA Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets, other than pursuant to an RMR Contract between the CAISO and Seller.

#### (i) Seller shall, and shall cause each Generating Unit’s SC to promptly (and in any event within one (1) Business Day of the time Seller or such SC receives notification from the CAISO) notify Buyer in the event the CAISO designates any portion of the Project as CPM Capacity and (ii) in the event the CAISO makes such a designation Seller shall, and shall cause each Generating Unit’s SC to not accept any such designation by the CAISO unless and until Buyer has agreed to accept such designation.

#### Buyer shall have the exclusive right to offer the Product and Project, or any portion thereof, to the CAISO as CPM Capacity.

#### Each Generating Unit is connected to the CAISO Grid, is within the CAISO Control Area, and is under the control of CAISO.

#### Seller shall, and each Generating Unit’s SC, owner and operator is obligated to, comply with Applicable Laws, including the Tariff, relating to the Product.

#### Buyer shall have no liability for the failure of Seller or the failure of any Generating Unit’s SC, owner, or operator to comply with such Tariff provisions, including any penalties, charges or fines imposed on Seller or any Generating Unit’s SC, owner, or operator for such noncompliance.

#### Seller has notified the SC of each Generating Unit that Seller has transferred the Product to Buyer, with respect to each day of each Showing Month, and that such SC is obligated to deliver the Supply Plans in accordance with the Tariff and this Agreement.

#### Seller has notified the SC of each Generating Unit that Seller is obligated to cause each Generating Unit’s SC to provide to the Buyer, at least fifteen (15) Business Days before the relevant deadlines for each RA Compliance Showing, the applicable Expected Contract Quantity of such Generating Unit for each day of such Showing Month, including the amount of Flexible Capacity and Inflexible Capacity, that is to be submitted in the Supply Plan associated with this Agreement for the applicable period.

#### Seller has notified each Generating Unit’s SC that Buyer is entitled to the revenues set forth in Section 10.02, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

## 16.03. Seller’s Affirmative Covenants.

1. Seller shall maintain and preserve its existence as a *[insert applicable corporate incorporation information]* formed under the laws of the State of *[XX]* and all material rights, privileges and franchises necessary or desirable to enable it to perform its obligations under this Agreement.
2. Seller shall, from time to time as requested by SCE, execute, acknowledge, record, register, deliver and/or file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid and enforceable under all Applicable Laws the rights, liens and priorities of SCE with respect to its Security Interest furnished pursuant to this Agreement.
3. Seller shall ensure that no less than twenty percent (20%) of Seller’s aggregate costs to complete the initial development, engineering, procurement and construction of the Project are funded by equity contributions to Seller. The amount funded by equity contributions shall not be less than Ten Million Dollars ($10,000,000). The foregoing shall not impose any obligations that survive the Initial Delivery Date, *provided* that if SCE determines after the Initial Delivery Date that Seller breached this obligation with respect to any time prior to the Initial Delivery Date, SCE retains all rights under this Agreement, including, without limitation under Article Three, with respect to such occurrence.
4. Seller shall obtain, maintain and remain in compliance with all permits, interconnection agreements and transmission rights necessary to operate the Project and to provide the Product to SCE in accordance with this Agreement.
5. Seller shall deliver to SCE the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person.
6. Seller shall provide and execute all documents and instruments reasonably necessary (including documents amending this Agreement and documents reflecting compliance with all applicable Tariff provisions and applicable decisions of the CPUC and/or any other Governmental Authority that address performance obligations and penalties related to the Product hereunder) and take all commercially reasonable actions necessary, in each case to effect the use of the Resource Adequacy Benefits of the Project in accordance with Section 1.01(a) through the Delivery Period.
7. Seller shall maintain the Project as fully deliverable for the purposes of counting the Product, in an amount equal to the Contract Capacity, towards RA Compliance Obligations.
8. Two (2) years prior to the Expected Initial Delivery Date, and thereafter no later than January 1, April 1, July 1 and October 1 of each calendar year during the Term, Seller shall submit to SCE each Generating Unit’s proposed schedule of Planned Outages (“Outage Schedule”), covering every day of the following twenty-four months that is within the Delivery Period. Seller shall submit the Outage Schedule in substantially the form set forth in Appendix 16.03(H). Within twenty (20) Business Days after its receipt of an Outage Schedule, SCE shall notify Seller in writing of any reasonable request for changes to the Outage Schedule, and Seller shall, if consistent with Accepted Electrical Practices, accommodate SCE’s requests regarding the timing of any Planned Outage; provided that the CAISO agrees to such changed timing. Seller will communicate to SCE all changes to a Planned Outage and estimated time of return of each Generating Unit as soon as practicable after the condition causing the change becomes known to Seller. Seller shall, and Seller shall cause each Generating Unit’s SC to, notify Buyer within five (5) Business Days of any change to the Outage Schedule.
9. Seller shall (i) provide all information needed for the Product to be shown on Supply Plans and RA Compliance Showings and to be used to satisfy RA Compliance Obligations, including, without limitation providing information with respect to the amount of Flexible Capacity and Inflexible Capacity available to be included in any applicable Supply Plan and RA Compliance Showing and (ii) provide any information requested by SCE related to the Project that is required to be provided to the CAISO or CPUC in order for SCE to comply with the Tariff or other Applicable Laws.

## 16.04. Seller’s Negative Covenants.

* 1. Seller shall not issue any Disqualified Stock, other than Disqualified Stock issued, in connection with the funding of the development, construction, operation, reconstruction, restoration or refinancing of the Project.
	2. Except for (i) liens for the benefit of Lender, and (ii) liens cured or removed within thirty (30) days after their incurrence, Seller shall not create, incur, assume or suffer to be created by it or any subcontractor, employee, laborer, materialman, other supplier of goods or services or any other person, any lien on Seller’s interest in the Site, the Project, or any part thereof or interest therein. Seller shall pay or discharge, or shall cause its contractors to promptly pay and discharge, and discharge of record, any such lien for labor, materials, supplies or other obligations upon Seller’s interest in the Site, the Project, or any part thereof or interest therein, unless Seller is disputing any such lien in good faith and only for so long as it does not create an imminent risk of a sale or transfer of the Site, the Project or a material part thereof or interest therein. Seller shall promptly notify SCE of any attachment or imposition of any lien against Seller’s interest in the Site, the Project, or any part thereof or interest therein.
	3. Seller shall not hold any material assets, become liable for any material obligations or engage in any material business activities other than directly associated with the development, construction and operation of the Project.
	4. Seller shall not own, form or acquire, or otherwise conduct any of its activities through, any direct or indirect subsidiary.
	5. During any period during which a Seller is a Defaulting Party, Seller shall (i) not declare or pay any dividend, or make any other distribution or payment, on account of any equity interest in Seller, or (ii) otherwise make any distribution or equivalent payment to any Affiliate of Seller.
	6. Seller shall not directly or indirectly pledge or assign, or cause or permit the pledge or assignment of, the Required Permits as collateral to any party other than to Lender or Lender’s agent without SCE’s prior written consent, which consent may be granted or withheld in SCE’s sole discretion.
	7. Seller shall not directly or indirectly pledge or assign, or cause or permit the pledge or assignment of, any ownership interest in Seller if such pledge or assignment would have a material adverse effect on the Project or on Seller’s ability to perform its obligations under this Agreement. Seller shall provide SCE with written Notice of any direct or indirect pledge or assignment of any ownership interest in Seller at least ten (10) Business Days prior to such pledge or assignment.

# ARTICLE Seventeen

# LIMITATIONS

## 17.01. Limitation of Remedies, Liability and Damages.

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

UNLESS EXPRESSLY PROVIDED IN THIS AGREEMENT, INCLUDING WITHOUT LIMITATION THE PROVISIONS OF ARTICLE TWENTY (INDEMNITY), 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 SCE FROM PROCEEDING AGAINST OR EXERCISING ITS RIGHTS WITH RESPECT TO ANY DELIVERY DATE SECURITY OR PERFORMANCE ASSURANCE.

## 17.02. No Representation by SCE .

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

# ARTICLE eightteen

# RECORDS

## 18.01. Performance under this Agreement.

Each Party and its Representatives shall maintain records and supporting documentation relating to this Agreement, the Project, and the performance of the Parties hereunder in accordance with, and for the applicable time periods required by, all Applicable Laws, but in no event less than four (4) years after final payment is made under this Agreement.

## 18.02. Other Regulatory and Governmental Requirements.

At SCE’s request, Seller shall maintain and deliver to SCE copies of records and supporting documentation with respect to the Project that Seller is not already required to maintain or deliver under this Agreement, in order to comply with all Applicable Laws.

## 18.03. Audit Rights.

SCE shall have the right, at its sole expense and during normal working hours, to audit the documents, records or data of Seller to the extent reasonably necessary to verify the accuracy of any statement, claim, charge or calculation made pursuant to this Agreement. Seller shall have the right, at its sole expense, to hire an independent third party reasonably acceptable to SCE to audit the documents, records or data of SCE related to this Agreement during normal working hours to the extent reasonably necessary to verify the accuracy of any statement, claim, charge or calculation made pursuant to this Agreement. Such independent third party must sign a confidentiality agreement in substance reasonably acceptable to SCE before examining SCE’s documents, records or data. Each Party shall promptly comply with any reasonable request by the other Party under this Section 18.03 and provide copies of documents, records or data to the requesting Party. The rights and obligations under this Section 18.03 shall survive the termination of this Agreement for a period of two (2) years.

# ARTICLE Nineteen

# DISPUTES

## 19.01. Dispute Resolution.

Other than requests for provisional relief under Section 19.04, 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 19.02 below, and if the matter is not resolved through mediation, *then* for final and binding arbitration under the procedures described in Section 19.03 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 Nineteen shall be commenced within one (1) year of the date of the occurrence of the facts giving rise to the Dispute, without regard to the date such facts are discovered; *provided*, if the facts giving rise to the Dispute were not reasonably capable of being discovered at the time of their occurrence, then such one (1) year period shall commence on the earliest date that such facts were reasonably capable of being discovered. If the Dispute resolution process pursuant to Article Nineteen 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.

## 19.02. Mediation.

Either Party may initiate mediation by providing Notice to the other Party of a written request for mediation, setting forth a description of the Dispute and the relief requested.

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

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.

## 19.03. Arbitration.

Either Party may initiate binding arbitration with respect to the matters first submitted to mediation by providing Notice 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 19.02, 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 19.02 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:

* + 1. 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);
		2. 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;
		3. Discovery may commence at any time after the Parties’ initial disclosure;
		4. The Parties will not be permitted to propound any interrogatories or requests for admissions;
		5. 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);
		6. Each Party is allowed a maximum of three (3) expert witnesses, excluding rebuttal experts;
		7. 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;
		8. Within thirty (30) days after the initial expert disclosure, the Parties may designate a maximum of two (2) rebuttal experts;
		9. Unless the Parties agree otherwise, all direct testimony will be in form of affidavits or declarations under penalty of perjury; and
		10. Each Party shall make available for cross examination at the arbitration hearing its witnesses whose direct testimony has been so submitted.

Subject to Section 17.01, 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 1.01, 3.06, 9.01, 9.03, 16.02(a), 16.03(f) and 16.03(i), and Article Twenty-One of this 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.

## 19.04. 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 Section 1.01, 3.06, 9.01, 9.03, 16.02(a), 16.03(f) or 16.03(i) or Article Twenty-One of this 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 Nineteen. The Parties further acknowledge and agree that the results of the arbitration may be rendered ineffectual without the provisional relief.

Such a request for provisional relief does not waive a Party’s right to seek other remedies for the breach of the provisions specified above in accordance with Article Nineteen, 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.

## 19.05. Waiver of Jury Trial.

THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING UNDER THIS AGREEMENT.

## 19.06. 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 Nineteen that arise from or relate to the same act, omission or issue.

# ARTICLE TWENTY

# INDEMNIFICATION

## 20.01. SCE’s Indemnification Obligations.

In addition to any other indemnification obligations SCE may have elsewhere in this Agreement, which are hereby incorporated in this Section 20.01, SCE 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 SCE of its representations and warranties in Section 16.01.

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.

## 20.02. 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 20.02, Seller releases, and shall indemnify, defend and hold harmless SCE, and SCE’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:

* + - 1. any breach made by Seller of its representations, warranties or covenants in Article Sixteen;
			2. Seller’s failure to fulfill its obligations regarding Resource Adequacy Benefits as set forth in Section 1.01(a) and Article 9;
			3. Penalties assessed by FERC, NERC (through WECC or otherwise) or any other Governmental Authority for violations of the NERC Reliability Standards by the Project or Seller, as Generator Operator or other applicable category against SCE;
			4. injury or death to persons, including SCE employees, and physical damage to property, including SCE property, where the damage arises out of, is related to, or is in connection with, Seller’s construction, ownership or operation of the Project, or obligations or performance under this Agreement; or
			5. injury or death to any person or damage to any property, including the personnel or property of SCE, to the extent that SCE would have been protected had Seller complied with all of the provisions of Section 22.15; *provided*, the inclusion of this subsection (e) is not intended to create any express or implied right in Seller to elect not to provide the insurance required under Section 22.15.

This indemnity applies notwithstanding SCE’s active or passive negligence. However, SCE will not be indemnified under Section 20.02(a) - (d) for its loss, liability, damage, claim, cost, charge, demand or expense to the extent caused by SCE’s gross negligence or willful misconduct.

## 20.03. 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:

* + - 1. 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.
			2. 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.
			3. 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.

## 20.04. Survival.

All indemnity rights shall survive the termination of this Agreement.

# ARTICLE TWENTY-One

# CONFIDENTIALITY/REGULATORY DISCLOSURE

## 21.01. Confidentiality Obligation.

Except as otherwise expressly agreed in writing by the other Party, and except as otherwise agreed in Sections 21.02 and 21.03, each receiving Party shall, and shall cause its Representatives to, (a) keep strictly confidential and take reasonable precautions to protect against the disclosure of all Confidential Information, and (b) use all Confidential Information solely for the purposes of performing its obligations under this Agreement and not for any other purpose; *provided,* a Party may disclose Confidential Information to those of its Representatives who need to know such information for the purposes of performing the receiving Party’s obligations under this Agreement if, but only if, prior to being given access to Confidential Information, such Representatives are informed of the confidentiality thereof and the requirements of this Agreement and are directed to comply with the requirements of this Agreement and, in the case of Representatives of Seller engaged wholly or in part in the purchase and sale of electrical power or natural gas, only if such Representatives are *directly* engaged in performing Seller’s obligations under this Agreement. Each Party will be responsible for any breach of this Agreement by its Representatives.

## 21.02. Permitted Disclosures.

* 1. Buyer and Seller may disclose Confidential Information to the Independent Evaluator. SCE and the Independent Evaluator may disclose Confidential Information to duly authorized regulatory and governmental agencies or entities, including the FERC, CPUC and all divisions thereof, and the CAISO, SCE’s Procurement Review Group, a group of non-market participants including members of the CPUC, other governmental agencies and consumer groups established by the CPUC in Decision 02-08-071, and CAM. Neither SCE nor the Independent Evaluator shall have any liability whatsoever to Seller in the event of any unauthorized use or disclosure by a regulatory or governmental agency or entity including without limitation the FERC, the CPUC and all divisions thereof, the PRG, CAM, or the CAISO of any Confidential Information or other information disclosed to any of them by SCE or the Independent Evaluator.
	2. SCE and the Independent Evaluator may also disclose Confidential Information to any Governmental Authority or to any third party to the extent necessary to comply with any Applicable Laws, and any applicable regulation, decision, rule, subpoena or order of the CPUC, CEC, FERC, any administrative agency, legislative body or other tribunal (other than those entities set forth in Section 21.02(c)), any exchange, Control Area or CAISO rule, or any discovery or data request of a party to any proceeding pending before any of the foregoing.
	3. The Parties may disclose Confidential Information to the extent necessary to comply with any subpoena or order of court or judicial entity having jurisdiction over the disclosing Party (other than those entities set forth in Section 21.02(b)), or in connection with a discovery or data request of a party to any proceeding before any of the foregoing.
	4. Buyer may disclose the Product or any applicable portion of the Product, including any amounts of Flexible Capacity and Inflexible Capacity, under this Agreement to any Governmental Authority, the CPUC, the CAISO in order to support its RA Compliance Showings, if applicable, and Seller may disclose the transfer of the Product and the applicable Expected Contract Quantity and any amounts of Flexible Capacity and Inflexible Capacity for each day of each Showing Month under this Agreement to the SC of each Generating Unit in order for such SC to timely submit accurate Supply Plans; provided, that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Authority, CAISO, or SC to further disclose such information. In addition, in the event Buyer resells all or any portion of the Product to another party or the Product is to be provided to another party in accordance with Section 1.01(a), Buyer shall be permitted to disclose to the other party to such transaction all such information necessary to effect such transaction.

## 21.03. Duty to Seek Protection.

* 1. In connection with requests or orders to produce Confidential Information protected by this Agreement in the circumstances provided in Section 21.02(c) (by deposition, interrogatories, requests for information or documents, subpoena, order or similar legal process) each Party (i) will promptly notify the other Party of the existence, terms, and circumstances of such requirement(s) so that such other Party may seek an appropriate protective order or waive compliance with the provisions of this Agreement, and (ii) will, and will cause its Representatives to, cooperate fully with such other Party in seeking to limit or prevent such disclosure of such Confidential Information.
	2. If a Party or its Representatives are, in the written opinion of its legal counsel, and notwithstanding compliance with Section 21.03(a) compelled to make disclosure in response to a requirement described in Section 21.03(a) or stand liable for contempt or suffer other penalty, the compelled person may disclose only that portion of the Confidential Information protected by this Agreement which it is legally required to disclose and will exercise its best efforts to obtain reliable assurance that confidential treatment will be accorded to the disclosed Confidential Information protected by this Agreement.

## 21.04. Ownership and Return of Information.

All Confidential Information shall be and remain the property of the Party providing it. Nothing in this Agreement shall be construed as granting any rights in or to Confidential Information to the Party or Representatives receiving it, except the right of use in accordance with the terms of this Agreement. Notwithstanding the foregoing, the Parties shall have the right to retain copies of Confidential Information, subject to the confidentiality obligations in this Article Twenty-One.

# ARTICLE Twenty-two

# MISCELLANEOUS

## 22.01. General.

This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. All references to time shall be in PPT unless stated otherwise. The headings used herein are for convenience and reference purposes only. This Agreement shall be binding on each Party’s successors and permitted assigns. Each Party agrees if one Party seeks to amend any applicable wholesale power sales tariff during the term of this Agreement without the prior written consent of the other Party, such amendment will not in any way affect either Party’s obligations under the Agreement. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.

## 22.02. Notices.

Unless otherwise provided in this Agreement, any notice or request (“Notice”) shall be in writing to the address provided below and delivered by hand delivery, United States mail, overnight courier service, or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day received, if the entire document was received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day after it was sent or personally delivered. Notice by overnight courier service shall be effective on the next Business Day after the postmarked date. Notice by United States mail shall be effective on the third (3rd) Business Day after it was sent. A Party may change its address by providing Notice of same to the other Party in accordance with this Section 22.02.

|  |  |
| --- | --- |
| **Seller:** | **SCE:** |
| **All Notices:[To be completed]**  | **All Notices:** |
| Street:  | Street: 2244 Walnut Grove Ave., G.O.1, Quad 1C |
| City: Zip:  | City: Rosemead, CA Zip: 91770 |
| Attn: Phone: Facsimile: Duns: Federal Tax ID Number:  | Attn: Contract AdministrationPhone: (626) 302-3126Facsimile: (626) 302-8168Duns: 006908818Federal Tax ID Number: 95-1240335 |
| **Invoices:**Attn: Phone: Facsimile:  | **Invoices:**Attn: Power Procurement - FinancePhone: (626) 302-3277Facsimile: (626) 302-3276Email: PPFDPowerSettle@sce.com |
| **Payments:**Attn: Phone: Facsimile:  | **Payments:**Attn: Accounts Receivable - Power ProcurementSouthern California Edison CompanyPO Box 800Rosemead, CA 91770Phone: (626) 302-9371Facsimile: (626) 302-9392 |
| **Wire Transfer:**BNK: ABA: ACCT:  | **Wire Transfer:**BNK: JPMorganChase BankABA: 021000021ACCT: 323-394434 |
| **Credit and Collections:**Attn: Phone: Facsimile:  | **Credit and Collections:**Attn: Manager of CreditPhone: (626) 302-1129Facsimile: (626) 302-2517 |
| **With additional Notices of an Event of Default or Potential Event of Default to:**Attn: Phone: Facsimile:  | **With additional Notices of an Event of Default or Potential Event of Default to:**Southern California Edison Company2244 Walnut Grove Ave., G.O.1, Quad 1CRosemead, CA 91770Attn: Manager of Energy ContractsPhone: (626) 302-3312Facsimile: (626) 302-8168 |

## 22.03. Governing Law; Venue.

THIS AGREEMENT SHALL BE CONSTRUED UNDER THE LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING EFFECT TO CHOICE OF LAW PROVISIONS THAT MIGHT APPLY THE LAWS OF A DIFFERENT JURISDICTION. THE PARTIES HEREBY CONSENT TO CONDUCT ALL DISPUTE RESOLUTION, JUDICIAL ACTIONS OR PROCEEDINGS ARISING DIRECTLY, INDIRECTLY OR OTHERWISE IN CONJUNCTION WITH, OUT OF, RELATED TO OR ARISING FROM THIS AGREEMENT IN THE CITY OF LOS ANGELES, CALIFORNIA.

## 22.04. Amendment.

This Agreement can only be amended by a writing signed by both Parties.

## 22.05. Assignment.

Neither Party shall assign, transfer, delegate, mortgage, hypothecate, pledge or encumber its rights, title or interest in this Agreement without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; *provided,* Seller may collaterally assign this Agreement in accordance with Article Thirteen.

## 22.06. Waiver.

None of the provisions of this Agreement shall be considered waived by either Party unless the Party against whom such waiver is claimed gives the waiver in writing. The failure of either Party to insist in any one instance upon strict performance of any the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of such rights for the future, but the same shall continue and remain in full force and effect. Waiver by either Party of any default of the other Party shall not be deemed a waiver of any other default.

## 22.07. Obligations Surviving Termination.

Except as may be provided or limited by this Agreement, the obligations which by their nature are intended to survive termination of this Agreement, including representations, warranties, covenants and rights and obligations with respect to audits, indemnification, payment and settlement, confidentiality, remedies, limitation of liabilities, posting of Performance Assurance and Delivery Date Security, dispute resolution, and limitations on third party sales, shall so survive.

## 22.08. Further Assurances.

If either Party determines in its reasonable discretion that any further instruments, assurances or other things are necessary to carry out the terms of this Agreement, the other Party shall execute and deliver all such instruments and assurances and do all things reasonably necessary to carry out the terms of this Agreement.

## 22.09. No Agency.

Except as otherwise provided explicitly herein, inperforming their respective obligations under this Agreement, neither Party is acting, or is authorized to act, as the other Party’s agent.

## 22.10. No Third Party Beneficiaries.

This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound by this Agreement).

## 22.11. Independent Contractors.

The Parties are independent contractors. Nothing contained herein shall be deemed to create an association, joint venture, partnership or principal/agent relationship between the Parties or to impose any partnership obligation or liability on either Party in anyway.

## 22.12. Severability.

If any term, Section, provision or other part of this Agreement, or the application of any term, Section, provision or other part of this Agreement, is held to be invalid, illegal or void by a court or regulatory agency of proper jurisdiction, all other terms, Sections, provisions or other parts of this Agreement shall not be affected thereby but shall remain in force and effect unless such court or regulatory agency holds that the provisions are not separable from all other provisions of this Agreement.

## 22.13. Forward Contract.

The Parties acknowledge and agree that this Agreement constitutes a “forward contract” and that they are each “forward contract merchants” within the meaning of the United States Bankruptcy Code.

## 22.14. Mobile Sierra.

Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver below is unenforceable or ineffective as to such Party), a non-party or FERC acting *sua sponte*, shall be the ‘public interest’ standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co*., 350 U.S. 348 (1956), and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish* 554 U.S. 527 (2008).

Notwithstanding any provision of Agreement, and absent the prior written agreement of the Parties, each Party, to the fullest extent permitted by Applicable Laws, for itself and its respective successors and assigns, hereby also expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205, 206, or 306 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation, supporting a third party seeking to obtain or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any Section of this Agreement specifying any rate or other material economic terms and conditions agreed to by the Parties.

## 22.15. Insurance.

1. Seller shall, at its own expense, provide and maintain in effect insurance policies with limits of coverage in amounts not less than as specified below, and such additional coverage as may be required by Applicable Law, throughout the Term of this Agreement and as required otherwise below (“Seller’s Insurance”):
	1. Workers’ Compensation Insurance, in statutory limits, as required by the state in which the Project is located, and Employers' Liability Insurance for bodily injury in limits not less than the following:
		1. $1,000,000 each accident;
		2. $1,000,000 disease, each employee; and
		3. $1,000,000 disease, policy limit.
		4. Commercial General Liability Insurance, written on an “occurrence,” not “claims-made” basis, covering all operations by or on behalf of Seller arising out of or connected with this Agreement, including coverage for bodily injury, property damage, personal and advertising injury, products/completed operations, and contractual liability. Such insurance shall be in limits not less than *[TBD (or) $1,000,000,* *per occurrence* *and $2,000,000 annual aggregate**]*, exclusive of defense costs. Such insurance shall contain (A) standard cross-liability or severability of interest provision; and (B) no explosion, collapse, or underground exclusions.

If Seller elects, with the approval of SCE, which approval shall not be unreasonably withheld, to use a “claims-made” form, then the following additional requirements shall apply: (x) the retroactive date of the policy must be prior to the Effective Date of this Agreement; and (y) either (1) coverage shall be maintained in effect for a period of not less than three (3) years after end of the Term or the Early Termination Date, if any, or (2) an extended reporting period of not less than three (3) years after end of the Term or the Early Termination Date, if any.

* + 1. Commercial Automobile Liability Insurance, covering bodily injury and property damage with a combined single limit of not less than $1,000,000 each accident. Such insurance shall cover liability arising out of the use of all owned, non-owned and hired automobiles by Seller in the performance of this Agreement.
		2. Pollution Liability Insurance, written, except with the prior written consent of SCE, on an “occurrence”, not a “claims-made” basis, with limits of not less than *[TBD (or) $5,000,000, per occurrence or each claim and in the annual aggregate]*, covering losses involving hazardous material(s) and caused by pollution incidents or conditions that arise from the operations of the Seller, including but not limited to, coverage for the following: (A) bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death; (B) property damage including the resulting loss of use thereof; clean-up costs; and the loss of use of tangible property that has not been physically damaged or destroyed; and (C) defense costs. Seller shall continue to maintain such coverage for a period of not less than one (1) year following end of the Term or the Early Termination Date, if any.

If Seller elects, with the approval of SCE, which approval shall not be unreasonably withheld, to use a “claims-made” form, then the following additional requirements shall apply: (x) the retroactive date of the policy must be prior to the Effective Date of this Agreement; and (y) either (1) coverage shall be maintained in effect for a period of not less than three (3) years after end of the Term or the Early Termination Date, if any, or (2) an extended reporting period of not less than three (3) years after end of the Term or the Early Termination Date, if any.

* + 1. Umbrella Liability/Excess Liability Insurance, written on an “occurrence,” not “claims-made,” following-form basis, providing coverage excess of the underlying Employers’ Liability, Commercial General Liability, Commercial Automobile Liability, and Pollution Liability insurance, on terms at least as broad as the underlying coverage, in limits not less than *[TBD (or ) $10,000,000, per occurrence and in the annual aggregate]*. The insurance requirements of this Section 22.15 can be provided by any combination of Seller’s primary and excess liability policies.
1. Seller’s Insurance shall be maintained with insurers authorized to do business in the state in which the Project is located and such insurers shall have an A.M. Best Company rating of A-:VII or better (or equivalent S&P rating), and on forms and with deductibles reasonably acceptable to SCE.
2. Seller’s Insurance above shall apply as primary insurance to, without a right of contribution from, any other insurance maintained by or afforded to SCE its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, and employees, regardless of any conflicting provision in Seller’s policies to the contrary.
3. To the extent permitted by Applicable Law, Seller and its insurers shall be required to waive all rights of recovery from or subrogation against SCE, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, employees and insurers.
4. The Seller’s Commercial General Liability, Pollution Liability and Umbrella Liability/Excess Liability insurance required above shall name SCE, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents and employees, as additional insureds with respect to all liabilities arising out of Seller’s obligations under this Agreement, including, without limitation, construction, use, ownership or operation the Project and Seller’s obligations.
5. At the time this Agreement is executed, or within a reasonable time thereafter, and within a reasonable time after coverage is renewed or replaced, Seller shall furnish to SCE certificates of insurance evidencing the coverage required above, written on forms and with deductibles reasonably acceptable to SCE. All deductibles, co-insurance and self-insured retentions applicable to the insurance above shall be paid by Seller. All certificates of insurance shall note that the insurers issuing coverage shall endeavor to provide SCE with at least thirty (30) days’ prior written notice in the event of cancellation of coverage. SCE’s receipt of certificates that do not comply with the requirements stated herein, or Seller’s failure to provide certificates, shall not limit or relieve Seller of the duties and responsibility of maintaining insurance in compliance with the requirements in this Section 22.15 and shall not constitute a waiver of any of the requirements in this Section 22.15.
6. If any of Seller’s Insurance policies contain aggregate limits applying to other projects or operations of Seller outside of this Agreement, and such limits are diminished by any incident, occurrence, claim, settlement or judgment against Seller’s Insurance, Seller shall take immediate steps to restore such aggregate limits or shall provide other insurance protection for such aggregate limits.
7. If Seller fails to comply with any of the provisions of this Section 22.15, Seller, among other things and without restricting SCE’s remedies under Applicable Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above and defend, indemnify and hold harmless SCE. With respect to the required Commercial General Liability, Pollution Liability, Umbrella/Excess Liability and Commercial Automobile Liability insurance, Seller shall also act as an insurer and provide insurance in accordance with the terms and conditions above, and provide a current, full and complete defense to SCE, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest in response to any third party liability claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above.
8. Seller’s compliance with this Section 22.15 shall not limit, reduce, cancel or otherwise impair Seller's liability under the provisions of Article Twenty.

## 22.16. NERC Standards Compliance Penalties.

During the Delivery Period, Seller shall be (i) responsible for complying with any NERC Reliability Standards applicable to the Project, including registration with NERC as the Generator Operator for the Project or other applicable category under the NERC Reliability Standards and implementation of all applicable processes and procedures required by FERC, NERC, WECC, CAISO or other Governmental Authority for compliance with the NERC Reliability Standards; and (ii) liable for all penalties assessed by FERC, NERC (through WECC or otherwise) or other Governmental Authority for violations of the NERC Reliability Standards by the Project or Seller, as Generator Operator or other applicable category.

## 22.17. Multiple Originals.

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission or by other electronic means shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or by other electronic means shall be deemed to be their original signatures for all purposes. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any of the signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

[Remainder of this page intentionally left blank]

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

|  |  |  |
| --- | --- | --- |
| ***[SELLER’S NAME]*,***a [Seller’s jurisdiction of organization and type of organization]*. |  | **SOUTHERN CALIFORNIA EDISON COMPANY,**a California corporation. |
| By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*[Name]**[Title]* |  | *By:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Steven Eisenberg*Vice President of Energy Contracts* |
| Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

APPENDIX A

DEFINITIONS

“AB 32” means the California Global Warming Act of 2006, Assembly Bill 32 (2006) and the regulations promulgated thereunder (including, without limitation, the GHG Regulations) by any authorized Governmental Authority.

“AB 32 Compliance Obligation” has the meaning set forth for “Compliance Obligation” in the GHG Regulations as it relates to Seller.

“Accepted Electrical Practices” means those practices, methods and acts that would be implemented and followed by prudent operators of electric energy generating facilities in the Western United States, similar to the Project, during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known or that should reasonably have been known at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety. Accepted Electrical Practices shall include, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with manufacturers’ warranties, restrictions in this Agreement, and the requirements of Governmental Authorities, WECC standards, the CAISO and Applicable Laws. Accepted Electrical Practices also includes taking reasonable steps to ensure that: (a) equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Project’s needs; (b) sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to operate the Project properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions at the Project and emergencies whether caused by events on or off the Site; (c) preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe operation of the Project, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools; (d) appropriate monitoring and testing are performed to ensure equipment is functioning as designed; (e) equipment is not operated in a reckless manner, in violation of manufacturer’s guidelines or in a manner unsafe to workers, the general public, or the PTO’s electric system or contrary to environmental laws, permits or regulations or without regard to defined limitations such as, flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and (f) equipment and components are designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy generating facilities operating in the western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.

“Affiliate” means, with respect to a Party, any entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such Party. 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.

“Aggregate Network Upgrade Costs” has the meaning set forth in Section 4.02(a).

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

“Air Pollution Control District” means a district as defined by Section 39025 of the California Health and Safety Code, Division 26, Air Resources.

“Applicable Laws” means all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority that apply to either or both of the Parties, the Project or the terms of this Agreement, including, without limitation, the Tariff.

“Approval Date” has the meaning set forth in Section 2.02.

“Arbitrator” has the meaning set forth in Section 19.03.

“Availability Incentive Payments” has the meaning set forth in the Tariff.

“Availability Standards” has the meaning set forth in the Tariff.

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

“Business Day” means any day except a Saturday, Sunday, the Friday immediately following the U.S. Thanksgiving holiday, or a Federal Reserve Bank holiday.

“Buyer” has the meaning set forth in the preamble.

“CAISO” means the California Independent System Operator, a state chartered, nonprofit, public benefit corporation that controls certain transmission facilities of all participating transmission owners and dispatches certain electric generation units and loads, or any successor entity performing the same functions.

“CAISO Certification” means the certification and testing requirements for a generating unit set forth in the Tariff, including certification and testing for all ancillary services, PMAX, and PMIN associated with such generating units.

“CAISO Grid” means the system of transmission lines and associated facilities of the participating transmission owners that have been placed under the CAISO’s operational control.

“California Energy Commission” or “CEC” means the State Energy Resources Conservation and Development Commission as defined and used in Section 25104 in the California Public Resources Code, Division 15, Energy Conservation and Development (Sections 25000, *et seq*).

“CAM” means the advisory Cost Allocation Mechanism Group established by the CPUC in Decision 07-12-052.

“Capacity Attributes” means, with respect to a Generating Unit, any and all of the following, in each case which are attributed to or associated with such Generating Unit at any time throughout the Delivery Period:

(a) resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO, or other Governmental Authority having jurisdiction, that can be counted toward RAR;

(b) resource adequacy attributes or other locational attributes for the Generating Unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Authority having jurisdiction, associated with the physical location or point of electrical interconnection of the Generating Unit within the CAISO Control Area, that can be counted toward a Local RAR;

(c) flexible capacity resource adequacy attributes for the Generating Unit, including, without limitation, the amount of the currently effective Unit EFC of such Generating Unit and MWs and capacity attributes associated with the current Unit EFC, in each case as may be identified from time to time by the CPUC, CAISO, or other Governmental Authority having jurisdiction, that can be counted toward Flexible RAR; and

(d) any other current or future defined characteristics, certificates, tags, credits, or accounting constructs, howsoever entitled, including any accounting construct counted toward any RA Compliance Obligations.

“Capacity Procurement Mechanism” has the meaning set forth in the Tariff.

“Claiming Party” means the Party claiming a Force Majeure under Article Fifteen.

“Collateral Assignment Agreement” has the meaning set forth in Section 13.01.

“Commercial Operation” has the meaning set forth in the Tariff.

“Confidential Information” means any and all written or recorded or oral information, data, analyses, documents, and materials furnished or made available by a Party or its Representatives to the other Party or its Representatives in connection with this Agreement, including any and all analyses, compilations, studies, documents, or other material prepared by the receiving Party or its Representatives to the extent containing or based upon such information, data, analyses, documents, and materials, and the terms and conditions and other facts with respect to this Agreement. Confidential Information does not include information, data, analyses, documents, or materials that (i) are when furnished or thereafter become available to the public other than as a result of a disclosure by the receiving Party or its Representatives, (ii) are already in the possession of or become available to the receiving Party or its Representatives on a nonconfidential basis from a source other than the disclosing Party or its Representatives; *provided*, to the best knowledge of the receiving Party or its Representatives, as the case may be, such source is not and was not bound by an obligation of confidentiality to the disclosing Party or its Representatives, or (iii) the receiving Party or its Representatives can demonstrate that the information has been independently developed without a violation of this Agreement.

“Congestion Revenue Right” has the meaning set forth in the Tariff.

“Construction Report” has the meaning set forth in Section 6.01.

“Contract Capacity” means, (a) from the Effective Date until the Initial Delivery Date, the Predicted Capacity, and (b) on the Initial Delivery Date and thereafter, the IDD Capacity, provided that for purposes of this definition of “Contract Capacity”, the IDD Capacity may not exceed the Predicted Capacity.

“Contract Year” means the months within each calendar year during the Delivery Period. The initial Contract Year would be from the Initial Delivery Date until December 31st of such year. The second Contract Year would be from January 1st through December 31st of the year immediately following the initial Contract Year. The final Contract Year will be January 1st of the last year during which the Delivery Period occurs, through the last day of the Delivery Period.

“Control Area” means the electric power system (or combination of electric power systems) under the operational control of the CAISO or any other electric power system under the operational control of another organization vested with authority comparable to that of the CAISO.

“Costs” means with respect to the Non-Defaulting Party, 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 under the Agreement or entering into new arrangements which replace the Product. With respect to SCE, Costs shall be based on replacing the Product with product from new [[gas-fired generation ]][TBD based on technology] capacity which has not yet been [constructed][TBD based on technology] and which would be considered a *[Western LA Basin Project or Moorpark Sub-Area Project]*.

“CPM Capacity” has the meaning set forth in the Tariff.

“CPUC” means the California Public Utilities Commission or any successor thereto.

“CPUC Filing Guide” is the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by the Ratings Agencies.

“Daily Delay Damages” means liquidated damages in the amount of (i) the product of [$410.00/MW][TBD based on technology] and the Predicted Capacity for each day of delay during the period of June 1 through September 30, inclusive, or (ii) the product of [$265.00/MW][TBD based on technology] and the Predicted Capacity for each day of delay during all other days of the year.

“Defaulting Party” has the meaning set forth in Sections 3.01 and 3.02.

“Delivery Date Security” has the meaning set forth in Section 12.02(a).

“Delivery Period” has the meaning set forth in Section 2.04.

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

“Disqualified Stock” means any capital stock that, by its terms (or by the term of any security instrument into which it is convertible, or for which it is exchangeable, in each case at the option of the holder of the capital stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the capital stock, in whole or in part, on or prior to the date that is ninety-one (91) days after the last day of the Term.

“Early Termination Date” has the meaning set forth in Section 3.03.

“Effective Date” has the meaning set forth in the preamble.

“Emission Reduction Credits” or “ERC” means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby a district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.

“Energy” means all electrical energy produced, flowing or supplied by a Generating Unit or the Project, as applicable, measured in kilowatt-hours or multiples units thereof. Energy shall include without limitation, all electrical energy products that may be developed or evolve from time to time during the Term.

“Energy Delivery Point” has the meaning set forth in Section 1.03(a).

“Environmental Costs” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Project, and the Project’s compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Project, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the Site, and the decontamination or remediation, on or off the Site, necessitated by the introduction of such hazardous substances on the Site.

“EPC Contract” means Seller’s engineering, procurement and construction contract with the EPC Contractor.

“EPC Contractor” means the entity chosen by Seller to perform the engineering, procurement and construction activities for the Project.

“Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

“Event of Default” has the meaning set forth in Sections 3.01 and 3.02.

“Excess Network Upgrade Costs” has the meaning set forth in Section 4.02.

“Expected Contract Quantity” means, with respect to any particular day of any Showing Month of the Delivery Period, the Product (in MWs) for such day of such Showing Month, less any reductions to the amount of Product (in MWs) that must be provided for such day as specified in Section 9.02.

“Expected Initial Delivery Date”is the date set forth in Section 2.03.

“Expected MCPS” has the meaning set forth in Section 12.02(c)(i).

“Federal Funds Effective Rate” means the rate for that day opposite the caption “Federal Funds (effective)” as set forth in the weekly statistical release as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.

“FERC” means the Federal Energy Regulatory Commission, or any division thereof.

“Final CPUC Approval” means a decision of the CPUC that (i) is final and no longer subject to appeal, which approves the Agreement in full and in the form presented on terms and conditions acceptable to SCE in its sole discretion, including without limitation terms and conditions related to cost recovery and cost allocation of amounts paid to Seller under the Agreement; (ii) does not contain conditions or modifications unacceptable to SCE, in SCE’s sole discretion, and (iii) finds that any procurement pursuant to this Agreement satisfies the requirement to procure resources under CPUC Decision 13-02-015.

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

“Flexible Capacity” means, with respect to any particular Showing Month of the Delivery Period, the number of MWs of Product which are eligible to satisfy Flexible RAR.

“Flexible RAR” means the flexible capacity requirements established for LSEs or other Persons by the CPUC pursuant to the Resource Adequacy Rulings, the CAISO pursuant to the Tariff, or by any other Governmental Authority having jurisdiction.

“Force Majeure” means any event or circumstance to the extent beyond the control of, and not the result of the negligence of, or caused by, the Party seeking to have its performance obligation excused thereby, which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome including, but not limited to (but only to the extent that the following examples satisfy such definition): (a) acts of God such as droughts, floods, earthquakes, (b) adverse geological or underground conditions that could not have been discovered through a reasonably prudent geophysical site survey, (c) war (declared or undeclared), riots, insurrection, rebellion, acts of the public enemy, acts of terrorism and sabotage, blockades, and embargoes, and (d) industry-wide or general (i.e. not directed specifically at or by the party claiming Force Majeure) strikes, lockouts or other labor disputes. Force Majeure shall not include (i) a failure of performance of any other entity, including any entity providing electric transmission service or natural gas transportation to the Project, except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure event, (ii) failure to timely apply for or obtain permits including required Marketable Emission Trading Credits, or (iii) breakage or malfunction of equipment (except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure).

“Forward Settlement Amount” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other.

If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Forward Settlement Amount shall be an amount owing to the Non-Defaulting Party.

If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Forward Settlement Amount shall be Zero dollars ($0).

The Forward Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to such Party, if any (exclusive of Costs), resulting from the termination of the Agreement, determined in a commercially reasonable manner, as described below. With respect to SCE, Gains shall be based on replacing the Product with product from new [gas-fired generation][TBD based on technology] capacity which has not yet been [constructed] [TBD based on technology] and which would be considered a *[Western LA Basin Project or Moorpark Sub-Area Project]*.

Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Term of this Agreement.

Only if the Non-Defaulting Party is unable, after using commercially reasonable efforts, to obtain third party information to determine the gain of economic benefits, *then* the Non-Defaulting Party may use information available to it internally suitable for this purpose in accordance with prudent industry practices.

“GAAP” means United States generally accepted accounting principles as in effect from time to time, consistently applied.

“Generating Facility” has the meaning set forth in the Tariff.

“Generating Unit” or “Generating Units” means the generating unit or units specified in Appendix 1.03.

“Generating Unit Removal Right” means, with respect to any Generating Unit that is subject to 8.02(d)(i) or 8.02(e)(i), SCE’s right to designate such affected Generating Unit(s) for removal from this Agreement. Upon Notice of such designation: (i) SCE shall have no obligation to compensate Seller for Product from such Generating Unit(s), (ii) IDD Capacity, Predicted Capacity, Project, Product and Appendices 1.02, 1.03, 10.02, and any other information specific to such Generating Unit(s), shall automatically be amended to reflect the removal of such Generating Unit(s), (iii) Seller shall not be permitted to market, dispatch, provide, or convey Product from such Generating Unit(s) for SCE or any other third party, (iv) SCE shall calculate, and Seller shall be obligated to pay, a Termination Payment attributable to and associated with the Product from such Generating Unit(s) with SCE being considered the Non-Defaulting Party in all circumstances, and (v) notwithstanding clause (iv), this Agreement will otherwise remain in full force and effect.

“Generator Operator” means the entity that operates generating unit(s) and performs the functions of supplying energy and interconnected operations services and the other functions of a generator operator as described in NERC’s Statement of Compliance Registry Criteria located on the NERC website.

“Generator Owner” means an entity that owns the Project and has registered with NERC as the entity responsible for complying with those NERC Reliability Standards applicable to owners of generating units as set forth in the NERC Reliability Standards.

“GHG Charge” means any taxes, charges or fees imposed on the Project or Seller by a Governmental Authority for Greenhouse Gas emitted by and attributable to the Project during the Term.

“GHG Regulations” means Subchapter 10 Climate Change, Article 5, Sections 95800 to 96022, Title 17, California Code of Regulations, as amended or supplemented from time to time.

“Governmental Authority” means any federal, state, local, municipal, or other governmental, executive, administrative, judicial or regulatory entity or agency, the CAISO or any other transmission authority, exchange or grid control operator in each case having or asserting jurisdiction over a Party, any Generating Unit, the Project or this Agreement.

“Greenhouse Gas” or “GHG” has the meaning set forth in the GHG Regulations or in any other Applicable Law.

 “GU Capacity” means the actual Unit NQC, as of the Initial Delivery Date, for any particular Generating Unit.

“GU Flexible Capacity” means that actual Unit EFC, as of the Initial Delivery Date, for any particular Generating Unit.

“IDD Capacity” means the aggregate sum of actual Unit NQCs (in MWs), as of the Initial Delivery Date, for each of the Generating Units that are part of the Project, provided that the IDD Capacity may not exceed the Predicted Capacity.

“Indemnified Party” has the meaning set forth in Section 20.03.

“Indemnitor” has the meaning set forth in Section 20.03.

“Independent Engineer” or “IE” has the meaning set forth in Section 8.02(d).

“Independent Evaluator” has the meaning set forth in CPUC Decision 04-12-048.

“Industry Standards” has the meaning set forth in Section 8.01(a).

“Inflexible Capacity” means, with respect to any particular Showing Month of the Delivery Period, the number of MWs of Product which are not eligible to satisfy Flexible RAR. Inflexible Capacity is also known as ‘generic capacity’.

“Initial Delivery Date” has the meaning set forth in Section 2.04.

“Interconnection Facilities” means all apparatus installed between a Generating Unit and the Point of Interconnection on the PTO’s electrical system, other participating transmission owner’s system, or the CAISO Grid, to interconnect the Project to make available to SCE the Product and energy and other related products to the CAISO Control Area, including connection, Tie-Line, transformation, switching, metering, communications, control, and safety equipment, such as equipment required to protect (a) the PTO’s electric system (or other participating transmission owner’s system to which the PTO’s electric system is connected, including the CAISO Grid) and SCE’s customers from faults occurring at the Generating Unit(s), and (b) the Generating Unit(s) from faults occurring on the PTO’s electric system or on other participating transmission owner’s system to which the PTO’s electric system is connected.

“Interconnection Queue Position” is the order of Seller’s valid request for interconnection relative to all other valid interconnection requests, as specified in Section 1.03(c).

“Interconnection Study” or “Interconnection Studies” means any of the studies defined in the Tariff or any PTO’s tariff that reflect methodology and costs to interconnect the Project to the PTO’s electric grid.

“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.

 “JAMS” has the meaning set forth in Section 19.02.

“kW” means kilowatt or kilowatts.

“kWh” means kilowatt-hours.

“Lender” means any and all financial institutions that provide to Seller any development, bridge, construction, permanent debt, tax equity, Performance Assurance, or other form of financing or refinancing, or other credit support, relating to the Project.

“Letter of Credit” means an irrevocable, nontransferable standby letter of credit, substantially in the form of Appendix 12.03(b) and acceptable to SCE, 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 the bank (i) having a Credit Rating of at least (a) “A-” by S&P, “A-” by Fitch and “A3” by Moody's, if such entity is rated by the Ratings Agencies; (b) if such entity is rated by only two of the three Ratings Agencies, a Credit Rating from two of the three Ratings Agencies of at least “A-” by S&P, if such entity is rated by S&P, “A-” by Fitch, if such entity is rated by Fitch, and “A3” by Moody's, if such entity is rated by Moody’s; or (c) “A-” by S&P or “A3” by Moody's, or “A-” by Fitch if such entity is rated by only one Ratings Agency; and (ii) having shareholder equity (determined in accordance with GAAP) of at least $1,000,000,000.00 (ONE BILLION AND 00/100 DOLLARS). Costs of a Letter of Credit shall be borne by Seller.

“Letter of Credit Default” means with respect to a Letter of Credit, the occurrence of any of the following events: (a) the issuer of such Letter of Credit shall fail to maintain a Credit Rating of at least (i) “A-” by S&P, “A-” by Fitch, and “A3” by Moody’s, if such issuer is rated by the Ratings Agencies, (ii) “A-” by S&P, “A-” by Fitch or “A3” by Moody’s if such issuer is rated by only two of the Ratings Agencies, or (iii) “A-” by S&P, “A-” by Fitch, or “A3” by Moody’s, if such issuer is rated by only one Ratings Agency; (b) the issuer of such Letter of Credit fails to comply with or perform its obligations under such Letter of Credit; (c) the issuer of such Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit; (d) such Letter of Credit fails or ceases to be in full force and effect at any time; or (e) the issuer of such Letter of Credit becomes Bankrupt; *provided*, no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Agreement.

“Local Capacity Area” has the meaning set forth in the Tariff.

“Local RAR” means the local resource adequacy requirements established for LSEs and other Persons by the CPUC pursuant to the Resource Adequacy Rulings, the CAISO pursuant to the Tariff, or by any other Governmental Authority having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

“Losses” means with respect to either Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of the Agreement, determined in a commercially reasonable manner, as described below. With respect to SCE, Losses shall be based on replacing the Product with product from new [gas-fired generation][TBD based on technology] capacity which has not yet been [constructed][TBD based on technology] and which would be considered a *[Western LA Basin Project or Moorpark Sub-Area Project]*.

Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Term of this Agreement.

Only if the Non-Defaulting Party is unable, after using commercially reasonable efforts, to obtain third party information to determine the loss of economic benefits, then the Non-Defaulting Party may use information available to it internally suitable for these purposes in accordance with prudent industry practices.

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

“Market-Based Rate Authority” means authority granted by FERC to charge market-based rates for electrical power pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d.

“Marketable Emission Trading Credits” means without limitation, emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (42 U.S.C. § 7651b.(a) to (f)).

“Mediator” has the meaning set forth in Section 19.02.

“Meter Service Agreement For CAISO Metered Entities” or “MSA” has the meaning set forth in the Tariff.

“Milestone Schedule” means the completed schedule in the form of Appendix 6.01(A), setting forth Seller’s engineering, permit, procurement, contract, financing and construction milestones.

“Monthly Capacity Payment” has the meaning set forth in Section 10.01.

“Monthly Capacity Price” means, for any Showing Month, the “Monthly Capacity Price” applicable to such Showing Month set forth in Appendix 10.02, which such price applies to all Generating Units.

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

“Moorpark Sub-Area High Voltage Substations” means the following substations located in the CAISO Control Area: Goleta, Moorpark, Santa Clara, Mandalay, and Ormond Beach. *[SCE Note: if applicable]*

“Moorpark Sub-Area Project” means a [generating facility][TBD based on technology] that directly connects to a (i) Moorpark Sub-Area High Voltage Substation, or (ii) lower voltage substation that electrically connects to a Moorpark Sub-Area High Voltage Substation. *[SCE Note: if applicable]*

“MW” means megawatt or megawatts.

“NERC” means the North American Electric Reliability Council, or any successor thereto.

“NERC Reliability Standards” means those reliability standards applicable to the Generating Facility, or to the Generator Owner or the Generator Operator with respect to the Generating Facility, that are adopted by NERC and approved by the applicable regulatory authorities and available on the NERC website.

“Net Qualifying Capacity” has the meaning set forth in the Tariff.

“Network Upgrades” means all apparatus, modifications, and upgrades to the PTO’s electric system, CAISO Grid or, if applicable, participating transmission owner’s system that are required at or beyond the Point of Interconnection to accommodate the Project’s output.

“Network Upgrades Cap” has the meaning set forth in Section 4.02(a).

“New Resource” means that the Project (a) has a remaining design life of at least thirty (30) years after the Initial Delivery Date as attested by an engineering assessment performed by a professional mechanical engineer (with experience acceptable to SCE in its sole discretion) licensed by the State of California, (b) provides incremental capacity to the CAISO’s Control Area, and (c) is a [Western LA Basin Project][Moorpark Sub-Area Project][select as applicable].

“Non-Availability Charges” has the meaning set forth in the Tariff.

“Non-Defaulting Party” has the meaning set forth in Section 3.03.

“Notice” has the meaning set forth in Section 22.02.

“NYMEX” means the New York Mercantile Exchange.

“Obligation Month” has the meaning set forth in Section 11.01.

“Outage Schedule” has the meaning set forth in Section 16.03(h).

“Participating Generator Agreement” or “PGA” has the meaning set forth in the Tariff.

“Participating Transmission Owner” or “PTO” means any entity or entities responsible for the interconnection of the Project with a Control Area or transmitting the Energy on behalf of Seller from the Project to the Point of Interconnection.

“Party” or “Parties” has the meaning set in the preamble.

“Performance Assurance” means collateral, including Delivery Date Security, in the form of cash or a Letter of Credit.

“Permit Requirements” means any requirement or limitation imposed as a condition of a permit or other authorization relating to construction or operation of the Project or related facilities, including limitations on any pollutant emissions levels, limitations on fuel combustion or heat input throughput, limitations on operational levels or operational time, limitations on any specified operating constraint, requirements for acquisition and provision of any Emission Reduction Credits or Marketable Emission Trading Credits, or any other operational restriction or specification related to compliance with any Applicable Laws.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Planned Outage” means, an Approved Maintenance Outage (as defined in the Tariff), but does not include a RA Maintenance Outage With Replacement (as defined in the Tariff), a Short-Notice Opportunity RA Maintenance Outage (as defined in the Tariff) or an Off-Peak Opportunity RA Maintenance Outage (as defined in the Tariff).

“PMAX” or “Pmax” means the applicable CAISO-certified maximum operating level of a Generating Unit.

“PMIN” or “Pmin” means the applicable CAISO-certified minimum operating level of a Generating Unit.

“Point of Interconnection” has the meaning set forth in Section 1.03(b).

“PPT” means Pacific Daylight Time when California observes Daylight Savings Time and Pacific Standard Time otherwise.

“Predicted Capacity” means the aggregate sum of the expected Unit NQCs for each of the Generating Units that are part of the Project, as set forth in Appendix 1.02.

“Predicted GU Capacity” means the expected Unit NQC for any particular Generating Unit as set forth for such Generating Unit in Appendix 1.02.

“Predicted GU Flexible Capacity” means the expected Unit EFC for any particular Generating Unit as set forth for such Generating Unit in Appendix 1.02.

“Procurement Review Group” or “PRG” has the meaning set forth in Section 21.02(a).

“Product” means all Capacity Attributes associated with the Project, provided that:

(a) Product does not include any right to the energy or ancillary services from the Project;

(b) any change by the CAISO, CPUC or other Governmental Authority that defines new or re-defines existing Local Capacity Areas that results in a decrease or increase in the amount of Capacity Attributes related to a Local Capacity Area provided hereunder will not result in a change in payments made pursuant to this Agreement;

(c) any change by the CAISO, CPUC or other Governmental Authority that defines new or re-defines existing Flexible RAR, Capacity Attributes related to Flexible RAR, or attributes of the Project related to Flexible RAR, that results in a decrease or increase in the amount of Capacity Attributes related to Flexible RAR provided hereunder will not result in a change in payments made pursuant to this Agreement;

(d) the Parties agree that if the CAISO, CPUC or other Governmental Authority defines new or re-defines existing Local Capacity Areas whereby the Project subsequently qualifies for a Local Capacity Area, the Product shall include all Capacity Attributes related to such Local Capacity Area; and

(e) the Parties agree that if the CAISO, CPUC or other Governmental Authority defines new or re-defines existing Flexible RAR, Capacity Attributes related to Flexible RAR, or attributes of any Generating Unit related to Flexible RAR whereby any Generating Unit, or a portion of any Generating Unit which did not previously qualify to satisfy Flexible RAR, subsequently qualifies to satisfy Flexible RAR, the Product shall include all Capacity Attributes of all Generating Units related to Flexible RAR, including any Capacity Attributes related to Flexible RAR with respect to any portion of the Generating Units which previously were not able to satisfy Flexible RAR.

“Project” means the Generating Units and the Interconnection Facilities (owned by Seller or Seller’s Affiliates), up to the Point of Interconnection, together with all materials, equipment systems, structures, features and improvements necessary to produce electric energy at the facility, excluding the Site, land rights and interests in land and as more fully described in Appendix 1.03.

“Protective Apparatus” means control devices (such as meters, relays, power circuit breakers and synchronizers) specified in the interconnection agreement or other related agreements for the Project.

“RA Capacity Qualification Tests” means any and all tests, certifications or performance evaluations required by CAISO, the CPUC or any other applicable Governmental Authority pursuant to any Applicable Laws, including without limitation the Tariff, in order for a Generating Unit to obtain, maintain or update a Unit NQC and Unit EFC, including without limitation, testing for PMAX.

“RA Compliance Obligations” means the RAR, Local RAR and Flexible RAR.

“RA Compliance Showings” means the (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) Flexible RAR compliance or advisory showings (or similar successor showings), in each case, an LSE or other Person is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, to the CAISO pursuant to the Tariff, or to any Governmental Authority having jurisdiction.

“RAR” means the resource adequacy requirements established for LSEs and other Persons by the CPUC pursuant to the Resource Adequacy Rulings, the CAISO pursuant to the Tariff, or by any other Governmental Authority having jurisdiction.

“RA Replacement Capacity” has the meaning set forth in the Tariff.

“Ratings Agency” shall mean any of S&P, Moody’s and Fitch, and any other rating agency agreed by the Parties (collectively the “Ratings Agencies”).

“Repair Plan” has the meaning set forth in Section 8.02(c).

“Representatives” means the officers, directors, employees, legal counsel, accountants, lenders, advisors, or ratings agencies and other agents of a Party utilized in connection with this Agreement and, in the case of SCE, includes the Independent Evaluator.

“Required Permits” has the meaning set forth in Section 5.01(b).

“Required Permit Date” means the date set forth in Section 5.01(b).

“Resold Product” has the meaning set forth in Section 9.05.

“Resource Adequacy Benefits” means the rights and privileges attached to any generating resource that satisfy any entity’s RA Compliance Obligations under any Resource Adequacy Rulings, including, without limitation, the Product.

“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, and any other existing or subsequent decisions, resolutions, or rulings related to resource adequacy, including, without limitation, the CPUC Filing Guide, in each case as may be amended from time to time by the CPUC, and any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, as such decisions, rulings, laws, rules or regulations may be amended or modified from time to time during the Term.

“Resource Adequacy Resource”“ has the meaning set forth in the Tariff.

“Responsible Officer” means the chief financial officer, treasurer or any assistant treasurer of a Party or any employee of a Party designated by any of the foregoing.

“RMR Contract” has the meaning set forth in the Tariff.

“RUC Availability Payments” has the meaning set forth in the Tariff.

“S&P” means Standard & Poor’s Financial Services LLC or its successor.

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

“SCE” has the meaning set forth in the preamble.

“SEC” means the United States Securities and Exchange Commission.

“Security Interest” has the meaning set forth in Section 12.04.

“Seller” has the meaning set forth in the preamble.

“Seller’s Insurance” has the meaning set forth in Section 22.15.

“Shortfall Capacity” has the meaning set forth in Section 9.06.

“Showing Month” shall be the calendar month of the Delivery Period that is the subject of the RA Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the Tariff. For illustrative purposes only, pursuant to the Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly RA Compliance Showing made in June is for the Showing Month of August.

“Simple Interest” means the product of the following three factors: (a) dollar amount on which an interest payment is based; (b) Federal Funds Effective Rate; and (c) the number of days in the calculation period divided by 360.

“Site” means the real property on which the Project is, or will be located, as further described in Section 1.02(c) and Appendix 1.03.

“Site Certification” means the “California Energy Commission Power Facility and Site Certification” set forth in Section 5.01(b).

“Site Control” means that Seller owns the Site and the Project or has demonstrable contractual rights to, or is the managing general partner of any partnership (or comparable manager of any other person) who owns or has demonstrable contractual rights to, with explicit authority to act in all matters relating to, the control and operation of, the Site and the Project.

“Successful Repair” means that, immediately upon completion of the repairs to a particular Generating Unit, Seller conducts an RA Capacity Qualification Test, at Seller’s expense, and obtains (a) a Unit NQC for the applicable Generating Unit equal to or greater than ninety-eight percent (98%) of GU Capacity for such Generating Unit and (b) a Unit EFC for the applicable Generating Unit equal to or greater than ninety-eight (98%) of the GU Flexible Capacity for such Generating Unit.

“Supply Plan” has the meaning set forth in the Tariff.

“Tariff” means the tariff and protocol provisions, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended or supplemented from time to time, of the CAISO.

“Term” has the meaning set forth in Section 2.01.

“Termination Payment” has the meaning set forth in Section 3.04.

“Tie-Line” means the transmission or distribution line between the Energy Delivery Point and the Point of Interconnection as more fully described in Appendix 1.03(A).

“United States Bankruptcy Code” means 11 U.S.C. §101 *et seq*., as amended, and any successor statute.

“Unit EFC” means the effective flexible capacity (in MWs) of the applicable Generating Unit pursuant to the counting conventions set forth in the Resource Adequacy Rulings and Tariff, which such flexible capacity may be used to satisfy Flexible RAR.

“Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Generating Unit and which such Net Qualifying Capacity is part of the final annual NQC report as described in the Tariff, as such report may be updated by the CAISO, and which makes the Generating Unit associated with such Net Qualifying Capacity a resource eligible to be included in RA Compliance Showings by LSEs.

“WECC” means the Western Electricity Coordinating Council, or any successor thereto.

“Western LA Basin High Voltage Substations” means the following substations located in the CAISO Control Area: Alamitos, Barre, Center, Chevmain, Del Amo, Eagle Rock, El Nido, El Segundo, Ellis, Goodrich, Gould, Hinson, Huntington Beach, Johanna, La Cienega, La Fresa, Laguna Bell, Lewis, Lighthipe, Long Beach, Mesa, Olinda, Redondo, Rio Hondo, San Onofre, Santiago, Viejo, Villa Park, and Walnut. [*SCE Note: if applicable*]

 “Western LA Basin Project” means a [generating facility][TBD based on technology] that directly connects to a (i) Western LA Basin High Voltage Substation, or (ii) lower voltage substation that electrically connects to a Western LA Basin High Voltage Substation. *[SCE Note: if applicable]*

“Wholesale Distribution Access Tariff” or “WDAT” means the tariff through which open access transmission service and interconnection service are offered by SCE, as filed with FERC, and as amended or supplemented from time to time, or any successor tariff.

“WMDVBE” means women, minority, and disabled veteran business enterprise, as more particularly set forth in CPUC General Order 156.

# APPENDIX 1.02

**CAPACITY**

Excel Appendices

(See attached)

# APPENDIX 1.03

**GENERATING UNITS**

Excel Appendices

Include:

(1) description of the Project, the Generating Units and the Interconnection Facilities (owned by Seller or Seller’s Affiliates), up to the Point of Interconnection, together with all materials, equipment systems, structures, features and improvements necessary to produce electric energy at the facility, excluding the Site, land rights and interests in land.

(2) legal description and address of the Site.

# APPENDIX 1.03(a)

**ENERGY DELIVERY POINT**

[Single-line diagram depicting grid interconnection

To include identification of “Energy Delivery Point” and “Point of Interconnection”]

(See attached)

# APPENDIX 6.01(A)

**MILESTONE SCHEDULE**

**[SCE Note: Appendix is subject to modification, including for technology specific differences]**

Project Schedule -

Seller has provided dates for development, construction, commissioning, and testing of the Project, showing all significant elements and milestones, as applicable, such as permitting, procurement, turbine first fire, financing, engineering, acceptance testing, Seller’s proposed Expected Initial Delivery Date, and proposed Delivery Period.

| No. | Projected Completion Date | Milestone |
| --- | --- | --- |
| 1 |  | **Front End Engineering / Permits / Agreements** |
| 2 |  | Submit Applicable Participating Transmission Owner Interconnection Application |
| 3 |  | File a CEC Certification and Verification Application |
| 4 |  | Receive a Completed Interconnection System Impact Study (or equivalent) |
| 5 |  | Receive a Completed Interconnection Facilities Study (or equivalent) |
| 6 |  | Finalize Labor Agreement Negotiations |
| 7 |  | Execute a Participating Transmission Owner Tariff and/or Applicable Service Agreement and/or WDAT and Interconnection Facilities agreement |
| 8 |  | Receive FERC Acceptance of Interconnection Agreement and Transmission Agreement(s) |
| 9 |  | Receive CEC Certification and Verification or APCD permit if applicable |
| 10 |  | Obtain Control Of All Lands and Rights-Of-Way Comprising The Site |
| 11 |  | Receive CEC Full Notice To Proceed |
| 12 |  | Receive All Other Required Permits |
| 13 |  | **Financing** |
| 14 |  | Verify That Seller’s Bank Has Received All Required Due Diligence Information |
| 15 |  | Complete Bank Financing  |
| 16 |  | **Engineering** |
| 17 |  | Execute EPC Contract |
| 18 |  | Begin Existing Site Re-Engineering |
| 19 |  | Begin New Power Plant Engineering Design |
| 20 |  | Lump Sum Estimate Preparation |
| 21 |  | Complete Existing Site Re-Engineering |
| 22 |  | Complete New Power Plant Engineering Design |
| 23 |  | **Construction – Initial Site Work** |
| 24 |  | Begin Civil Tasks - CTG’s |
| 25 |  | Begin Mechanical Tasks - U/G Piping |
| 26 |  | Begin Electrical Tasks - U/G Electrical |
| 27 |  | **Construction** |
| 28 |  | Begin Construction Of Project - Erect Equipment |
| 29 |  | Civil Tasks - Balance of Plant |
| 30 |  | Mechanical Tasks - A/G Piping |
| 31 |  | Electrical Tasks - A/G Electrical |
| 32 |  | Erect Heat Recovery Steam Generator  |
| 33 |  | Commission Heat Recovery Steam Generator |
| 34 |  | Erect Gas Turbine |
| 35 |  | Commission Gas Turbine |
| 36 |  | Erect Steam Turbines |
| 37 |  | Commission Steam Turbines |
| 38 |  | Erect Generators |
| 39 |  | Commission Generators |
| 39 |  | Complete Construction Of The Project |
| 40 |  | **Commissioning** |
| 41 |  | Begin start-up Activities - BOP Systems |
| 42 |  | Achieve Initial Operation |
| 43 |  | Obtain Unit NQC and Unit EFC for each Generating Unit |
| 44 |  | Expected Initial Delivery Date |

# APPENDIX 6.01(B)

**CONSTRUCTION REPORT**

[SCE Note: Appendix is subject to modification for technology specific differences]

Monthly Project Progress Report

From the Effective Date of this Agreement and continuing until the Initial Delivery Date, Seller will provide a monthly Project progress report containing, at a minimum, the information listed below.

1. An executive summary;
2. Project bar chart schedule (including current status of all events);
3. Assessment of percent construction complete and percent change from immediately previous report;
4. Description of general work status (including short passages as applicable) on:

Engineering;

Procurement;

Permitting (include status of any required regulatory determinations for approval of Federal New Source Review permitting exemptions, expedited permitting processes, and status of acquisition of required ERCs and other emission credits in terms of impact on the Project’s permitting schedule, over-all Project schedule, and ability of Project to meet Initial Delivery Date);

Major construction activities in the prior month;

Testing;

Electrical interconnection status;

Fuel gas interconnection status; and

Any other required interconnections.

1. Forecast activities for next month; and
2. Potential issues affecting the Project.

Seller must notify SCE’s contract manager for the Agreement in writing of its receipt of any additional documents, which fall into the categories, listed (in a – f) below, and make such documents available to SCE within two (2) Business Days of such receipt:

1. All material written commitments regarding construction work at the Project that could impact the completion schedule or Initial Delivery Date;
2. Executed work orders for construction of the Project;
3. Construction agreements;
4. Letters of intent;
5. Precedent agreements; and
6. Engineering assessments of the Project or any Generating Unit.

# APPENDIX 10.02

**DELIVERY PERIOD AND MONTHLY CAPACITY PAYMENT**

Excel Appendices

(See attached.)

**APPENDIX 12.03(b)**

**LETTER OF CREDIT FORM**

IRREVOCABLE NONTRANSFERABLE STANDBY

LETTER OF CREDIT

Reference Number:

Transaction Date:

BENEFICIARY:

Southern California Edison Company

2244 Walnut Grove Avenue

Risk Control GO#1, Quad 2A

Rosemead, CA 91770

Attn: Manager Credit, Risk & Collateral Management

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 *[CONTRACT PARTY]*, a \_\_\_\_\_\_\_\_\_\_\_\_ corporation, (the “Applicant”), for the amount of XXX AND XX/100 Dollars ($ ) (the “Available Amount”), effective immediately and expiring at 5:00 p.m., California time, on \_\_\_\_\_\_\_\_\_\_\_\_ (the “Expiration Date”).

This Letter of Credit shall be of no further force or effect upon the close of business on the Expiration Date or, if such day is not a Business Day (as hereinafter defined), on the next Business Day.

For the purposes hereof, “Business Day” shall mean any day on which commercial banks are not authorized or required to close in Los Angeles, California.

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

1. The original or a photocopy of this Letter of Credit and all amendments; and

2. The Drawing Certificate issued in the form of Attachment A attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the signature of an authorized representative of the Beneficiary.

Notwithstanding the foregoing, any full or partial drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at \_\_\_\_\_\_\_\_\_\_\_\_\_\_ or such other number as specified from time-to-time by the Bank.

The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

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.

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.

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 Issuer

(Name)

Title:

**ATTACHMENT A TO APPENDIX 12.03(b)**

**DRAWING CERTIFICATE**

TO [ISSUING BANK NAME]

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT

Reference Number.

*(Sample Text)*

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Nontransferable Standby Letter of Credit

 Reference Number:

The undersigned , an authorized representative of Southern California Edison Company (the “Beneficiary”), hereby certifies to [Issuing Bank Name] (the “Bank”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Applicant”), with reference to Irrevocable Nontransferable Standby Letter of Credit No. , dated , (the “Letter of Credit”), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to
 $ , for the following reason(s) [check applicable provision]:

[ ]A. An Event of Default, as defined in the Resource Adequacy Purchase Agreement between Beneficiary and Applicant (the “Agreement”), with respect to the Applicant has occurred and is continuing. Wherefore, the undersigned does hereby demand payment under the Letter of Credit.

[ ]B. An Early Termination Date (as defined in the Agreement) has been set by the Beneficiary under the Agreement. Wherefore, the undersigned does hereby demand payment under the Letter of Credit.

[ ]C. The Letter of Credit will expire in fewer than twenty (20) Business Days (as defined in the Agreement) from the date hereof, and Applicant has not provided Beneficiary alternative Performance Assurance (as defined in the Agreement) acceptable to Beneficiary.

[ ]D. The Bank or Applicant has heretofore provided written notice to the Beneficiary of the Bank’s or Applicant’s intent not to renew the Letter of Credit following the present Expiration Date thereof, and Applicant has failed to provide the Beneficiary with a replacement letter of credit satisfactory to Beneficiary in its sole discretion within thirty (30) days following the date of the notice of non-renewal.

[ ]E. The Beneficiary has not been paid any or all of the Applicant’s payment obligations now due and payable under the Agreement.

[ ]F. Daily Delay Damages (as defined in the Agreement) are now due and payable under the Agreement.

[ ]G. The Beneficiary is entitled to retain the entire Delivery Date Security (as defined in the Agreement): (i) because the Initial Delivery Date (as defined in the Agreement) has not occurred on or before \_\_\_\_\_\_\_\_\_\_\_\_; or (ii) because the Agreement has been terminated due to an Event of Default by Applicant before the Initial Delivery Date.

2. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS AND \_\_\_\_/100ths (U.S.$ ), which amount does not exceed (i) the amount set forth in paragraph 1 above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.

3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire-transferred to the Beneficiary in accordance with the following instructions:

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.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Beneficiary by its authorized representative as of this \_\_\_\_ day of , \_\_\_\_\_.

Beneficiary: SOUTHERN CALIFORNIA EDISON COMPANY

 By:

 Name:

 Title:

#  APPENDIX 16.03(h)

**OUTAGE SCHEDULE REPORT**

Actual Outage Schedule reports submitted under this Agreement should be provided in Excel.

|  |  |
| --- | --- |
| DATE OF UPDATE |  |
| **RESOURCE NAME** |  |
| Replicate for each Generating Unit |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
| **Planned Outages** |  |  |  |  |
| **Start Date** | **HE** | **End Date** | **HE** | **MW Available** |
|   |   |   |   |   |
|   |   |   |   |   |
|   |   |   |   |   |
|   |   |   |   |   |
|   |   |   |   |   |