



SOUTHERN CALIFORNIA  
**EDISON**

An *EDISON INTERNATIONAL* Company

*2/27/20 Version*

**DISADVANTAGED COMMUNITIES GREEN TARIFF & COMMUNITY SOLAR  
GREEN TARIFF STANDARD CONTRACT**

**RENEWABLE POWER PURCHASE AGREEMENT**

*between*

**SOUTHERN CALIFORNIA EDISON COMPANY**

*and*

***[SELLER]***

*(ID# [Number])*

**STANDARD CONTRACT TERMS AND CONDITIONS THAT MAY NOT BE MODIFIED FOR RESOURCES ELIGIBLE FOR RPS PER THE CPUC D. 08-04-009, D.08-08-028, D.10-03-021 AND D.11-01-025 ARE SHOWN IN GREEN SHADED TEXT.**

SCE NOTES APPLICABLE TO RENEWABLE TECHNOLOGIES OTHER THAN SOLAR PHOTOVOLTAIC APPLY ONLY TO DAC GREEN TARIFF PROJECTS. CSGT PROJECTS MUST BE SOLAR PHOTOVOLTAIC GENERATING FACILITIES. SaCE NOTES ARE GENERATING FACILITY-TYPE SPECIFIC COMMENTS THAT SHOULD BE REMOVED OR ACCEPTED, AS APPLICABLE.

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**RENEWABLE POWER PURCHASE AGREEMENT**

**between**

**SOUTHERN CALIFORNIA EDISON COMPANY**

**and**

**[SELLER'S NAME]**

**(ID# [Number])**

This Renewable Power Purchase Agreement, together with its attachments and exhibits (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”), and [SELLER], a [Seller's business registration] (“Seller”). SCE and Seller are sometimes referred to herein individually as a “Party” and jointly as the “Parties”.

**RECITALS**

- A. SCE is an investor-owned electric utility serving customers in central and southern California.
- B. Seller is willing to sell and deliver exclusively to SCE, and SCE is willing to purchase, the Product under the terms and 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 1. PURCHASE AND SALE OF PRODUCT**

1.01 Product.

- (a) During the Delivery Period, Seller shall deliver and sell, and SCE shall purchase and receive, the Product. Seller shall not substitute or purchase any portion of the Product from any resource other than the Project, or from the market, for delivery hereunder.



- (b) The “Product” consists of any and all Energy, net of Station Use, Green Attributes, and Capacity Attributes, generated by, associated with or attributable to the Project throughout the Delivery Period.

1.02 Project.

The Project is as set forth in Section 1.02 of Attachment 1.

1.03 Contracted Amount.

The Contracted Amount is set forth in Section 1.03 of Attachment 1.

1.04 Price.

The Product Price is set forth in Section 1.04 of Attachment 1.

1.05 Exclusive Rights.

- (a) During the Delivery Period, SCE shall have exclusive rights to the Product and all benefits derived therefrom, including the exclusive right to use, market, allocate, designate, award, report or sell the Product, and the right to all revenues generated therefrom. SCE’s rights hereunder shall also include any other rights, and be subject to any other conditions, listed in Section 1.05 of Attachment 1.
- (b) Seller will not sell, assign, attribute, claim, or otherwise transfer the Product to any party other than SCE pursuant to this Agreement.
- (c) If SCE re-sells all or a portion of the Product or any associated rights acquired under this Agreement (“Resold Product”), Seller agrees to (and, if applicable, agrees to cause the Project’s SC to):
  - (i) Follow SCE’s instructions and the CAISO Tariff with respect to providing such Resold Product to subsequent purchasers of such Resold Product.
  - (ii) 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 if SCE incurs any liability to any purchaser of such Resold Product due to the failure of Seller or the Project’s SC to comply with the terms of this Agreement, and Seller would have had liability to SCE under this Agreement for such failure had SCE not sold the Resold Product, then Seller shall be liable to SCE under this Agreement,

including pursuant to this Section 1.05, for the amounts for which it would have been liable to SCE had such Resold Product not been sold.

## 1.06 Resource Adequacy Provisions.

If applicable:

- (a) Seller shall, on a timely basis, submit, or cause the Project's SC to submit, Annual Supply Plans and Monthly Supply Plans in accordance with the CAISO Tariff, and any other decisions or orders of the CPUC associated with providing the Capacity Attributes under this Agreement, to identify and confirm the Expected Capacity Attributes provided to SCE for each day of each Showing Month so that the total amount of Expected Capacity Attributes identified and confirmed for each day of such Showing Month equals the Expected Capacity Attributes for such day of such Showing Month.
- (b) Seller shall or shall cause the Project's SC to submit written notification to SCE, no later than fifteen (15) Business Days before the applicable RA Compliance Showing deadlines for each Showing Month, that SCE will be credited with the Expected Capacity Attributes for each day of such Showing Month in the Project's Supply Plan so that the credited Expected Capacity Attributes for each day of the Showing Month equals the Expected Capacity Attributes for such day of such Showing Month.
- (c) Seller shall (i) execute all other documents or instruments necessary, and provide all information otherwise needed, for the Product to be shown on Supply Plans and RA Compliance Showings and to be used to satisfy RA Compliance Obligations, including 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) execute all documents or instruments necessary and 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 Applicable Laws.
- (d) At SCE's request, the Parties shall execute such documents and instruments, and Seller shall cooperate with SCE with respect to any testing or measurements that may be reasonably required to effect recognition and transfer of Capacity Attributes, if any, to SCE.
- (e) The Parties shall use commercially reasonable efforts to cause the Resource ID and the benefitting load serving entity SC identification number to be included in all applicable Supply Plans and to communicate changes in such information to each other promptly throughout the Delivery Period.

- (f) If any change by the CAISO, CPUC or other Governmental Authority occurs that defines new or re-defines existing:
  - (i) Local Capacity Areas, resulting in a decrease or increase in the amount of Capacity Attributes related to a Local Capacity Area provided hereunder there will be no change in payments made pursuant to this Agreement;
  - (ii) Flexible RAR, Capacity Attributes related to Flexible RAR, or attributes of the Project related to Flexible RAR, resulting in a decrease or increase in the amount of Capacity Attributes related to Flexible RAR provided hereunder there will be no change in payments made pursuant to this Agreement;
  - (iii) Local Capacity Areas, resulting in the Project subsequently qualifying for a Local Capacity Area, the Capacity Attributes will change to include all Resource Adequacy Benefits related to such Local Capacity Area; and
  - (iv) Flexible RAR, Capacity Attributes related to Flexible RAR, or attributes related to Flexible RAR, resulting in the Project, or a portion of the Project which did not previously qualify to satisfy Flexible RAR, subsequently qualifying to satisfy Flexible RAR, the Capacity Attributes will change to include all Capacity Attributes related to Flexible RAR, including any Capacity Attributes related to Flexible RAR with respect to any portion of the Project which previously was not able to satisfy Flexible RAR.
- (g) Seller shall perform any other obligations set forth in Section 1.06 of Attachment 1.

## 1.07 Additional Product Delivery Obligations.

Additional provisions, if any, related to the delivery of the Product are forth in Sections 1.07, and following, of Article 1 of Attachment 1.

## **ARTICLE 2. TERM AND DELIVERY PERIOD**

### 2.01 Term.

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

### 2.02 Delivery Period.

The “Delivery Period” or “Delivery Term” shall commence at 12:01 a.m. on the Initial Delivery Date, and shall continue until the earlier of: midnight on the date that is *[number of years]* years after the Initial Delivery Date or the date that this Agreement is otherwise terminated in accordance with its terms.

2.03 Expected Initial Delivery Date.

The Expected Initial Delivery Date is *[Date]* {SCE Note: *must be the first day of a calendar month*}.

2.04 Initial Delivery Date.

- (a) The “Initial Delivery Date” shall be no earlier than the Expected Initial Delivery Date and shall be the first day of the first month after all of the conditions listed in this Section 2.04(a) and in Section 2.04 of Attachment 1 have been satisfied for the Project:
- (i) Seller has completed, to SCE’s satisfaction, Seller’s obligations set forth in Section 4.01;
  - (ii) Seller has installed and placed in operation all equipment and systems required under Section 5.02;
  - (iii) Seller has provided at least three (3) Business Days’ Notice to SCE that it will achieve the Initial Delivery Date;
  - (iv) Seller has paid to SCE the full amount of the Excess Network Upgrade Costs, if applicable;
  - (v) Seller has deposited with SCE the applicable Performance Assurance amounts as set forth in Section 7.02(a);
  - (vi) Seller has executed and delivered to SCE all documents or instruments required under or requested pursuant to Article 7;
  - (vii) Seller has delivered to SCE all insurance documents required under Section 14.07; and
  - (viii) SCE shall have obtained or waived CPUC Approval.

The Parties agree that, in order for Seller to achieve the Initial Delivery Date, the Parties may have to perform certain of their Delivery Period obligations in advance of the Initial Delivery Date, including providing Outage Schedules and Supply Plans. The Parties shall cooperate with each other in order for SCE to be able to utilize the Product beginning on the Initial Delivery Date.

- (b) If (x) Seller and SCE mutually agree that Initial Delivery Date will not occur on or before the Initial Delivery Deadline or Guaranteed Delivery Deadline, as applicable; or (y) the Initial Delivery Date will not occur due to any termination of this Agreement as a result of an Event of Default by Seller occurring on or before the Initial Delivery Deadline or Guaranteed Delivery Deadline, as applicable, SCE shall be entitled to:
- (i) The entire Development Security, including the right to draw on and retain for its sole benefit any Letter of Credit and the proceeds thereof, as well as any cash posted as Development Security and interest accrued thereon; and
  - (ii) Terminate this Agreement.

If SCE terminates this Agreement pursuant to this Section 2.04(b), any amount of Development Security that Seller has not yet posted with SCE will be immediately due and payable by Seller to SCE.

Neither Party shall have liability for damages for failure to deliver or purchase the Product after the effective date of termination under this Section 2.04(b) and the Forward Settlement Amount will be zero dollars (\$0).

## 2.05 Initial Delivery Deadline.

The Initial Delivery Date must be no later than the date that is the first day of the month occurring thirty-six (36) months after CPUC Approval (the "Initial Delivery Deadline").

## 2.06 Extension of Initial Delivery Deadline

- (a) Extension Due to Permitting Delay.

Subject to Section 2.06(d), if Seller has not obtained approval of any Permit on or before that date that is ninety (90) days before the Initial Delivery Deadline, then, upon SCE's receipt of Notice from Seller, which Notice must be provided at least sixty (60) days before the Initial Delivery Deadline, the Initial Delivery Deadline shall be extended six (6) months, without payment of Daily Delay Liquidated Damages; provided, however, such extension shall not be given if the failure to obtain approval of any applicable Permit was as a result of Seller's failure to take all commercially reasonable actions to apply for and meet all of its requirements and deadlines to obtain such Permit.

- (b) Extension due to Interconnection Delay.

Subject to Section 2.06(d), if (i) all of the interconnection facilities, distribution upgrades, transmission upgrades and new transmission facilities, if

any, described in Seller's interconnection agreement and required to interconnect the Project to the CAISO Controlled Grid or SCE's distribution system have not been completed and placed into operation by the CAISO or the transmission provider on the estimated completion date set forth in Seller's interconnection agreement, or if no such agreement exists, Seller's most recent Interconnection Study (the "Estimated IA Completion Date"), and (ii) the Estimated IA Completion Date is on or prior to the Initial Delivery Deadline, then upon SCE's receipt of Notice from Seller, which Notice must be provided at least sixty (60) days before the Initial Delivery Deadline, the Initial Delivery Deadline shall be extended six (6) months, without payment of Daily Delay Liquidated Damages; provided, however, such extension shall not be given if the failure to meet the Estimated IA Completion Date was as a result of Seller's failure to complete its obligations, take all actions and meet all of its deadlines needed to ensure timely completion and operation of such interconnection facilities, distribution upgrades, transmission upgrades and new transmission facilities.

(c) Extension by Payment of Daily Delay Liquidated Damages.

Subject to Section 2.06(d), Seller may extend the Initial Delivery Deadline for up to one-hundred and eighty (180) days by paying to SCE liquidated damages in an amount equal to one percent (1%) of the Development Security per day for each day (or portion thereof) from and including the Initial Delivery Deadline to and excluding the actual date that the Project achieves the Initial Delivery Date ("Daily Delay Liquidated Damages").

To extend the Initial Delivery Deadline under this Section 2.06(c), Seller must, no later than 6:00 a.m. on the third Business Day immediately prior to the first day of the proposed Initial Delivery Deadline extension, provide SCE with Notice of its election to extend the Initial Delivery Deadline along with Seller's estimate of the duration of the extension and its payment of Daily Delay Liquidated Damages for the full estimated Initial Delivery Deadline extension period. This process shall apply to the original Initial Delivery Deadline extension period and any subsequent extensions.

The Daily Delay Liquidated Damages payments applicable to days included in any Initial Delivery Deadline extension are nonrefundable (subject to the next paragraph of this Section 2.06) and are in addition to, and not a part of, the Development Security.

Seller will be entitled to a refund (without interest) of any estimated Daily Delay Liquidated Damages payments paid by Seller which exceed the amount required to cover the number of days by which the Initial Delivery Date was actually extended.

(d) Maximum Allowable Extension.

Notwithstanding anything in this Agreement to the contrary, the Initial Delivery Deadline may not be later than the first day of the month occurring forty-eight (48) months after CPUC Approval (the "Guaranteed Delivery Deadline"). In no event may Seller extend the Initial Delivery Deadline beyond the Guaranteed Delivery Deadline as a result of the failure to obtain Permits, due to interconnection delay, Force Majeure, or by payment of Daily Delay Liquidated Damages, or any combination thereof.

2.07 CPUC Approval.

Within ninety (90) days after the Effective Date, SCE shall file with the CPUC the appropriate request for CPUC Approval. SCE shall expeditiously seek CPUC Approval, including promptly responding to any requests for information related to the request for CPUC Approval. As requested by SCE, Seller shall use commercially reasonable efforts to support SCE in obtaining 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 CPUC Approval with conditions or modifications unacceptable to SCE.

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 (i) CPUC Approval has not been obtained or waived by SCE in its sole discretion within one-hundred and eighty (180) days after SCE files its request for CPUC Approval and (ii) a Notice of termination is given on or before the date CPUC Approval is obtained.

Failure to obtain CPUC Approval in accordance with this Section 2.07 will not be deemed to be a failure of Seller to install the Project or a failure of SCE to purchase or receive the Product, and will not be or cause an Event of Default by either Party.

## ARTICLE 3. BILLING AND PAYMENTS

3.01 Invoicing Process.

By the Invoice Date, the Invoicing Party shall issue an invoice for the payment obligations, if any, incurred hereunder during the previous Invoice Calculation Period 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 3.03.

If an invoice is not rendered by Seller, or if SCE is incapable of rendering an invoice

due to the actions or inactions of Seller, within twenty-four (24) months after the close of an Invoice Calculation Period, the right to any payment for that Invoice Calculation Period under this Agreement is waived.

### 3.02 Timeliness of Payment.

Payments under this Agreement will be made no later than the applicable Payment Date for each invoice by ACH or similar method, or by other mutually agreeable methods, to the account designated by the Party to which payment is owed. Any payment made after such Payment Date shall include an Interest Payment.

The Parties acknowledge that data necessary to calculate certain payment obligations of SCE and Seller under this Agreement may not be available at the time the Invoicing Party issues the invoice with respect to a particular month. Any such payment obligations, including related documentation supporting such obligations, shall be included in a subsequent invoice on or before the last Business Day of the month following the month that is the later of (x) one hundred and twenty (120) days following the last day of the calendar month to which the data relates or (y) thirty (30) days after the relevant CAISO final settlement data is available.

### 3.03 Disputes and Adjustments of Invoices.

If Seller or SCE determines that a calculation is incorrect, Seller or SCE, as the case may be, shall promptly recompute the amounts for the period of the inaccuracy based upon a correction of data and any payment affected by the adjustment or correction.

Any amount due will be made as an adjustment to the next invoice that is calculated after Seller's or SCE's recomputation using corrected measurements.

If the recomputation results in a net amount owed to SCE after applying any amounts owing to Seller as shown on the next invoice, any such amount owing to SCE will at SCE's discretion be netted against amounts owed to Seller in any subsequent invoice or separately invoiced to Seller, in which case Seller must pay the amount owing to SCE within five (5) days after receipt of that invoice.

A Party will be deemed to have waived any such payment adjustments, if such Party does not provide Notice of such payment adjustment within twelve (12) months after the Invoice Date for the invoice containing the error. Adjustment payments for meter inaccuracy will not bear interest.

### 3.04 Netting Rights.

SCE reserves the right to net amounts that would otherwise be due to Seller under this Agreement in payment of any amounts:



- (a) Owing to SCE by Seller arising out of, or related to, this Agreement; or
- (b) Owed to SCE by Seller arising out of, or related to, any other SCE agreement, tariff, obligation or liability.

Nothing in this Section 3.04 shall limit SCE's rights under applicable tariffs, other agreements or Applicable Laws.

### 3.05 Compensation.

Seller shall be compensated according to the provisions set forth in Article 3 of Attachment 1.

## **ARTICLE 4. DESIGN AND CONSTRUCTION OF PROJECT**

### 4.01 Seller's Obligations.

At no cost to SCE, Seller shall perform the following obligations, and any additional obligations listed in Section 4.01 of Attachment 1:

- (a) Design, construct, install, or refurbish the Project;
- (b) Obtain all Permits for the Project on or before the Initial Delivery Deadline;
- (c) Complete all environmental impact assessments, statements, or studies required pursuant to Applicable Laws, including obtaining public review and certification of any final documents relating to any environmental impact assessment or studies; and
- (d) 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 Prudent Electrical Practices.

### 4.02 Inspection Rights.

SCE shall have the right at any time during the Term to enter onto the Site 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. SCE may take these actions during normal business hours on any Business Day.

Seller shall, or shall cause its EPC Contractors to, provide SCE with access to the Site and all applicable documents and records:

- (a) in order to permit SCE to determine whether:
  - (i) Seller has obtained, maintained, and complied with all Permits, and that such Permits do not contain Permit Requirements that might restrict SCE's ability to utilize the Product as provided for in this Agreement;
  - (ii) All contracts described in Section 4.05(a), and all other contracts or arrangements necessary to interconnect the Project (including transmission arrangements as contemplated in Section 5.01, and contracts or arrangements for electrical service, water supply and waste disposal) have been entered into and become effective on a timely basis and Seller is not in default thereunder; and
- (b) for any other purpose reasonably connected with this Agreement or the exercise of any and all rights of SCE under Applicable Laws or the SCE Tariff schedules and rules on file with the CPUC.

When at the Site, SCE, its authorized agents, employees and inspectors shall adhere to safety and security procedures as may reasonably be required by Seller, provided Seller has provided such procedures to SCE in writing in advance.

#### 4.03 Changes in Operational Characteristics.

- (a) 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 4.03(a) 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.
- (b) Seller shall provide Notice to SCE within five (5) Business Days after a change in the status of any of the following:
  - (i) Seller's exact and complete name, form of organization, direct or indirect ownership and state of incorporation or organization, or address of Seller's principal place of business; and
  - (ii) Seller's financing, including the sources of equity investments and debt financings.

No Notice provided pursuant to this Section 4.03(b) constitutes or substitutes for any consent required pursuant to Sections 14.04(a)-(d).

4.04 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 fifth (5th) Business Day after Seller enters into a contract with an EPC Contractor.

4.05 Provision of Information.

During the Term, Seller shall provide SCE copies of the following, and any additional items listed in Section 4.05 of Attachment 1:

- (a) Within ten (10) Business Days after receipt thereof:
  - (i) any Interconnection Study or the interconnection agreement tendered to Seller by the T&D Provider;
  - (ii) any agreements with providers of engineering, procurement, or construction services for the Project and any amendments thereto, including any EPC Contract (which may be redacted by Seller to eliminate any portions reasonably believed by Seller to contain confidential information);
  - (iii) Any documents, information, or records related to the Project or the Generating Facility(ies) (including documents, information or records of an Affiliate or Customer) that relate to Seller's obligations under this Agreement, including any documents, information, or records needed to measure the Product;
  - (iv) Any documents, information, or records relating to Seller's Evaluator and Seller's Evaluator's work; and
  - (v) any reports, studies, or assessments done for Seller by an independent engineer;
- (b) within ten (10) Business Days of Seller's receipt of Notice from SCE requesting the same, Internal Revenue Service tax Form W-9 and California tax Form 590 (or their equivalents), completed with Seller's information, and any other documentation necessary for SCE to comply with its tax reporting or withholding obligations with respect to Seller; and
- (c) No later than twenty (20) days after each semi-annual period ending on June 30th and December 31st, a report listing all women, minority, disabled veteran, lesbian, gay, bisexual and/or transgender business enterprises, as more particularly set forth in CPUC General Order 156 ("Diverse Business Enterprises") that supplied goods or services to Seller during such period,

including any certifications or other documentation of such Diverse Business Enterprises' status as such and the aggregate amount paid to Diverse Business Enterprises during such period. SCE has the right to disclose to the CPUC all such information provided by Seller pursuant to this Section 4.05(c).

- (d) Within twenty (20) days after SCE's request, Seller shall complete a "Supplier Self-Certification Form" provided by SCE accurately describing Seller's status as either a Large Business or a Small Business as defined in 48 C.F.R § 52.219-8, as such statute may be amended from time to time. Seller shall notify SCE if information relevant to the accurate determination of Seller's status under 48 C.F.R § 52.219-8 changes, including but not limited to changes to Seller's size, classification, or ownership.
- (e) Within twenty (20) days after SCE's request, Seller shall provide SCE with a report on the status of workforce development efforts, including whether and to what extent the project has employed individuals who reside in the Disadvantaged Community where the Project is sited. *{SCE Note: For Community Solar Green Tariff projects only}*

#### 4.06 Monthly Project Progress Report.

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 after SCE's request, Seller shall deliver to SCE a progress report, substantially in the form set forth in Exhibit C ("Project Progress Report"), describing its progress, including projected time to completion of any milestones. Seller shall include in any Project Progress Report a list of all letters, notices, applications, approvals, authorizations and filings referring or relating to Permits, and shall provide any such documents as may be reasonably requested by SCE. [Seller shall also report on the status of workforce development efforts, including whether and to what extent the project has employed individuals who reside in the Disadvantaged Community where the Project is sited.] *{SCE Note: For Community Solar Green Tariff projects only}*. 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 set forth in Exhibit D ("Milestone Schedule") by the applicable deadline.

A report delivered pursuant to this Section 4.06 shall not constitute Notice for any purpose under this Agreement, including with respect to any fact, circumstance, request, issue, dispute or matter included in such report.

## ARTICLE 5. INTERCONNECTION; METERING; TESTING

### 5.01 Transmission and Interconnection.

#### (a) Interconnection Studies.

Seller shall be responsible for all fees and costs associated with interconnecting the Project to the T&D Provider's electric system, including (if applicable) the following:

- (i) Funding for any apparatus, modifications, and upgrades to the T&D Provider's electric system, the CAISO Controlled Grid or, if applicable, Affected System (as defined in the CAISO Tariff) that are required at or beyond the Interconnection Point to accommodate the Project's output ("Network Upgrades") (any refund of such fees and costs will be consistent with the CAISO Tariff);
- (ii) All costs (including interconnection costs and transmission losses) arising from, relating to or associated with transmission of electric energy from the Project to the T&D Provider's system or the CAISO Controlled Grid.

#### (b) Interconnection Queue Position.

Seller shall not withdraw any Interconnection Queue Position related to the Project 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.

### 5.02 Metering, Communications, Dispatch, and Telemetry.

Metering, communications, dispatch, and telemetry requirements for the Project are as set forth in Section 5.02 of Attachment 1.

### 5.03 Testing.

Testing requirements for the Project are as set forth in Section 5.03 of Attachment 1.

### 5.04 Certification.

CEC and CAISO certification requirements for the Project are set forth in Section 5.04 of Attachment 1.

## 5.05 Cyber Security Precautions.

Seller shall implement reasonable administrative, technical, and physical safeguards, including any specific safeguards specified from time to time by SCE, to protect the security and integrity of SCE's systems.

A "Security Incident" is:

- (a) Unless expressly authorized under this Agreement, any use, reproduction, distribution, transfer, disposition, disclosure, possession, memory input, alteration, erasure, damage, breach in the security, or other activity by a person or party other than SCE of
  - (i) Seller's computing systems or equipment, including those that contain information about SCE's systems or provides information to SCE's systems, or
  - (ii) SCE's computing systems or equipment, if caused by the action or inaction of Seller; or
- (b) Any unauthorized access to, interception of, disclosure or acquisition of such information.

Any reasonably suspected or confirmed Security Incident must be reported to SCE via email to the Cybersecurity email listed in Exhibit E, immediately upon Seller's awareness of the event. Notification shall include the nature of the event, date and time of the event, suspected amount and type of information exposed and steps being taken to investigate the circumstances of the exposure. Seller shall cooperate and assist SCE in the investigation, analysis and resolution of Security Incidents affecting SCE's systems. Seller shall provide SCE with details of the investigation and final disposition of the Security Incident relevant to the services provided to SCE or which may impact the confidentiality, integrity or availability of those services or of SCE information.

In addition to the above, Seller shall: (x) regularly scan systems for vulnerabilities, (y) rank all vulnerabilities and promptly remediate detected vulnerabilities ranked as critical, high or moderate, and (z) use commercially reasonable efforts to identify and notify SCE in writing, within one (1) Business Day after identification, of any critical, high or moderate vulnerabilities, risks or threats that could potentially impact SCE, and that Seller cannot remediate within 30 days. If Seller later determines that it cannot remediate within 30 days, it shall promptly notify SCE in writing. Seller's notification shall provide detailed information describing the controls used to mitigate these vulnerabilities, risks or threats.

## ARTICLE 6. SELLER'S OPERATION, MAINTENANCE AND REPAIR OBLIGATIONS

### 6.01 Seller's Operation and Record Keeping Obligations.

- (a) Seller shall maintain all Permits, licenses, certifications and approvals necessary for the operation and maintenance of the Project, and shall operate the Project in accordance with Prudent Electrical Practices, Applicable Laws, Permit Requirements, and Industry Standards.
- (b) Seller shall maintain all records applicable to the Project, including those set forth in Section 6.01 of Attachment 1. Information maintained pursuant to this Section 6.01(b) shall be retained throughout the Delivery Period and for four (4) years thereafter, and made available or provided to SCE within fifteen (15) days after SCE's request.
- (c) SCE or the CAISO may require Seller, at Seller's expense, to demonstrate to SCE's reasonable satisfaction the correct calibration and operation of any Protective Apparatus required as part of the Project any time SCE or the CAISO has reason to believe that the Protective Apparatus may impair the integrity of the T&D Provider's electric system or the CAISO Controlled Grid.
- (d) DERs Monitoring.
  - (i) The Parties acknowledge that, during the Term, DERMS may progress in a manner that allows SCE to exercise greater access to real-time monitoring of grid assets, including Distributed Energy Resources, consistent with interconnection facilities requirements ("DERs Monitoring"). If such DERMS become available during the Term, Seller agrees to implement DERs to DERMS interfacing equipment to the Project to allow for such DERs Monitoring.
  - (ii) Once the DERMS become available within SCE's service territory, as determined by SCE, Seller agrees to change the Project to allow SCE to implement DERs Monitoring, including the installation of any necessary telemetry or equipment required for such DERs Monitoring ("DER Upgrade"). Prior to the purchase and installation of any equipment for the implementation of DERs Monitoring, Seller shall (A) consult with SCE regarding all proposed installation plans and equipment modifications and (B) obtain SCE approval of any such proposed installation plans and equipment modifications.
  - (iii) Subject to this Section 6.01(d), Seller shall not be responsible for any out-of-pocket expenses in order to make any DER Upgrade. If Seller

reasonably anticipates that it will incur out-of-pocket expenses to effectuate any DER Upgrade required by SCE, Seller shall provide Notice to SCE of such anticipated out-of-pocket expenses. SCE will have sixty (60) days to evaluate such Notice (during which time period Seller shall not be obligated to take any actions to implement the DER Upgrade) and shall, within such time, either:

- (A) Agree to reimburse Seller for all or some portion of such costs (such SCE-agreed upon costs, the “Accepted DER Costs”). If SCE agrees to reimburse Seller for the Accepted DER Costs, then Seller shall install and implement such DER Upgrade covered by the Accepted DER Costs and SCE shall reimburse Seller for Seller’s actual costs to effect the DER Upgrade, not to exceed the Accepted DER Costs; or
- (B) Waive Seller’s obligation to implement such DER Upgrade, or any part thereof for which SCE has not agreed to reimburse Seller.

Notwithstanding the foregoing, to the extent that this Agreement (other than pursuant to this Section 6.01(d)), the CAISO Tariff, Applicable Laws, Seller’s interconnection agreement, or SCE, in its capacity as participating transmission or distribution owner, requires Seller to make a DER Upgrade, Seller shall implement such DER Upgrade and shall bear the entire cost of any such DER Upgrades.

- (e) Seller shall perform any additional obligations set forth in Section 6.01 of Attachment 1.

## 6.02 Seller’s Maintenance and Repair Obligations.

- (a) Seller shall inspect, maintain, repair and, if necessary, replace, the Project, and any component or portion thereof, in accordance with applicable Industry Standards and take all actions necessary in order to provide the Product to SCE in accordance with the terms of this Agreement. Seller shall maintain, and deliver to SCE upon request, maintenance and repair records of the Project.
- (b) Seller shall inspect, maintain and repair any SCADA, DERMS and telemetry equipment associated with the Project. Seller will promptly notify SCE of any malfunction, outage or other condition affecting such equipment that could impair the ability of the Project to respond to Dispatch instructions or SCE’s ability to monitor the Project by telephoning Real-Time Scheduling at the telephone number(s) listed in Exhibit E, and by entering outage information as required by the CAISO Tariff, both within ten (10) minutes after the



commencement of the event. Seller shall promptly prepare and provide to SCE, using the Outage Management System or email to Real-Time Scheduling as instructed by SCE, all reports related to such event that SCE may reasonably require for purposes of compliance with Applicable Laws.

- (c) If a Party observes non-responsive system communication from the other Party, such Party will promptly contact the other Party by telephoning Real-Time Scheduling at the telephone number(s) listed in Exhibit E. If SCE issues a Dispatch Instruction while system communication is known to be non-responsive, SCE will exercise good faith reasonable efforts to notify Seller of the Dispatch Instruction by telephoning Real-Time Scheduling at Seller's telephone number(s) listed in Exhibit E.
- (d) Seller shall perform any additional obligations set forth in Section 6.02 of Attachment 1.

## 6.03 Additional Operation, Maintenance and Repair Requirements.

Additional operation, maintenance and repair requirements are set forth in Section 6.03, and following, of Article 6 of Attachment 1.

## ARTICLE 7. CREDIT AND COLLATERAL

### 7.01 Development Security.

- (a) Amount.

Seller shall post and thereafter maintain Development Security equal to *{SCE Note: Development Security will be calculated based on RFO Instructions.}*

- (b) Posting Requirements.

Seller shall post the Development Security in accordance with the following terms and conditions:

- (i) Seller shall post one-half of the Development Security within five (5) Business Days following the Effective Date, with the remainder to be posted no later than five (5) Business Days after CPUC Approval is obtained or waived by SCE in its sole discretion;
- (ii) The Development Security must be in the form of cash or a Letter of Credit; and
- (iii) The Development Security and any interest accrued thereon in accordance with Section 7.03(a) shall be held by SCE as security for

Seller achieving the Initial Delivery Date on or before the Initial Delivery Deadline and demonstrating that the Project is capable of providing the Contracted Amount in accordance with the terms of this Agreement.

(c) Return of Development Security.

If no Event of Default with respect to Seller has occurred and is continuing, and no Early Termination Date has occurred or been designated as the result of an Event of Default with respect to Seller, then:

- (i) As soon as reasonably practicable after the Initial Delivery Date, SCE shall return to Seller the Development Security including any interest accrued thereon pursuant to Section 7.03(a), less, if applicable, any amount of Development Security retained pursuant to this Agreement.
- (ii) As soon as reasonably practicable after the termination of this Agreement by either Party pursuant to Sections 2.07, 8.03(a), or 10.05, SCE shall return to Seller the full Development Security; provided, a termination under Article 8 only entitles Seller to a return of the Development Security if the termination is based on a Force Majeure that prevents the Initial Delivery Date from occurring on or before the Guaranteed Delivery Deadline.

Seller may, with SCE's consent, authorize SCE to retain cash or Letter(s) of Credit initially posted as Development Security as Performance Assurance posted under Section 7.02.

7.02 Performance Assurance.

(a) Amount.

At all times during the Delivery Period, Seller shall post and maintain Performance Assurance in an amount equal to *{SCE Note: Performance Assurance will be calculated based on RFO Instructions.}*

(b) Posting Requirements.

Seller shall post the Performance Assurance in accordance with the following terms and conditions:

- (i) Seller shall post all of the Performance Assurance on or before the Initial Delivery Date;

- (ii) Performance Assurance must be in the form of cash or a Letter of Credit; and
  - (iii) The Performance Assurance and any interest accrued thereon in accordance with Section 7.03(a) shall be held by SCE as security for Seller's performance of its obligations under this Agreement.
- (c) Return of Performance Assurance.

SCE shall return to Seller the unused portion of the Performance Assurance, including any interest accrued thereon pursuant to Section 7.03(a), as soon as reasonably practicable after (i) the Delivery Period has ended; and (ii) Seller has satisfied all monetary obligations which survive termination of this Agreement.

## 7.03 Administration of Project Security.

- (a) Cash.
- (i) SCE shall calculate and pay to Seller an Interest Payment on any Project Security posted in cash, concurrently with the return of such Project Security to Seller in accordance with the terms of this Agreement.
  - (ii) On or after the occurrence of an Event of Default with respect to the Seller or an Early Termination Date as a result of an Event of Default with respect to the Seller, SCE shall retain any Interest Payment as additional Project Security until the obligations of the Seller under this Agreement have been satisfied in the case of an Early Termination Date or for so long as such Event of Default is continuing in the case of an Event of Default; provided that, any Interest Payment amount that is held by SCE as an additional Project Security amount shall not accrue interest in accordance with Section 7.03(a)(i).
  - (iii) SCE shall have the right to sell, pledge, rehypothecate, assign, invest, use, commingle or otherwise use in its business any cash that it holds as Project Security hereunder, free from any claim or right of any nature whatsoever of Seller, including any equity or right of redemption by Seller.
- (b) Letters of Credit.
- (i) Each Letter of Credit shall be maintained for the benefit of SCE.

- (ii) Seller shall:
    - (A) renew or cause the renewal of each outstanding Letter of Credit no less than sixty (60) days before its expiration
    - (B) if the issuer of an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide alternative Project Security no less than twenty (20) Business Days prior to its expiration; and
    - (C) if the issuer of a Letter of Credit fails to honor SCE's properly documented request to draw on an outstanding Letter of Credit, provide substitute Project Security within three (3) Business Days after such refusal.
  - (iii) Upon the occurrence of a Letter of Credit Default, Seller shall provide to SCE alternative Project Security on or before the third (3<sup>rd</sup>) Business Day after the occurrence thereof (or the fifth (5<sup>th</sup>) Business Day after the occurrence thereof if only clause (a) under the definition of Letter of Credit Default applies).
  - (iv) Upon or at any time after the occurrence and continuation of an Event of Default by Seller, SCE may draw on the entire undrawn portion of any outstanding Letter of Credit upon submission to the issuer of such Letter of Credit of one or more certificates specifying that such Event of Default has occurred and is continuing. In addition, SCE will have the right to draw on the Letter of Credit for any of the reasons set forth in such Letter of Credit or its accompanying draw certificate.
  - (v) Cash proceeds received by SCE from drawing upon the Letter of Credit shall be deemed Project Security for Seller's obligations to SCE, and SCE shall have the rights and remedies set forth in this Agreement with respect to such cash proceeds.
  - (vi) In all cases, all costs associated with a Letter of Credit, including the costs and expenses of establishing, renewing, substituting, canceling, and changing the amount of a Letter of Credit shall be borne by Seller.
- (c) Liability Following Application of Collateral. Notwithstanding SCE's use of cash collateral or receipt of cash proceeds of a drawing under the Letter of Credit, Seller shall remain liable for:

- (i) Any failure to provide or maintain the required Project Security if, following such application, the remaining Project Security is less than the amount required hereunder (including failure to replenish cash collateral or a Letter of Credit to the full Project Security amount in the event that SCE uses the cash collateral or draws against the Letter of Credit for any reason other than to satisfy a Termination Payment); or
- (ii) Any amounts owing to SCE that remain unpaid after the application of the amounts drawn by SCE.

#### 7.04 Grant of Security Interest.

To secure its 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 Project Security and any and all proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of SCE.

#### 7.05 Remedies.

- (a) Upon or any time after the occurrence and during the continuation of an Event of Default or an Early Termination Date, SCE, if it is the Non-Defaulting Party, may do any one or more of the following:
  - (i) exercise any of its rights and remedies with respect to the Project Security, including any such rights and remedies under Applicable Laws;
  - (ii) exercise any of its rights of setoff against any and all property of Seller in the possession of SCE or its agent;
  - (iii) draw on any outstanding Letter of Credit issued for its benefit; and
  - (iv) liquidate any Project Security 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.
- (b) 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, subject to SCE’s obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

- (c) SCE shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available hereunder. Seller shall in all events remain liable to SCE for any amount payable by Seller in respect of any of its obligations remaining unpaid after any such liquidation, application and set off.

#### 7.06 Credit and Collateral Covenants.

- (a) Seller shall, from time to time as requested by SCE, take such actions and execute, acknowledge, record, register, deliver and file such notices, statements, instruments and other documents as may be necessary or advisable to perfect the Security Interest.
- (b) During any period during which Seller is a Defaulting Party, Seller shall not:
  - (i) 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 payment to any Affiliate of Seller.
- (c) If Seller is a Special Purpose Entity, then:
  - (i) Seller shall not cause or permit the stock, equity ownership interest in Seller or assets of Seller to be pledged or assigned as collateral or otherwise to any party other than Lender under a Collateral Assignment Agreement.
  - (ii) Seller shall not hold any material assets, become liable for any material obligations or engage in any material business activities other than the development, construction and operation of the Project.
  - (iii) Seller shall not own, form or acquire, or otherwise conduct any of its activities through, any direct or indirect subsidiary.

#### 7.07 California 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 in Article 7 and Article 10, neither Party:

- (a) 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

- (b) will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of Article 7 and Article 10; and all implied rights relating to financial assurances arising from Section 2609 of the California Commercial Code or case law applying similar doctrines, are hereby waived.

7.08 Financial Information.

Each Party, if requested by 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 or IFRS:

- (a) 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 for the Party; and
- (b) 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 unaudited 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 for the Party.

In each case, the financial statements specified above must be certified in accordance with all Applicable Laws, including all applicable SEC rules and regulations, if such Party is an SEC reporting company, or certified by the chief financial officer, controller, treasurer or any assistant treasurer of a Party, or any employee of a Party designated by any of the foregoing, as being fairly stated in all material respects (subject to normal year end audit adjustments) if such Party is not an SEC reporting company.

A Party shall be deemed to have met the requirements of this Section 7.08 if its financial statements are publicly available electronically on its or the SEC's website.

Unavailability of financial statements required hereunder due to a delay in preparation or certification shall not be an Event of Default so long as the producing Party diligently pursues the preparation, certification and delivery of such statements.

**ARTICLE 8. FORCE MAJEURE**

8.01 No Default for Force Majeure.

Neither Party will be considered to be in default in the performance of any of its obligations set forth in this Agreement when and to the extent failure of performance is caused by Force Majeure; provided, a failure to make payments when due that accrued prior to the Force Majeure event shall not be excused.

#### 8.02 Force Majeure Claim.

If, because of a Force Majeure, either Party is unable to perform its obligations under this Agreement, such Party (the "Claiming Party") shall be excused from whatever performance is affected by the Force Majeure only to the extent so affected; provided:

- (a) the Claiming Party, no more than fourteen (14) days after the initial occurrence of the claimed Force Majeure, gives the other Party Notice describing the particulars of the occurrence;
- (b) the Claiming Party must provide timely evidence reasonably sufficient to establish that the occurrence constitutes a Force Majeure as defined in this Agreement;
- (c) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure; and
- (d) as soon as the 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.

#### 8.03 Termination.

- (a) If the Initial Delivery Date does not occur on or before the Initial Delivery Deadline as the result of a Force Majeure occurring before the Initial Delivery Deadline and Seller is the Claiming Party, then the Initial Delivery Deadline will, subject to Sections 2.04 and 2.05 and Seller's compliance with its obligations as the Claiming Party under this Article 8, be extended on a day-for-day basis for the duration of the Force Majeure; provided, if (i) the Initial Delivery Date does not occur before the Guaranteed Delivery Deadline and (ii) such Force Majeure extension coincides with and extends beyond the Guaranteed Delivery Deadline, then either Party may terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is provided.

If either Party exercises its termination right pursuant to this Section 8.03(a), no Termination Payment will be due or owing by either Party, and Seller will be entitled to a return of any Development Security.



- (b) During the Delivery Period, either Party may terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is provided, if (i) an event of Force Majeure extends for more than three hundred sixty-five (365) consecutive days and materially and adversely affects the operations of the Claiming Party, or (ii) the Project is destroyed or rendered inoperable by a Force Majeure, and an independent, third-party engineer determines in writing that the Project cannot be repaired or replaced within six (6) months after the first day of such Force Majeure.

If either Party exercises its termination right pursuant to this Section 8.03(b), no Termination Payment will be due or owing by either Party, and Seller will be entitled to a return of any Performance Assurance.

## **ARTICLE 9. REPRESENTATIONS, WARRANTIES AND COVENANTS**

### **9.01 Representations and Warranties of Both Parties.**

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

- (a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) Except for CPUC Approval in the case of SCE, it has or will timely acquire all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;
- (c) The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action 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;
- (d) This Agreement constitutes its legally valid and binding obligation, enforceable against it in accordance with the terms of this Agreement, subject to any Equitable Defenses;
- (e) It is not Bankrupt and there are not proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (f) There is not pending, or to its knowledge, threatened against it or, in the case of Seller, any of its Affiliates, any legal proceedings that could materially and adversely affect its ability to perform under this Agreement;

- (g) No Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;
- (h) It is acting for its own account and its decision to enter into this Agreement is based upon its own judgment, not in reliance upon the advice or recommendations of the other Party and it is capable of assessing the merits of and understanding, and understands and accepts the terms, conditions and risks of this Agreement;
- (i) It has entered into this Agreement in connection with the conduct of its business and it has the capability or ability to make available or take delivery of, as applicable, the Product under this Agreement in accordance with the terms of this Agreement; and
- (j) It has not relied upon any promises, representations, statements or information of any kind whatsoever that are not contained in this Agreement in deciding to enter into this Agreement.

#### 9.02 Additional Seller Representations and Warranties.

- (a) As of the Effective Date, Seller represents and warrants to SCE that:
  - (i) Seller  is/  is not *{SCE note: select applicable option}* an entity formed solely to engage in the development, construction and operation of the Project (a “Special Purpose Entity”); and
  - (ii) Seller has provided SCE with true and correct, up-to-date copies of all of the Interconnection Studies, if any, to enable delivery of the Project’s output to the Interconnection Point pursuant to Applicable Laws and to enable Seller to provide the Product to SCE.
- (b) As of the Effective Date and, if applicable, as of each time that a Generating Facility is added to the Project, Seller represents and warrants to SCE that Seller has not used, granted, pledged, assigned, sold or otherwise committed any Product to meet the RA Compliance Obligations of, or conferred 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.
- (c) On each day on which Project Security is held by SCE under this Agreement, Seller hereby represents and warrants that:

- (i) Seller has good title to and is the sole owner of such Project Security, and the execution, delivery and performance of the covenants and agreements of this Agreement do not result in the creation or imposition of any lien or security interest upon any of its assets or properties, including the Project Security, other than the security interests and liens created under this Agreement;
  - (ii) Upon the posting of Project Security by Seller to SCE, SCE shall have a valid and perfected first priority continuing security interest therein, free of any liens, claims or encumbrances, except those liens, security interests, claims or encumbrances arising by operation of law that are given priority over a perfected security interest; and
  - (iii) Seller is not and will not become a party to or otherwise be bound by any agreement, other than this Agreement, which restricts in any manner the rights of any present or future holder of any of the Project Security with respect hereto.
- (d) On the Initial Delivery Date and on each day Seller provides information to SCE or updates Exhibit B, Seller hereby represents and warrants that: (i) the information contained in Exhibit B is correct and accurate and (ii) Seller has provided SCE with true and correct, up-to-date copies of all documents, if any, related to the interconnection of the Project.
- (e) Seller also makes the additional representations and warranties set forth in Section 9.02 of Attachment 1.

### 9.03 SCE Covenants.

- (a) SCE shall maintain and preserve its existence as a corporation formed under the laws of the State of California and all material rights, privileges and franchises necessary or desirable to enable it to perform its obligations under this Agreement.
- (b) SCE shall, comply with Applicable Laws with respect to the Product arising out of or in connection with SCE's actions or inactions after taking delivery of the Product.

### 9.04 Seller Covenants.

- (a) Seller shall maintain ownership of and demonstrable exclusive rights to the Project throughout the Term.

- (b) Seller shall deliver the Product to SCE free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person.
- (c) Seller shall obtain, maintain and remain in compliance with all Permits, agreements (including interconnection agreements) and rights (including transmission rights) necessary to operate the Project and provide the Product to SCE in accordance with this Agreement.
- (d) 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.
- (e) [Reserved.]
- (f) Seller shall furnish SCE, the CPUC, each applicable Governmental Authority, and the CAISO with such evidence as may reasonably be requested to demonstrate SCE's ownership of or exclusive right to the Product during the Delivery Period.
- (g) Seller shall, and shall cause the SC (if any) to, comply with Applicable Laws relating to the Project and the Product.
- (h) Throughout the Delivery Period:
  - (i) No portion of the Product will be committed by Seller to any third party in order to satisfy RA Compliance Obligations or analogous obligations in any CAISO Markets or non-CAISO markets, other than pursuant to an RMR Contract between the CAISO and Seller, an order of the CPUC, or at the direction of SCE.
  - (ii) If the CAISO designates any portion of the Project as CPM Capacity Seller shall, and shall cause the Project's SC to:
    - (A) Promptly (and in any event within one (1) Business Day of the time Seller or such SC receives notification from the CAISO) notify SCE and
    - (B) Not accept any such designation by the CAISO unless and until SCE has agreed to accept such designation, provided that SCE shall have the exclusive right to offer the Product and Project, or any portion thereof, to the CAISO as CPM Capacity.

- (i) Seller shall perform all covenants (if any) set forth in Section 9.04 of Attachment 1.

## ARTICLE 10. EVENTS OF DEFAULT; TERMINATION

### 10.01 Events of Default.

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

- (a) With respect to either Party:
  - (i) Such Party fails to make when due any payment required under this Agreement and this failure is not cured within five (5) Business Days after Notice of the failure;
  - (ii) 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, provided, if the misrepresentation or breach of warranty is capable of a cure, an Event of Default will be deemed to occur if the misrepresentation or breach of warranty is not remedied within five (5) Business Days after Notice from the non-breaching Party;
  - (iii) Such Party fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied within thirty (30) days after Notice of the failure, which Notice sets forth in reasonable detail the nature of the failure; provided, if the failure is not reasonably capable of being cured within the thirty (30) day cure period specified above, the Party will have such additional time (not exceeding an additional sixty (60) days) as is reasonably necessary to cure the failure, so long as the Party promptly commences and diligently pursues the cure; or
  - (iv) Such Party becomes Bankrupt.
- (b) With respect to Seller:
  - (i) Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the

obligations of Seller under this Agreement either by operation of law or pursuant to an agreement reasonably satisfactory to SCE;

- (ii) Seller fails to satisfy the credit and collateral requirements set forth in Article 7, including failure to post or maintain Project Security, and such failure is not cured within three (3) Business Days after Notice from SCE;
- (iii) Seller fails to achieve the Initial Delivery Date for the Project by the Initial Delivery Deadline except if (A) the cause of such failure is due to an event of Force Majeure, (B) Seller has complied with its obligations under Article 8 as the Claiming Party, and (C) this Agreement is subject to termination under Section 8.03(a);
- (iv) Seller intentionally or knowingly delivers, or attempts to deliver, or Forecast if applicable, Product for sale under this Agreement that is not associated with the Project;
- (v) A termination of, or cessation of service under, any agreement necessary for Seller:
  - (A) To interconnect the Project to the T&D Provider's electric system;
  - (B) To transmit the electric energy on the T&D Provider's electric system; or
  - (C) To comply with the CAISO Tariff and the SCE Tariff;provided, if SCE and Seller mutually agree that a termination of, or cessation of service under, any such agreement is not due to the fault of Seller, Seller shall have thirty (30) days from such termination or cessation to cure such default;
- (vi) Seller fails to take any actions necessary to dedicate, convey or effectuate the use of any and all Resource Adequacy Benefits for SCE's sole benefit;
- (vii) Subject to the terms of a Collateral Assignment Agreement, which shall control in the event of any conflict or inconsistency with this Section 10.01(b)(vii), the occurrence and continuation of an event of default of Seller under one or more agreements or instruments relating to indebtedness for borrowed money, in the aggregate amount of not less than *[dollar amount text]* dollars (*[\$[Number] [amount to be*

*determined by SCE]* which results in the indebtedness having been declared immediately due and payable.

- (viii) If Seller is a Special Purpose Entity, the stock or equity ownership interests in Seller or assets of Seller are directly or indirectly pledged or assigned, as collateral to any party other than Lender;
- (ix) Seller makes any material misrepresentation or omission in any report, documentation, or information required to be made or furnished by Seller pursuant to this Agreement and such misrepresentation or omission is not remedied within five (5) Business Days after Notice from SCE;
- (x) 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;
- (xi) [Reserved];
- (xii) Seller fails to maintain the necessary Permits under Section 4.01;
- (xiii) Seller fails to provide a Project Progress Report in accordance with Section 4.06 and such failure is not remedied within five (5) Business Days after Notice from SCE; or
- (xiv) Any additional Event of Default set forth in Section 10.01 of Attachment 1.

## 10.02 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, (d) suspend performance pending termination of this Agreement but excluding the obligation to post and maintain Project Security in accordance with Article 7; and (e) pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages and, where appropriate, specific performance or injunctive relief), except to the extent that such remedies are limited by the terms of this Agreement.

## 10.03 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, calculated in a commercially reasonable manner in accordance with Section 10.04. 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 Forward Settlement Amount shall be zero dollars (\$0) and the Non-Defaulting Party shall only pay to the Defaulting Party, within thirty (30) days after the Notice is provided, any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date.

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 12.

## 10.04 Calculation of Termination Payment.

### (a) 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 as follows:

- (i) If Seller is the Defaulting Party, then the Termination Payment shall be owed to SCE and shall be equal to the entire Development Security amount and any interest accrued thereon. SCE shall be entitled to immediately retain for its own benefit those funds held as Development Security and any interest accrued thereon, and any amount of Development 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.
- (ii) 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 Seller's assets individually, or (B) the entire Project,



whichever is greater, regardless of whether or not any Seller asset or the entire Project is actually sold or disposed of. There will be no amount owed to SCE.

- (iii) Each Party agrees that its damages in the event of an Early Termination Date prior to the Initial Delivery Date caused by the other Party's default would be difficult or impossible to determine and that the damages set forth in this Section 10.04(a) are a reasonable approximation of its harm or loss.

(b) Termination Payment After the Initial Delivery Date Occurs.

If the Early Termination Date occurs after the Initial Delivery Date, then 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. If SCE is the Non-Defaulting Party and reasonably expects to incur penalties, fines or costs from the CAISO, the CPUC, or any other Governmental Authority, then SCE may estimate the amount of those penalties and fines and include them in the Termination Payment amount.

(c) No-Fault Termination.

If either Party exercises a termination right as set forth in Sections 2.07, 8.03, or 10.05, the Termination Payment will be calculated with a Forward Settlement Amount of zero dollars (\$0), and, if the termination occurs before the Initial Delivery Date, Seller will be entitled to a return of any Development Security provided to SCE.

10.05 Additional Termination Rights.

(a) SCE Termination Right – Excess Network Upgrade Costs.

- (i) 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 interconnection agreement tendered to Seller by the T&D Provider if:
  - (A) 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 that are, or may

become, reimbursable by SCE, the CAISO, or any T&D Provider under the jurisdiction of the CAISO, to Seller (“Aggregate Network Upgrade Costs”), may in the aggregate exceed two hundred and fifty thousand dollars (\$250,000) (“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

- (B) SCE must procure transmission service from any other participating transmission owner to allow SCE to Schedule electric energy from the Project and the cost for such transmission service is not reimbursed or paid by Seller.

If SCE exercises its termination right pursuant to this Section 10.05(a), no Termination Payment will be due or owing by either Party and Seller will be entitled to a return of any Development Security provided to SCE.

- (ii) Notwithstanding anything to the contrary in this Section 10.05(a), SCE shall have no right to terminate this Agreement under this Section 10.05(a) if Seller, concurrently with its provision of the first Interconnection Study or interconnection agreement tendered to Seller by the T&D Provider that may give rise to a termination right of SCE under this Section 10.05(a), provides Notice to SCE that Seller irrevocably elects to owe to SCE:

- (A) the amount by which the Aggregate Network Upgrade Costs exceed the Network Upgrades Cap (“Excess Network Upgrade Costs”), provided, (I) with respect to this Section 10.05(a)(ii)(A), and solely for the purpose of calculating Excess Network Upgrade Costs, Aggregate Network Upgrade Costs shall be updated to reflect the latest interconnection agreement (including any amendments or modifications thereto) tendered to Seller; and (II) under no circumstance shall the calculation of Excess Network Upgrade Costs be less than zero dollars (\$0), and
- (B) any costs for transmission services specified in Section 10.05(a)(i)(B);

Seller’s failure to provide an election pursuant to this Section 10.05(a)(ii) shall be deemed to be an election not to exercise such rights.

If Seller elects to pay, without reimbursement, for the Excess Network Upgrade Costs pursuant to this Section 10.05(a), in no event shall Seller have any interest in or rights or title to any Network Upgrades or Congestion Revenue Rights (as that term is defined in the CAISO Tariff) in connection with the development of the Project or the delivery of Product to SCE pursuant to this Agreement.

10.06 Limitation on Seller's and Seller's Affiliates' Ability to Make or Agree to Sales from the Project after Certain Terminations of this Agreement.

If Seller terminates this Agreement as provided in Sections 2.07 or 8.03 (based on a Force Majeure as to which Seller is the Claiming Party), or if SCE terminates this Agreement due to Seller's Event of Default prior to the Initial Delivery Date, neither Seller nor Seller's Affiliates may sell, market or deliver any Product (or any component of the Product) associated with or attributable to the Project to a party other than SCE for a period of two (2) years following the Early Termination Date, 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 Product to SCE which provides SCE the right to select in its sole discretion to purchase such 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 after SCE's receipt thereof.

Neither Seller nor Seller's Affiliates may sell or transfer the Project or any part thereof, the Interconnection Queue Position (if applicable), or any of Seller's land rights or interests in the Site so long as the limitations contained in this Section 10.06 apply, unless the transferee agrees to be bound by the terms set forth in this Section 10.06 pursuant to a written agreement approved by SCE.

## **ARTICLE 11. LIMITATIONS**

11.01 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 12.04 (PROVISIONAL RELIEF), 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 THE PROVISIONS OF ARTICLE 13 (INDEMNIFICATION), 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 PROJECT SECURITY.

#### 11.02 No Representation by SCE.

Any review by SCE or its consultants of the Project or any aspect thereof, 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 any review of the design, construction or renovation, operation, or maintenance of the Project by SCE, constitutes any such representation by SCE. Any review, approval, request, or requirement of material submitted by Seller shall mean only that such Required Material is acceptable to SCE solely for SCE's internal purposes and benefit, and will not in any way be construed to mean that such material is accurate, suitable for its intended purpose, in compliance with any Applicable Law or other requirement, or endorsed for the benefit of any other party, including Seller. Further, Seller acknowledges and agrees that SCE shall have no liability to Seller or any other third party with respect to any Required Material so reviewed, approved, requested or required by SCE or on SCE's behalf. Seller is solely responsible for the economic and technical feasibility, operational capability, and reliability of the Project.

#### 11.03 Separation of Functions.

- (a) Nothing in this Agreement is intended to abrogate, limit, amend or modify the terms of any other agreement between Seller and SCE, including any interconnection agreement, and 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.
- (b) Nothing in this Agreement is intended to provide any rights or obligations to either Party with respect to:
  - (i) any relationship between the Parties in which SCE is acting in its capacity as an owner or provider of electrical interconnection, transmission, or distribution service or equipment, or
  - (ii) electrical interconnection, transmission, or distribution service or equipment.
- (c) Seller's non-performance of any provision of this Agreement shall not be excused to any greater extent due to any action or inaction of SCE in its capacity as an owner or provider of electrical interconnection, transmission, or distribution service or equipment than it would be if the non-performance were due to any action or inaction of a person other than SCE.

## **ARTICLE 12. DISPUTES**

#### 12.01 Dispute Resolution.

Other than requests for provisional relief under Section 12.04, 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 12.02 below, and if the matter is not resolved through mediation, then for final and binding arbitration under the procedures described in Section 12.03 below.

The Parties agree that there will be no interlocutory appellate relief (such as writs) available. Any Dispute resolution process pursuant to this Article 12 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, and in no event more than four (4) years after the occurrence of the facts giving rise to the Dispute. If any Dispute resolution process pursuant to this Article 12 with respect to a Dispute is not commenced within such one (1) year time period, such Dispute shall be waived and forever barred, without regard to any other limitations period set forth by law or statute.

#### 12.02 Mediation.

Either Party may initiate mediation by providing Notice to the other Party in accordance with Section 14.02 of a 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.

### 12.03 Arbitration.

Either Party may initiate binding arbitration with respect to the matters first submitted to mediation by providing Notice in accordance with Section 14.02 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 12.02. 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 12.02, the Dispute resolution process shall be deemed complete and further resolution of such Dispute shall be barred, without regard to any other limitations period set forth by law or statute.

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

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

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

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

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

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

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

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

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

- (a) Before discovery commences, the Parties shall exchange an initial disclosure of all documents and percipient witnesses which they intend to rely upon or use at any arbitration proceeding (except for documents and witnesses to be used solely for impeachment);
- (b) The initial disclosure will occur within thirty (30) days after the initial conference with the Arbitrator or at such time as the Arbitrator may order;
- (c) Discovery may commence at any time after the Parties' initial disclosure;
- (d) The Parties will not be permitted to propound any interrogatories or requests for admissions;
- (e) Discovery will be limited to twenty-five (25) document requests (with no subparts), three (3) lay witness depositions, and three (3) expert witness depositions (unless the Arbitrator holds otherwise following a showing by the Party seeking the additional documents or depositions that the documents or depositions are critical for a fair resolution of the Dispute or that a Party has improperly withheld documents);
- (f) Each Party is allowed a maximum of three (3) expert witnesses, excluding rebuttal experts;
- (g) Within sixty (60) days after the initial disclosure, or at such other time as the Arbitrator may order, the Parties shall exchange a list of all experts upon which they intend to rely at the arbitration proceeding;
- (h) Within thirty (30) days after the initial expert disclosure, the Parties may designate a maximum of two (2) rebuttal experts;
- (i) Unless the Parties agree otherwise, all direct testimony will be in form of affidavits or declarations under penalty of perjury; and



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

Subject to Section 11.01, 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 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 specific performance and injunctive or other equitable relief as a remedy for a breach of Sections 1.01, 5.05, 9.04(a)(vii), 9.05(c), 10.06, and 14.05 (Confidentiality) of Attachment 1.

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.

#### 12.04 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 Sections 1.01, 5.05, 9.04(a)(vii), 9.05(c), 10.06, and 14.05 (Confidentiality) of Attachment 1, 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 Section 12.01. The Parties further acknowledge and agree that the results of the arbitration may be rendered ineffectual without the provisional relief.

Such a request for provisional relief does not waive a Party's right to seek other remedies for the breach of the provisions specified above in accordance with this Article 12, 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 this Agreement does not specify a remedy for the breach, all other remedies available at law or equity to the Parties for the breach.

12.05 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 12 that arise from or relate to the same act, omission or issue.

**ARTICLE 13. INDEMNIFICATION; GOVERNMENTAL CHARGES**

13.01 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 13.01, 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:

- (a) any breach made by SCE of its representations, warranties, or covenants in Article 9;
- (b) the failure by SCE to pay any Governmental Charges or Environmental Costs for which SCE is responsible under Sections 13.06 or 13.08; and
- (c) any event, circumstance or act listed in Section 13.01 of Attachment 1.

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

### 13.02 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 13.02, 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:

- (a) any breach made by Seller of its representations, warranties, or covenants in Article 9;
- (b) injury or death to persons, including SCE employees, and physical damage to property, including SCE property, where the injury, death, or 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;
- (c) 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 14.07 (Insurance); provided, the inclusion of this Section 13.02(c) is not intended to create any express or implied right in Seller to elect not to provide the insurance required under Section 14.07;
- (d) any breach by Seller of the covenants set forth in Section 10.06;
- (e) any violation of Applicable Laws arising out of or in connection with Seller's performance of, or failure to perform this Agreement, including strict liability;
- (f) any (i) release of a Hazardous Material by Seller, any of Seller's EPC Contractors or other contractors, or any of its or their subcontractors, (ii) enforcement or compliance proceeding relating to or in connection with any alleged, threatened or actual violation of any environmental law by Seller or its EPC Contractor or any of Seller's or its EPC Contractor's subcontractors, or (iii) action reasonably necessary to abate, investigate, remediate or prevent a

- violation or threatened violation of any environmental law by Seller or its EPC Contractor or any of Seller's or its EPC Contractor's subcontractors;
- (g) any representations, statements or promises made by either Seller or Seller's agents or employees to a Customer or a potential Customer;
  - (h) any infringement upon or violation of any trade secret, trademark, trade name, copyright, patent, or other intellectual property rights of any third party by equipment, software, applications or programs (or any portion of same) used in connection with the Project;
  - (i) the failure by Seller to pay any Governmental Charges or Environmental Costs for which Seller is responsible under Sections 13.06 or 13.08;
  - (j) any costs, penalties or fines resulting from the failure of Seller or its SC (unless SCE is the SC) to, if applicable:
    - (i) provide any portion of the Contract Capacity for any portion of the Delivery Period;
    - (ii) provide notice of the non-availability of any portion of the Contract Capacity for any portion of the Delivery Period as required under Section 1.06;
    - (iii) provide notice of or any malfunction, outage or other condition affecting the Project as required under Article 6;
    - (iv) timely submit accurate Supply Plans that identify SCE's right to the Contract Capacity for each day of the Delivery Period;
    - (v) Dispatch the Project within any applicable time limits set forth in this Agreement; or
    - (vi) provide SCE with the full amount of Resource Adequacy Benefits associated with the Project (in accordance with then current resource adequacy counting rules);
  - (k) any event, circumstance or act listed in Section 13.02 of Attachment 1.

The Parties shall use commercially reasonable efforts to minimize costs, penalties, and fines for which indemnity is sought hereunder; provided, in no event will SCE be required to use or change its utilization of its owned or controlled assets or market positions to minimize such costs, penalties, and fines.

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

### 13.03 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:

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

### 13.04 Survival of Indemnification Rights and Obligations.

All indemnity rights and obligations shall survive the termination of this Agreement for a period of four (4) years.

### 13.05 Cooperation to Minimize Tax Liabilities.

Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

### 13.06 Governmental Charges.

Seller shall pay or cause to be paid all taxes, charges or fees imposed by a Governmental Authority, including ad valorem taxes and other taxes attributable to the Project, land, land rights or interests in land for the Project (collectively, "Governmental Charges") on or with respect to the Project or the Product.

For any period in which the Project is selling Energy to SCE hereunder: (a) Seller shall pay or cause to be paid all Governmental Charges on or with respect to the Product at or before the Delivery Point; and (b) SCE shall pay or cause to be paid all Governmental Charges on or with respect to Product after the Delivery Point.

If Seller is required by Applicable Laws to remit or pay Governmental Charges which are SCE's responsibility hereunder, SCE shall promptly reimburse Seller for such Governmental Charges. If SCE is required by Applicable Laws to remit or pay Governmental Charges which are Seller's responsibility hereunder, SCE may deduct the amount of any such Governmental Charge from any amounts due to Seller under this Agreement. If SCE elects not to deduct such amounts from amounts due to Seller under this Agreement, Seller shall promptly reimburse SCE for such amounts upon SCE's request.

Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under Applicable Laws.

13.07 Compliance with Laws and Indemnification.

Seller shall be responsible for obtaining and maintaining all Permits, and shall construct and operate the Project in compliance with all Applicable Laws and Permit Requirements for the Term, including any new or revised Permits or Applicable Laws that become effective during the Term. If these requirements conflict, or the CAISO or CPUC do not provide a corresponding requirement to the other Governmental Authorities, Seller shall comply with the most stringent requirement of the Governmental Authorities.

Seller shall be solely responsible for any fines, penalties or other charges which result from Seller's failure to obtain or maintain such Permits or operate the Project in accordance with Applicable Laws and Permit Requirements. No such fines, penalties or charges shall be passed through to SCE.

13.08 Environmental Costs and Indemnification.

Seller is solely responsible for

- (a) Any Environmental Costs,
- (b) 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, or any portion thereof, during the Term,
- (c) Any obligations listed under "Compliance Obligation" in the GHG Regulations, and

- (d) Any other costs associated with the implementation and regulation of Greenhouse Gas emissions (whether in accordance with the California Global Warming Solutions Act of 2006, Assembly Bill 32 (2006) and the regulations promulgated thereunder, including the GHG Regulations, or any other federal, state or local legislation to offset or reduce any Greenhouse Gas emissions implemented and regulated by a Governmental Authority) with respect to the Project, any portion of the Project, or Seller.

## ARTICLE 14. MISCELLANEOUS

### 14.01 General.

- (a) Entire Agreement. This Agreement constitutes the entire agreement between the Parties relating to its subject matter.
- (b) Amendment. This Agreement can only be amended by a writing signed by both Parties.
- (c) No Third-Party Beneficiaries. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).
- (d) Waiver. 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 relinquishments 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.
- (e) Section Headings; Technical Terms. The headings used in this Agreement are for convenience and reference purposes only. Words having well-known technical or industry meanings have these meanings unless otherwise specifically defined in this Agreement.
- (f) Successors and Assigns. This Agreement is binding on each Party's successors and permitted assigns.
- (g) Forward Contract. The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a "forward contract" and that SCE and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code (11 U.S.C. §101 *et seq.*), as amended.

- (h) Multiple Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF) or by other electronic means constitutes effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes.
- (i) Survival. 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, settlement, confidentiality, remedies, limitation of liabilities, posting of Project Security, dispute resolution, and limitations on third party sales, shall so survive.
- (j) No Agency. Except as otherwise provided explicitly herein, in performing their respective obligations under this Agreement, neither Party is acting, or is authorized to act, as the other Party's agent.
- (k) Independent Contractors. The Parties are independent contractors. Nothing contained herein shall be deemed to create an association, joint venture, or partnership relationship between the Parties or to impose any partnership obligations or liability on either Party in any way.
- (l) 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 a court or regulatory agency holds that the provisions are not separable from all other provisions of this Agreement.
- (m) Rules of Construction.
  - (i) This Agreement will be considered for all purposes as prepared through the joint efforts of the Parties and may 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.
  - (ii) The term "including" when used in this Agreement is by way of example only and may not be considered in any way to be in limitation.



- (iii) The word “or” when used in this Agreement includes the meaning “and/or” unless the context unambiguously dictates otherwise.
- (iv) Where days are not specifically designated as Business Days, they will be considered as calendar days.
- (v) All references to time shall be in Pacific Daylight Time (when California observes Daylight Savings Time) and Pacific Standard Time (otherwise) unless stated otherwise.
- (vi) No provision of this Agreement is intended to contradict or supersede the SCE Tariff, Applicable Laws, or any agreement covering transmission, distribution, metering, scheduling or interconnection, including the interconnection agreement, each of which shall control in the event of an apparent contradiction with this Agreement. Each Party agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.
- (vii) Any reference to any Applicable Laws, tariff, government department or agency, regional reliability council, T&D Provider, accounting standard, or Ratings Agency includes any successor to such law, tariff, standard or organization.

## 14.02 Notices.

All notices, requests, invoices, statements or payments must be made as specified in Exhibit E.

Notices must, unless otherwise specified herein, be in writing and may be provided by hand delivery, first class United States mail, overnight courier service, e-mail or facsimile.

Notice provided in accordance with this Section 14.02 will be deemed given as follows:

- (a) Notice by e-mail, facsimile or hand delivery will be deemed given at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise will be deemed given at the close of business on the next Business Day;
- (b) Notice by overnight United States mail or courier service will be deemed given on the next Business Day after such Notice was sent out;
- (c) Notice by first class United States mail will be deemed given two (2) Business Days after the postmarked date;

- (d) Curtailment Orders and Dispatch Instructions will be deemed given on the date and time made by SCE and will be effective immediately.

Notices will be effective on the date deemed given, unless a different date for the Notice to go into effect is stated in another section of this Agreement.

A Party may change its designated representatives, addresses and other contact information by providing Notice of same in accordance herewith.

All Notices, requests, invoices, statements or payments related to this Agreement must reference the ID# and clearly identify the fact, circumstance, request, issue, dispute or matter to which such Notice relates.

#### 14.03 Governing Law; Waiver of Jury Trial.

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

#### 14.04 Assignment.

- (a) Except as provided in Section 14.04(d), neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld.
- (b) Any Tax Equity Financing or a direct or indirect change of control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of SCE, which consent shall not be unreasonably withheld.
- (c) Any requests for consent to assignment shall be provided at least forty-five (45) days in advance of the assignment date.
- (d) In connection with any debt financing or refinancing of the Project by Seller that contemplates an assignment of this Agreement as collateral, SCE shall in good faith work with Seller and Lender to agree upon a consent to a collateral assignment of this Agreement ("Collateral Assignment Agreement") substantially in the form of Exhibit F. Requests for a Collateral Assignment Agreement must be received by SCE at least forty-five (45) days in advance of

the anticipated closing date for the transaction in question. Seller shall also be responsible for SCE's reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any such assignment, including attorneys' fees.

14.05 Confidentiality.

(a) Confidentiality Obligation.

Except as otherwise expressly agreed in writing by the other Party, and except as otherwise agreed in Sections 14.05(b) (Permitted Disclosures) and 14.05(c) (Duty to Seek Protection), each receiving Party shall, and shall cause its Representatives to, (i) keep strictly confidential and take reasonable precautions to protect against the disclosure of all Confidential Information, and (ii) 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 (and, in the case of Representatives of Seller engaged wholly or in part in the purchase and sale of electrical power or natural gas, are directly engaged in performing Seller's obligations under this Agreement) 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 obligated to comply with the requirements of this Agreement. Each Party will be responsible for any breach of this Agreement by its Representatives.

(b) Permitted Disclosures.

(i) SCE and Seller may disclose Confidential Information to the "Independent Evaluator," as defined in CPUC Decision 04-12-048. SCE and the Independent Evaluator may disclose Confidential Information to Governmental Authorities, the CAISO, SCE's Procurement Review Group established by the CPUC in Decision 02-08-071 ("PRG"), and SCE's advisory Cost Allocation Mechanism Group established by the CPUC in Decision 07-12-052 ("CAM"), or pursuant to any discovery or data request of a party to any proceeding before the CPUC, FERC or CEC. Neither SCE nor the Independent Evaluator shall have any liability whatsoever to Seller in the event of any unauthorized use or disclosure by any Governmental Authority, the PRG, the CAM, or the CAISO of any Confidential Information or other information disclosed to any of them by SCE or the Independent Evaluator.

- (ii) The Parties may disclose Confidential Information to the extent necessary to comply with Applicable Laws, any accounting rule or standard, and any applicable summons, subpoena or order of a Governmental Authority, and any exchange, Control Area or CAISO rule.
  - (iii) Either Party shall be permitted to disclose the following terms with respect to this Agreement: (A) Party names, (B) technology type, (C) Delivery Period, (D) Project location, (E) Contracted Amount, (F) Expected Initial Delivery Date, and (G) the Project's expected Energy deliveries, energy savings or load reduction (as applicable).
  - (iv) The Parties may disclose Confidential Information as may reasonably be required to participate in the WREGIS or other process recognized under Applicable Laws for the registration, transfer or ownership of Green Attributes associated with the Project;
  - (v) If applicable, Seller may disclose the Product, or any applicable portion of the Product, including the applicable Expected Capacity Attributes and any amounts of EFC and Inflexible Capacity for each day of each Showing Month under this Agreement:
    - (A) to the SC in order for such SC to timely submit accurate Supply Plans; provided, that Seller shall use reasonable efforts to limit, to the extent possible, the ability of the SC to further disclose such information.
    - (B) to any Governmental Authority, the CPUC, and the CAISO in order to support its RA Compliance Showings.
  - (vi) If SCE resells all or any portion of the Product to another party or the Product is to be provided to another party, SCE may disclose to the other party to such transaction all such information necessary to effect such transaction.
- (c) Duty to Seek Protection.
- (i) In connection with requests or orders to produce Confidential Information protected by this Agreement and in accordance with a summons, subpoena, order or similar request of a Governmental Authority, or pursuant to any discovery or data request of a party to any proceeding before a Governmental Authority, each Party, to the extent permitted by Applicable Laws, (A) will promptly notify the other Party of the existence, terms, and circumstances of such

requirement(s) so that such other Party may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Agreement, and (B) will, and will cause its Representatives to, cooperate fully with such other Party, to the extent permitted by Applicable Laws, in seeking to limit or prevent such disclosure of such Confidential Information. Notwithstanding the preceding sentence, the requirements under this Section 14.05(c)(i) do not apply to Section 14.05(b)(i).

- (ii) If a Party or its Representatives are compelled to make disclosure in response to a requirement described in Section 14.05(c)(i), the compelled person may disclose only that portion of the Confidential Information protected by this Agreement which its counsel advises that it is legally required to disclose and will exercise reasonable efforts to obtain assurance that confidential treatment will be accorded to the disclosed Confidential Information protected by this Agreement.

(d) 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 Section 14.05.

14.06 Records.

(a) Performance Under This Agreement.

Each Party and its Representatives shall maintain records and supporting documentation relating to this Agreement, the Product, 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.

(b) 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 Product or the Project that Seller is not already required to maintain or deliver under this Agreement, in order to comply with all Applicable Laws.

(c) Audit Rights.

SCE, or its designee, 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 promptly comply with any reasonable request by SCE under this Section 14.06(c) and provide copies of documents, records or data to SCE. The rights and obligations under this Section 14.06(c) shall survive the termination of this Agreement for a period of two (2) years.

(d) Industry Standards.

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 Prudent 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 Prudent Electrical Practices, Applicable Laws, Permit Requirements, or Industry Standards.

14.07 Insurance.

Throughout the Term and for such additional periods as may be specified below, Seller and, to the extent not covered by Seller's insurance policies, its contractors and subcontractors shall, at their own expense, provide and maintain in effect the insurance policies and minimum limits of coverage specified below, and such additional coverage as may be required by Applicable Laws, with insurance companies which are authorized to do business in the state in which the services are to be performed and which have an A.M. Best's Insurance Rating of not less than A-VII. The minimum insurance requirements specified herein do not in any way limit or relieve Seller of any obligation assumed elsewhere in this Agreement, including Seller's defense and indemnity obligations.

(a) Workers' Compensation Insurance with the statutory limits required by the state having jurisdiction over Seller's employees;

(b) Employer's Liability Insurance with limits of not less than:

(i) Bodily injury by accident – One Million dollars (\$1,000,000) each accident

- (ii) Bodily injury by disease – One Million dollars (\$1,000,000) policy limit
  - (iii) Bodily injury by disease – One Million dollars (\$1,000,000) each employee
- (c) Commercial General Liability Insurance (which, except with the prior written consent of SCE and subject to Sections 14.07(c)(i) and (ii), shall be written on an “occurrence,” not a “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 bear a per occurrence limit of not less than One Million dollars (\$1,000,000) and annual aggregate of not less than Two Million Dollars (\$2,000,000), exclusive of defense costs, for all coverages. Such insurance shall contain standard cross-liability and severability of interest provisions.

If Seller elects, with SCE’s written concurrence, to use a “claims made” form of Commercial General Liability Insurance, then the following additional requirements apply:

- (i) The retroactive date of the policy must be on or prior to the Effective Date; and
  - (ii) Either the coverage must be maintained for a period of not less than four (4) years after this Agreement terminates, or the policy must provide for a supplemental extended reporting period of not less than four (4) years after this Agreement terminates.
- (d) Commercial Automobile Liability Insurance covering bodily injury and property damage with a combined single limit of not less than One Million dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller’s use of all owned (if any), non-owned and hired vehicles in the performance of this Agreement.
- (e) Pollution Liability Insurance, (which, except with the prior written consent of SCE and subject to Sections 14.07(e)(i) and (ii), shall be written on an “occurrence” or a “claims-made” policy form) with limits of not less than [\_\_] Million dollars (\$[\_\_],000,000) *{SCE Note: Amount will be equal to \$1 million per MW of Contract Capacity, capped at \$5 million 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 Project, including coverage for bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death, 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 defense costs.

If Seller elects, with SCE's written concurrence, to use a "claims made" form of Pollution Liability Insurance, then the following additional requirements apply:

- (i) The retroactive date of the policy must be prior to the Effective Date; and
  - (ii) Either the coverage must be maintained for a period of not less than three (3) years after this Agreement terminates, or the policy must provide for a supplemental extended reporting period of not less than three (3) years after this Agreement terminates.
- (f) Umbrella/Excess Liability Insurance, written on an "occurrence," not a "claims-made" basis, providing coverage excess of the underlying Employer's Liability, Commercial General Liability, Pollution Liability Insurance, and Commercial Automobile Liability insurance, on terms at least as broad as the underlying coverage, with limits of not less than [ ] Million dollars (\$[ ],000,000) *{SCE Note: Amount will be equal to \$1 million per MW of Contract Capacity, capped at \$20 million}* per occurrence and in the annual aggregate. The insurance requirements under this Section 14.07 can be provided in part by the combination of Seller's primary commercial general liability and excess liability policies.

If Seller elects, with SCE's written concurrence, to use a "claims made" form of Umbrella/Excess Liability Insurance, then the following additional requirements apply:

- (i) The retroactive date of the policy must be prior to the Effective Date; and
- (ii) Either the coverage must be maintained for a period of not less than three (3) years after this Agreement terminates, or the policy must provide for a supplemental extended reporting period of not less than three (3) years after this Agreement terminates.

All policies required by Sections 14.07(a) through (f) shall be written on a "per project" or "per contract" basis.

- (g) SCE as Additional Insured. The insurance required in this Section 14.07 shall apply as primary insurance to, without a right of contribution from, any other insurance or self-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. To the extent permitted by Applicable Laws, Seller and its insurers shall be required to waive all rights of recovery from or subrogation against SCE, its parent, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees and insurers. The Commercial General Liability, Commercial Automobile Liability, Pollution Liability and Umbrella/Excess Liability insurance required above shall include, either by policy terms and conditions or by endorsement, SCE, its parent, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, as additional insureds for liability arising out of Seller's construction, ownership or operation of the Project, or obligations or performance, under this Agreement.

- (h) Proof of Insurance. Within ten (10) Business Days after the Effective Date, and within ten (10) Business Days after coverage is renewed or replaced, Seller shall furnish to SCE the entire policy forms, including endorsements, and certificates of insurance evidencing the coverage required above, written on forms and with deductibles reasonably acceptable to SCE. All deductibles and co-insurance retentions applicable to the insurance above shall be paid by Seller. Seller, or its insurance broker or agent, shall provide SCE with at least thirty (30) days' prior written notice in the event of cancellation of coverage. SCE's receipt of documents that do not comply with the requirements stated herein, or Seller's failure to provide documents that comply with the requirements stated herein, shall not limit or relieve Seller of the duties and responsibility of maintaining insurance in compliance with the requirements in this Section 14.07 and shall not constitute a waiver of any of the requirements in this Section 14.07.
- (i) Reporting. Seller agrees to report to SCE in writing within ten (10) Business Days following all accidents or occurrences resulting in bodily injury to any person, and to any property where such property damage is greater than One Hundred Thousand Dollars (\$100,000).
- (j) Failure to Comply. If Seller fails to comply with any of the provisions of this Section 14.07, Seller, among other things and without restricting SCE's remedies under the 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. With respect to the required Commercial General Liability, Umbrella/Excess Liability, Pollution Liability and Commercial Automobile Liability insurance, Seller shall 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 a third party 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. In addition, an alleged violation of the provisions of this Section 14.07 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

14.08 Consolidation of Seller's Financial Statements.

- (a) SCE shall determine, through consultation with its internal accountants and review with their independent registered public accounting firm, whether SCE is required to consolidate Seller's financial statements with SCE's financial statements for financial accounting purposes under Accounting Standards Codification (ASC) 810/Accounting Standards Update 2009-17, "Consolidation of Variable Interest Entities" (ASC 810), or future guidance issued by accounting profession governance bodies or the SEC that affects SCE accounting treatment for this Agreement (the "Financial Consolidation Requirement").
- (b) If the Financial Consolidation Requirement is applicable, then:
  - (i) Within twenty (20) days following the end of each calendar year (for each year that such treatment is required), Seller shall deliver to SCE unaudited financial statements and related footnotes of Seller as of the end of the year. It is permissible for Seller to use accruals and prior months' estimates with true-up to actual activity, in subsequent periods, when preparing the unaudited financial statements. The annual financial statements should include quarter-to-date and yearly information. SCE shall provide to Seller a checklist before the end of each year listing the items which SCE believes are material to SCE and required for this purpose, and Seller shall provide the information on the checklist, subject to the availability of data from Seller's records. If audited financial statements are prepared for Seller for the year, Seller shall provide such statements to SCE within five (5) Business Days after those statements are issued.
  - (ii) Within fifteen (15) days following the end of each fiscal quarter (for each quarter that such treatment is required), Seller shall deliver to SCE unaudited financial statements and related footnotes of Seller as of the end of the quarterly period. The financial statements should include quarter-to-date and year-to-date information. SCE shall provide to Seller a checklist before the end of each quarter listing items which SCE believes are material to SCE and required for this

purpose, and Seller shall provide the information on the checklist, subject to the availability of data from Seller's records. It is permissible for Seller to use accruals and prior months' estimates with true-up to actual activity, in subsequent periods, when preparing the unaudited financial statements and the information on the checklist.

- (iii) If Seller regularly prepares its financial data in accordance with GAAP or IFRS, the financial information provided to SCE shall be prepared in accordance with such principles. If Seller is not a SEC registrant and does not regularly prepare its financial data in accordance with GAAP or IFRS, the information provided to SCE shall be prepared in a format consistent with Seller's regularly applied accounting principles, e.g., the format that Seller uses to provide financial data to its auditor.
- (c) If the Financial Consolidation Requirement is applicable, then promptly upon Notice from SCE, Seller shall allow SCE's independent registered public accounting firm such access to Seller's records and personnel, as reasonably required so that SCE's independent registered public accounting firm can conduct financial statement audits in accordance with the standards of the Public Company Accounting Oversight Board (United States), as well as internal control audits in accordance with Section 404 of the Sarbanes-Oxley Act of 2002, as applicable. All expenses for the foregoing work of SCE's independent registered public accounting firm shall be borne by SCE. If SCE's independent registered public accounting firm during or as a result of the audits permitted in this Section 14.08(c) determines a material weakness or significant deficiency, as defined by GAAP or IFRS, as applicable, exists in Seller's internal controls over financial reporting, then within 90 days after Seller's receipt of Notice from SCE, Seller shall remediate any such material weakness or significant deficiency; provided, however, that Seller has the right to challenge the appropriateness of any determination of material weakness or significant deficiency. Seller's true up to actual activity for yearly or quarterly information as provided herein shall not be evidence of material weakness or significant deficiency.
- (d) SCE shall treat Seller's financial statements and other financial information provided under the terms of this Section 14.08 in strict confidence and, accordingly:
  - (i) Shall utilize such Seller financial information *only* for purposes of preparing, reviewing or certifying SCE's or any SCE parent company financial statements, for making regulatory, tax or other filings required by Applicable Laws in which SCE is required to demonstrate

- or certify its or any parent company's financial condition or to obtain Credit Ratings;
- (ii) Shall make such Seller financial information available only to its officers, directors, employees or auditors who are responsible for preparing, reviewing or certifying SCE's or any SCE parent company financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of SCE's or any SCE parent company financial statement and to those Persons who are entitled to receive Confidential Information as identified in Section 14.05; and
  - (iii) SCE shall ensure that its internal auditors and independent registered public accounting firm (1) treat as confidential any information disclosed to them by SCE pursuant to this Section 14.08, (2) use such information solely for purposes of conducting the audits described in this Section 14.08, and (3) disclose any information received only to personnel responsible for conducting the audits.
- (e) If the Financial Consolidation Requirement is applicable, then, within two (2) Business Days following the occurrence of any event from the Effective Date through the last day of the Delivery Period affecting Seller which Seller would be required to disclose in a Form 8-K filing with the SEC if Seller was subject to the form 8-K filing requirements, Seller shall provide to SCE a Notice describing such event in sufficient detail to permit SCE to make a Form 8-K filing.
- (f) If, after consultation and review, the Parties do not agree on issues raised by Section 14.08(a), then such dispute shall be subject to review by another independent audit firm not associated with either Party's respective independent registered public accounting firm, reasonably acceptable to both Parties. This third-party independent audit firm will render its recommendation on whether consolidation by SCE is required. Based on this recommendation, Seller and SCE shall mutually agree on how to resolve the dispute. If Seller fails to provide the data consistent with the mutually agreed upon resolution, SCE may declare an Event of Default pursuant to Section 10.01. If the independent audit firm associated with SCE still determines, after review by the third party independent audit firm, that SCE must consolidate, then Seller shall provide the financial information necessary to permit consolidation to SCE; provided, however, that in addition to the protections in Section 14.08(d), such information shall be password protected and available only to those specific officers, directors, employees and auditors who are preparing and certifying the consolidated financial statements and not for any other purpose.

14.09 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); *NRG Power Marketing LLC v. Maine Public Utility Commission*, 558 U.S. 527 (2010).

Notwithstanding any provision of this 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.

14.10 Seller Ownership and Control of Project.

Seller agrees, that, in accordance with FERC Order No. 697, upon request of SCE, Seller shall submit a letter of concurrence in support of any affirmative statement by SCE that the contractual arrangement set forth in this Agreement does not transfer “ownership or control of generation capacity” from Seller or Customer(s) to SCE as the term “ownership or control of generation capacity” is used in 18 Code of Federal Regulations Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to FERC Order Nos. 652 and 697, claim that the contractual arrangement set forth in this Agreement conveys ownership or control of generation capacity from Seller or Customer(s) to SCE.

14.11 NERC Standards Non-Compliance Penalties.

- (a) During the Delivery Period, Seller shall be
  - (i) responsible for complying with any NERC Reliability Standards applicable to the Project and
  - (ii) liable for NERC Standards Non-Compliance Penalties.

- (b) SCE shall reimburse Seller for a NERC Standards Non-Compliance Penalty, or any payment made by Seller in settlement of a claim of violation, if:
  - (i) the penalty or claim being settled was solely caused by SCE's actions or inactions as SC as described in the NERC Responsibilities;
  - (ii) SCE participated in, or waived its right to participate in, any administrative processes, discussions or settlement negotiations with FERC, NERC, WECC, or other Governmental Authority arising from or related to the alleged violation or possible penalty and, in the case of a settlement, agreed to the terms of the settlement; and
  - (iii) Seller can establish to SCE's reasonable satisfaction that the penalty was actually assessed against and paid by Seller or the settlement payment was actually made by Seller.

#### 14.12 Nondedication.

Notwithstanding any other provisions of this Agreement, neither Party dedicates any of the rights that are or may be derived from this Agreement or any part of its facilities involved in the performance of this Agreement to the public or to the service provided under this Agreement, and this service shall cease upon termination of this Agreement.

[Remainder of this page intentionally left blank]

*ID# [Number], [Seller's Name]*

*[RFO Name]*

IN WITNESS WHEREOF, the Parties have read this Agreement, understand it, and agree to be bound by its terms as of the Effective Date.

***[SELLER'S NAME],***

*a [Seller's jurisdiction of organization and type of organization].*

By:

\_\_\_\_\_

*[Name]*

*[Title]*

Date: \_\_\_\_\_

**SOUTHERN CALIFORNIA EDISON  
COMPANY,**

a California corporation.

By:

\_\_\_\_\_

*[Name]*

*[Title]*

Date: \_\_\_\_\_

**EXHIBIT A  
DEFINITIONS**

“Accepted DER Costs” has the meaning set forth in Section 6.01(d).

“Account Holder” has the meaning set forth in the WREGIS Operating Rules, as applicable to the Project as the Registered Generating Unit.

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

“Actual Availability Report” has the meaning set forth in Section 6.07(a) of Attachment 1.

“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.

“Aggregate Network Upgrade Costs” has the meaning set forth in Section 10.05(a)(i)(A).

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

“AC” or “Alternating Current” means the electric current that reverses direction; it is the opposite of Direct Current.

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

“Applicable Laws” means the CAISO Tariff and 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.

“Arbitrator” has the meaning set forth in Section 12.03.

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

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

“Bankrupt” means with respect to any entity, such entity (a) files a petition or otherwise commences, authorizes, or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator,



administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.

“Bid,” “Bids” or “Bidding” has the meaning set forth in the CAISO Tariff.

“Business Day” means any day except a Saturday, Sunday, a Federal Reserve Bank holiday or the Friday immediately following Thanksgiving. A Business Day begins at 8:00 a.m. and end at 5:00 p.m. local time for the Party sending the Notice or payment or performing a specified action.

“CAISO” means the California Independent System Operator Corporation.

“CAISO Approved Meter” means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real-time, all electric energy produced by the Project, excluding Station Use.

“CAISO Certification” has the meaning set forth in Section 2.04(g) of Attachment 1.

“CAISO Controlled Grid” has the meaning set forth in the CAISO Tariff.

“CAISO Costs” means the debits, costs, penalties and interest that are directly assigned by the CAISO to the Resource ID for the Project for, or attributable to, Scheduling or deliveries from the Project under this Agreement in each applicable Settlement Interval. Where the Project is aggregated with other projects under a single Resource ID, CAISO Costs means the debits, costs, penalties and interest that are directly assigned by the CAISO to the aggregated Resource ID and reasonably allocated to the Seller or the Project by SCE.

“CAISO Markets” has the meaning set forth in the CAISO Tariff.

“CAISO Revenues” means the credits and other payments incurred or received by SCE as a result of Energy from the Project delivered to any CAISO administered market by Seller, including costs and revenues associated with CAISO dispatches, for each applicable Settlement Interval. Where the Project is aggregated with other projects under a single Resource ID, CAISO Revenues means the costs and revenues that are reasonably allocated to the Seller or the Project by SCE.

“CAISO Sanctions” means any sanctions directly assigned by the CAISO to Seller, the Resource ID or the Project. Where the Project is aggregated with other projects under a single Resource ID, CAISO Sanctions means the sanctions that are reasonably allocated to the Seller or the Project by SCE.

“CAISO Tariff” means the California Independent System Operator Corporation Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by FERC.

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

“California Air Resources Board’s Voluntary Renewable Electricity Program” means the voluntary program to reduce GHG emissions under the California Cap-and-trade Program as set forth in 17 C.C.R. Sections 95841 and 95831. “California Renewables Portfolio Standard” means the California Public Utilities Code Section 399.11, *et seq.*

“CAM” has the meaning set forth in Section 14.05(b).

“Capacity Attributes” means any and all current or future defined characteristics, certificates, tags, credits, ancillary service attributes, or accounting constructs, howsoever entitled, including any accounting construct counted toward any RA Compliance Obligations or any capacity products considered as distribution deferral capacity, attributed to or associated with the Project throughout the Delivery Period, including:

- (a) resource adequacy attributes, as may be identified from time to time by the CPUC, any other Governmental Authority, or the CAISO, that can be counted toward RAR, energy savings or reductions;
- (b) resource adequacy attributes or other locational attributes for the Project related to a Local Capacity Area, as may be identified from time to time by the CPUC, any other Governmental Authority, or the CAISO, associated with the physical location or point of electrical interconnection of the Project within the CAISO Controlled Grid, that can be counted toward Local RAR; and
- (c) flexible capacity resource adequacy attributes for the Project, including the amount of EFC as may be identified from time to time by the CPUC, any other Governmental Authority, or the CAISO, that can be counted toward Flexible RAR.

“CEC” means the California Energy Commission.

“CEC Certification” has the meaning set forth in Section 5.04(a)(ii) of Attachment 1.

“CEC Pre-Certification” has the meaning set forth in Section 5.04(a)(i) of Attachment 1.

“CEC Verification” has the meaning set forth in Section 5.04(a)(iii) of Attachment 1.

“Check Meter” has the meaning set forth in Section 5.02(b) of Attachment 1.

“Claiming Party” has the meaning set forth in Section 8.02.

“Collateral Assignment Agreement” has the meaning set forth in Section 14.04(d).

“Commercial Operation” means that each Generating Facility included in the Project has successfully satisfied all of the conditions set forth in Section 2.04(a).

“Community Solar Green Tariff” means SCE’s Schedule CS-Green Tariff implemented by SCE in accordance with CPUC Decisions 18-06-026, 18-10-007, and Resolution E-4999, as that tariff may be modified from time to time.

“Confidential Information” means this Agreement, the terms and conditions and other facts with respect to this Agreement, and 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. Confidential Information does not include information, data, analyses, documents, or materials that (a) 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, or (b) 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 (c) the receiving Party or its Representatives can demonstrate that the information has been independently developed by the receiving Party’s personnel acting without access to the Confidential Information.

“Contracted Amount” has the meaning set forth in Section 1.03.

“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.

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

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

“CPUC” means the California Public Utilities Commission.

“CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:

- (a) Approves this Agreement in its entirety, including payments to be made by the Buyer, subject to CPUC review of the Buyer's administration of the Agreement; and
- (b) Finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), Decision 03-06-071, or other applicable law.

CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

“Credit Rating” means with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancements) by S&P or Moody's. If no rating is assigned to such entity's unsecured, senior long-term debt or deposit obligations by any Ratings Agency, then “Credit Rating” means the general corporate credit rating or long-term issuer rating assigned to such entity by S&P or Moody's. If an entity is rated by more than one Ratings Agency and the ratings are at different levels, then “Credit Rating” means the lowest such rating.

“Curtailed Product” means energy that could have been delivered to the Delivery Point by Seller but which was not delivered (a) due to Seller's curtailment in accordance with Section 6.01(f)(iii) of Attachment 1, or (b) if the CAISO Tariff prohibits, without any action by the CAISO or any T&D Provider, any electric generating facilities from delivery of energy in excess of its Schedule, any such energy that the Generating Facility was precluded from delivering. The amount of energy that could have been delivered but which was not delivered shall be determined by SCE in accordance with the definition of Curtailment Lost Output.

“Curtailment Lost Output” means energy that could have been delivered to the Delivery Point by Seller but which was not delivered in accordance with Section 6.01(f) of Attachment 1. That amount will equal: (1) the Forecast-Derived Energy minus (2) the greater of the total Expected Energy and the Qualified Amounts, as determined for each Settlement Interval; provided that in no event shall Curtailment Lost Output be less than zero (0) in any Settlement Interval.

“Curtailed Order” means an order from SCE to Seller to reduce or stop the delivery of Energy from the Generating Facility to SCE for any reason except as set forth in Sections 6.01(f)(i)-(ii) of Attachment 1.

“Customer” means a person or entity that is a customer of SCE and has an SCE customer service account number.

“Customer Subscription” means the sum of the registered kWh usage during the twelve (12) billing cycles completed in the Calendar Year of all Customers who have subscribed to the output of the Project in accordance with SCE’s Schedule DAC-Green Tariff and Schedule CS-Green Tariff, as applicable.

“Daily Delay Liquidated Damages” has the meaning set forth in Section 2.06.

“Day-Ahead” has the meaning set forth in the CAISO Tariff.

“Day-Ahead Market” or “DAM” has the meaning set forth in the CAISO Tariff.

“DC” or “Direct Current” means the continuous, unidirectional flow of electricity through a conductor such as a wire from high to low electrical potential; it is the opposite of Alternating Current.

“Defaulting Party” has the meaning set forth in Section 10.01.

“Deficiency Calculation Period” has the meaning set forth in Section 3.05(a)(i) of Attachment 1.

“Delivery Period” or “Delivery Term” has the meaning set forth in Section 2.02.

“Delivery Point” means has the meaning set forth in Section 1.02(c) of Attachment 1. *{SCE Note: For a Project not directly connected to the CAISO Controlled Grid, located outside the CAISO Control Area or connected to another transmission system operator, the Delivery Point will be the first point of interconnection with the CAISO Controlled Grid.}*

“Demonstrated Contract Capacity” has the meaning set forth in Section 5.03 of Attachment 1.

“Demonstrated Installed DC Rating” has the meaning set forth in Section 5.03 of Attachment 1.

“DERMS” or “Distributed Energy Resource Management Systems” means a software-based solution that allows for an operator’s real-time visibility into and control over its underlying Distributed Energy Resource capabilities. Such software shall allow SCE to exercise a heightened level of control and flexibility in the management of a Distributed Energy Resource. DERMS as used in this Agreement may be separate, distinct, and incremental to any software-based solution that allows for an operator’s real-time visibility into its underlying Distributed

Energy Resource capabilities required by the CAISO, Seller's interconnection agreement, or by SCE in its capacity as T&D Provider.

“DER Upgrade” has the meaning set forth in Section 6.01(d).

“DERs Monitoring” has the meaning set forth in Section 6.01(d).

“Development Security” means the collateral required under Section 7.01.

“Disadvantaged Community” or “DAC” has the meaning set forth in SCE's Community Solar Green Tariff.

“Disadvantaged Community Green Energy Programs” means SCE's Disadvantaged Communities Green Tariff program and SCE's Community Solar Green Tariff program, described in SCE's Schedule DAC-Green Tariff and Schedule CS-Green Tariff, respectively, implemented by SCE in accordance with CPUC Decisions 18-06-027, 18-10-007, and Resolution E-4999.

“Disadvantaged Community Green Energy Program Tariffs” means SCE's Schedule CS-Green Tariff and SCE's Schedule DAC-Green Tariff, as those tariffs may be modified from time to time.

“Dispatch” means the act of providing the Product to SCE, in accordance with the terms of this Agreement, pursuant to a Dispatch Instruction.

“Dispatch Instruction” has the meaning forth in the CAISO Tariff.

“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.

“Distributed Energy Resources” or “DERs” means electrical power or capacity resources, such as distributed renewable generation, energy efficiency, energy storage and demand response technologies, interconnecting directly to a distribution-level grid or sited at or within a load center connecting to a distribution grid.

“Diverse Business Enterprise” has the meaning set forth in Section 4.05(c).

“Distribution Loss Factor” or “DLF” has the meaning set forth in Section 2.04(i) of Attachment 1.

“Early Termination Date” has the meaning set forth in Section 10.02.

“Effective Flexible Capacity” or “EFC” means, for Projects providing Capacity Attributes, the effective flexible capacity (in MWs) of the Generating Facility, as applicable, under the Resource Adequacy Rulings and CAISO Tariff, in each case to the extent applicable, and which such effective flexible capacity may satisfy a load-serving entity’s Flexible RAR.

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

“Eligible Intermittent Resource Protocol” or “EIRP” means the CAISO’s intermittent resource program initially established pursuant to the CAISO Tariff or any successor program that SCE determines accomplishes a similar purpose.

“Emergency” means:

- (a) An actual or imminent condition or situation which jeopardizes the integrity of T&D Provider’s electric system or the integrity of any other systems to which the T&D Provider’s electric system is connected, as determined by the T&D Provider in its reasonable discretion, or any condition so defined and declared by the CAISO; or
- (b) An emergency condition as defined under an interconnection agreement and any abnormal interconnection or system condition that requires automatic or immediate manual action to prevent or limit loss of load or generation supply, that could adversely affect the reliability of the T&D Provider’s electric system or generation supply, that could adversely affect the reliability of any interconnected system, or that could otherwise pose a threat to public safety.

“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, 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 Facility, measured in kilowatt-hours or multiple units thereof. Energy shall include Associated Ancillary Services Energy, Supplemental Energy, and any other electrical energy products that may be developed or evolve from time to time during the Term.

“Energy Deviations” has the meaning set forth in Section 3.03(b) of Attachment 1.

“Energy Shortfall Amount” has the meaning set forth in Section 3.05(a)(ii) of Attachment 1.

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

“Eligible Renewable Energy Resource” or “ERR” has the meaning set forth in Section 9.04(b)(i) of Attachment 1.

“Event of Default” has the meaning set forth in Section 10.01.

“Excess Network Upgrade Costs” has the meaning set forth in Section 10.05(a)(ii)(A).

“Expected Annual Net Energy Production” means the Generating Facility’s expected annual Qualified Amounts, as calculated in accordance with Section 1.03(b).

“Expected Capacity Attributes” means, for Projects providing Capacity Attributes, with respect to any particular day of any Showing Month, the Capacity Attributes (in MWs) for such day of such Showing Month, less any reductions to the amount of Capacity Attributes (in MWs) that must be provided for such day as specified in Section 1.07 of Attachment 1.

“Expected Energy” has the meaning set forth in the CAISO Tariff.

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



“Expected Monthly Net Energy Production” means the Generating Facility’s expected monthly Qualified Amounts, as calculated in accordance with Section 1.03(c) of Attachment 1.

“FERC” means the Federal Energy Regulatory Commission.

“Financial Consolidation Requirement” has the meaning set forth in Section 14.08(a).

“Flexible Capacity” means, with respect to any particular Showing Month of the Delivery Period, the MWs of Product which are eligible to satisfy a load-serving entity’s Flexible RAR.

“Flexible RAR” means the flexible capacity requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

“Force Majeure” means any occurrence that was not anticipated as of the Effective Date that:

- (a) In whole or in part:
  - (i) Delays a Party’s performance under this Agreement;
  - (ii) Causes a Party to be unable to perform its obligations; or
  - (iii) Prevents a Party from complying with or satisfying the conditions of this Agreement;
- (b) Is not within the control of, and not the result of negligence of, that Party; and
- (c) The Party has been unable to overcome by the exercise of due diligence, including an act of God, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, terrorism, sabotage, or strike or labor dispute.

Force Majeure does not include:

- (d) Reductions in performance of the Project resulting from ordinary wear and tear, deferred maintenance, operator error, or the failure of equipment or parts except to the extent such failure is otherwise the result of a Force Majeure;
- (e) Curtailment or reduction in deliveries at the direction of a T&D Provider or the CAISO when the basis of the curtailment or reduction in deliveries ordered by a T&D Provider or the CAISO is congestion arising in the ordinary course of operations of the T&D Provider’s system or the CAISO Controlled Grid,

including congestion caused by outages or capacity reductions for maintenance, construction or repair;

- (f) Any delay in providing, or cancellation of, any Permit by the issuing Governmental Authority, except to the extent such delay or cancellation is otherwise the result of a Force Majeure;
- (g) Any delay in providing, or cancellation of, interconnection service by a T&D Provider, except to the extent such delay or cancellation is otherwise the result of a Force Majeure;
- (h) A failure of performance of any other entity, except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure;
- (i) Seller's ability to sell the Product, or any part thereof, at a price greater than the Product Price; and
- (j) The lack of wind, sun or other fuel source of an inherently intermittent nature.

“Forecast” means an hourly forecast provided in accordance with Exhibit H of either:

- (a) The sum of the continuous electrical output ratings for inverters (in MWs) in the Generating Facility that are operational; or
- (b) The amount of Energy (in MWh) expected to be generated by the Generating Facility,

in accordance with SCE instructions.

“Forecast-Derived Energy” means the amount of Energy in MWh that would have been generated by the Generating Facility, as determined by SCE after the applicable Settlement Interval(s) based upon CAISO forecasts. If appropriate CAISO forecasts are unavailable, then the Forecast-Derived Energy will be determined based upon (a) the Forecast of available capacity provided by Seller in accordance with this Agreement, (b) the meteorological data for the Generating Facility during the applicable Settlement Interval(s), and (c) the expected generating capabilities of the Generating Facility.

“Forecasting” means the action of Seller in preparing and submitting Forecasts to SCE.

“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. It is expressly agreed that the Non-Defaulting Party shall not be required to enter into replacement transactions in order to determine the Forward Settlement Amount.

- (a) When used in this definition, costs mean, with respect to the Non-Defaulting Party, brokerage fees, commissions, legal expenses and other similar third-party transaction costs and expenses reasonably incurred by the Non-Defaulting Party in entering into any new arrangement which replaces this Agreement, including, if SCE is the Non-Defaulting Party, with respect to credit towards SCE's procurement allocation under CPUC Decision 18-06-027 and CPUC Resolution E-4999. SCE may also take into consideration any non-standard performance measures or covenants applicable to the Project when determining its costs.
- (b) When used in this definition, gains or losses mean, with respect to any Party, an amount equal to the present value of the economic benefit or loss to such Party, if any (exclusive of costs), resulting from the termination of this Agreement for the remaining Term of this Agreement, determined in a commercially reasonable manner.

Factors used in determining economic gain and loss to a Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including 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). With respect to SCE, gains and losses shall be based on replacing the Product with product from a project with similar attributes to the Project. SCE may also take into consideration any non-standard performance measures or covenants applicable to the Project when determining its gains or losses.

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

“Full Capacity Deliverability Status” or “FCDS” has the meaning set forth in the CAISO Tariff.

“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 Section 1.02 of Attachment 1.

“Generating Facility Energy Yield Curve” has the meaning set forth in Exhibit K.

“Generation Management System” has the meaning set forth in Section 5.02 of Attachment 1.7

“Generation Operations Center” or “GOC” means the location of SCE’s CAISO market-oriented real-time operations personnel.

“Generator Operator” means the entity that operates the Project 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 the 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 Regulations” means Title 17, Division 3, Chapter 1, Subchapter 10, Article 5, Sections 95800 *et. seq.* of the California Code of Regulations, as amended or supplemented from time to time.

“Governmental Authority” means:

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

“Governmental Charges” has the meaning set forth in Section 13.06.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as:

- (1) Any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants;
- (2) Any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere;<sup>1</sup>
- (3) The reporting rights to these avoided emissions, such as Green Tag Reporting Rights.

Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include those Green Tag Reporting Rights accruing under Section 1605(b) of the Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of energy.

Green Attributes do not include:

- (i) Any energy, capacity, reliability or other power attributes from the Project,
- (ii) Production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation,
- (iii) Fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or
- (iv) Emission Reduction Credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits.

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<sup>1</sup> Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide SCE with sufficient Green Attributes to ensure that there are zero (0) net emissions associated with the production of electricity from the Project.

“Green-e® Energy” means the national certification program for renewable energy administered by the Center for Resource Solutions, as such program may be amended, supplemented or otherwise changed from time to time, and about which information can be found at <http://www.green-e.org>, or successor thereof.

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

“Guaranteed Delivery Deadline” has the meaning set forth in Section 2.06(d).

“Hazardous Material” means any substance, waste, or material which has been designated as hazardous or toxic by the United States Environmental Protection Agency, the federal Occupational Safety and Health Administration (“OSHA”), California OSHA, the California Environmental Protection Agency, the California Office of Environmental Health Hazard Assessment, the California Department of Toxic Substances Control, the California State Water Resources Control Board, or any other environmental agency now or subsequently authorized to regulate materials in the environment or workplace.

“Holiday” means New Year’s Day, Presidents’ Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day. When any Holiday falls on a Sunday, the following Monday will be recognized as a Holiday. No change will be made for Holidays falling on Saturday.

“IFRS” means the International Financial Reporting Standards as in effect from time to time, consistently applied.

“Indemnified Party” has the meaning set forth in Section 13.03.

“Indemnitor” has the meaning set forth in Section 13.03.

“Independent Engineer” or “IE” means an independent, non-Affiliate California registered professional engineer (with experience acceptable to SCE in its sole discretion).

“Independent Evaluator” has the meaning set forth in Section 14.05(b)(i).

“Industry Standards” mean 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.

“Inflexible Capacity” means, with respect to any particular Showing Month of the Delivery Period, the MWs of the Product which are not eligible to satisfy a load-serving entity’s Flexible RAR.

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

“Initial Delivery Deadline” has the meaning set forth in Section 2.05.

“Installed DC Rating” means the lesser of (a) the amount of Direct Current electric energy generating capacity, set forth in Section 1.03(a) of Attachment 1, that Seller commits to install at the Site, and (b) the Demonstrated Installed DC Rating, expressed in kW<sub>PDC</sub>.

“Interconnection Point” means the location where the Generating Facility first interconnects with the existing electrical transmission or distribution system, as set forth in Section 1.02(d) of Attachment 1.

“Interconnection Queue Position” means the order of Seller’s valid request for interconnection relative to all other valid interconnection requests, as specified in Section 1.02(e) of Attachment 1.

“Interconnection Study” means any of the studies defined in the CAISO Tariff or any T&D Provider’s tariff that reflect methodology and costs to interconnect the Project to the T&D Provider’s electric grid.

“Interest Payment” means a payment amount that results from the product of the following three factors:

- (a) the dollar amount on which an interest payment is based;
- (b) for any given month in which the payment is made, the average of the annual interest rates reported for all weekdays in such month opposite the caption “Federal funds (effective)” as set forth in the H.15 release, or any successor publication, published by the Board of Governors of the Federal Reserve System; and
- (c) the number of days in the calculation period divided by 360.

“Inverter Block Unit” means each inverter installed on the Site as part of the Generating Facility, along with the associated DC equipment, cables, components, devices and materials that interconnect the photovoltaic modules with the inverters.

“Inverter Block Unit Capacity” means, with respect to each Inverter Block Unit, the total rated electric Alternating Current capacity of such Inverter Block Unit, determined as the lesser of:

- (a) The manufacturer’s output rating of the inverter included in such Inverter Block Unit, consistent with Prudent Electrical Practices and accepted industry standards, as indicated on the nameplate physically attached to such inverter; provided, if such output rating is not indicated in kW or MW on the nameplate physically attached to such inverter, then such output rating in kW or MW will be deemed to be equal to the maximum continuous out power in kilovolt-amperes (kVA) or megavolt-amperes (MVA) indicated on the nameplate physically attached to such inverter for purposes of this calculation; provided further, that if more than one inverter output rating is provided, whether in kW, MW, kVA or MVA, the lowest of these shall be deemed to be the manufacturer’s rating of such inverter; or
- (b) The sum of the manufacturer’s nameplate ratings of all photovoltaic modules included in such Inverter Block Unit, consistent with Prudent Electrical Practices and accepted industry standards, as indicated on the nameplates physically attached to such individual photovoltaic modules.

“Invoice Calculation Period” has the meaning set forth in Section 3.01 of Attachment 1.

“Invoice Date” has the meaning set forth in Section 3.01 of Attachment 1.

“Invoicing Party” has the meaning set forth in Section 3.01 of Attachment 1.

“JAMS” has the meaning set forth in Section 12.02.

“kW” means a kilowatt.

“kWh” means a kilowatt-hour.

“kW<sub>PDC</sub>” means kilowatts of peak DC power.

“Lender” means any financial institutions that provide(s) development, bridge, construction, permanent debt or Tax Equity Financing or refinancing for the Project to Seller.

“Letter of Credit” means an irrevocable, nontransferable standby letter of credit, substantially in the form of Exhibit G and acceptable to SCE, provided by Seller from an issuer acceptable to SCE that is a U.S. branch of a commercial bank with total assets of at least ten billion U.S. dollars (US\$10,000,000,000) and a Credit Rating of at least “A-” from S&P or “A3” from Moody’s. If such bank is rated by more than one Ratings Agency and the ratings are at different levels, the lowest rating shall be the Credit Rating for this purpose.



“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 fails to maintain a Credit Rating of at least “A-” from S&P or “A3” from Moody’s, as required in the definition of “Letter of Credit”;
- (b) the issuer of the 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 expires or terminates, or fails or ceases to be in full force and effect at any time during the Term of this Agreement, in any such case without replacement;
- (e) Seller fails to provide an extended or replacement Letter of Credit prior to twenty (20) Business Days before the Letter of Credit expires or terminates; or
- (f) 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 CAISO Tariff.

“Local RAR” means the local Resource Adequacy Requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

“Locational Marginal Price” or “LMP” has the meaning set forth in the CAISO Tariff.

“Lost Output” means the reduction in Qualified Amounts over the relevant measurement period that the Generating Facility was available to produce and could reasonably have been expected to deliver, based upon the calculation method set forth in Exhibit K, but was not delivered due to a Lost Output Event.

“Lost Output Event” means any of the following occurrences which cause Seller to be unable to deliver Energy:

- (a) Force Majeure;

- (b) An Event of Default where SCE is the Defaulting Party;
- (c) A curtailment or reduction of deliveries in accordance with Section 6.01(f) or as otherwise ordered or caused by the CAISO, or SCE acting as a T&D Provider (including a curtailment or reduction that does not constitute a Force Majeure as provided in subparagraph (e) or (g) of the definition of Force Majeure); or
- (d) An Emergency, to the extent not already covered in item (c) above.

“Lost Output Report” means the monthly report of Lost Output in the form of the worksheet from the Lost Output Workbook prepared in accordance with the procedures set forth in Section 6.06 of Attachment 1 and Exhibit K.

“Lost Output Workbook” has the meaning set forth in Exhibit K.

“Marketable Emission Trading Credits” means 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)).

“Market Clearing Price” or “MCP” means for each Settlement Interval, the Day-Ahead Market price for the hour in which such Settlement Interval falls for SP-15.

“Mediator” has the meaning set forth in Section 12.02.

“Meteorological Equipment” means the instruments and equipment that meet those specifications set forth in Exhibit L, as may be modified by SCE from time to time to reflect the CAISO’s PIRP/EIRP protocol.

“Metered Amounts” has the meaning set forth in Section 1.07 of Attachment 1.

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

“Moody’s” means Moody’s Investors Service, Inc.

“Multiplier” has the meaning set forth in Section 1.06 of Attachment 1.

“MW” means megawatt or megawatts.

“MWh” means megawatt-hour or megawatt-hours.

“Negative LMP” means, in any Settlement Interval, the LMP at the Generating Facility’s Pricing Node (as defined in the CAISO Tariff) is less than zero dollars (\$0).

“Negative LMP Costs” has the meaning set forth in Section 3.03(b)(iii) of Attachment 1.

“NERC” means the North American Electric Reliability Corporation.

“NERC Reliability Standards” means those reliability standards applicable to a generating or storage facility, or to the Generator Owner or the Generator Operator with respect to a generating or storage facility, that are adopted by NERC and approved by the applicable regulatory authorities.

“NERC Responsibilities” means the document entitled “NERC Reliability Standards - Responsibilities of the Generator Operator, Scheduling Coordinator, CAISO, and Reliability Coordinator” or other successor description or document on the CAISO website at the time of the violation.

“NERC Standards Non-Compliance Penalties” means 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.

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

“Network Upgrades” has the meaning set forth in Section 5.01(a)(i).

“Network Upgrades Cap” has the meaning set forth in Section 10.05(a)(i)(A).

“Non-Defaulting Party” has the meaning set forth in Section 10.02.

“Notice” means notices, requests, statements or payments provided in accordance with Section 14.02 and Exhibit E.

“Outage” has the meaning set forth in the CAISO Tariff.

“Outage Schedule” has the meaning set forth in Section 6.05(a) of Attachment 1.

“Paid Curtailed Product” means the Curtailed Product for which SCE is obligated to pay Seller pursuant to Section 3.02(b) of Attachment 1.

“Participating Intermittent Resource” means an intermittent resource generating facility that is certified, and remains certified, under PIRP as set forth in the CAISO Tariff.

“Participating Intermittent Resource Program” or “PIRP” means the CAISO’s intermittent resource program initially established pursuant to Amendment No. 42 of the CAISO Tariff in Docket No. ER02-922-000 or any successor program that SCE determines accomplishes a similar purpose.

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

“Paying Party” has the meaning set forth in Section 3.01 of Attachment 1.

“Payment Date” has the meaning set forth in Section 3.01 of Attachment 1.

“Performance Assurance” means the collateral required under Section 7.02.

“Performance Tolerance Band” has the meaning set forth in Section 3.03(b)(i) of Attachment 1. If, at any time, the CAISO implements changes to the Performance Tolerance Band, then the Parties agree to negotiate in good faith to amend this definition to maintain the economic benefits and burdens contemplated under this Agreement.

“Permits” means all applications, approvals, authorizations, consents, filings, licenses, orders, permits or similar requirements imposed by any Governmental Authority, or the CAISO, in order to develop, construct, operate, maintain, improve, refurbish and retire the Project and deliver the Product to SCE in accordance with this Agreement.

“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.

“Photovoltaic Module DC Rating” means, for each photovoltaic module installed or to be installed at the Site, the number (expressed in kW<sub>PDC</sub>) stated on the nameplate affixed thereto representing the manufacturer’s maximum (at “peak” sunlight) DC power rating at the standard test condition (“P<sub>mp</sub>” or Power maximum at peak).

“Prevention Equipment” means all equipment necessary to prevent, suppress and contain any fire, flooding, explosion, leak of hazardous material or other injury or damage at the Site.

“PRG” has the meaning set forth in Section 14.05(b).

“Pricing Node” has the meaning set forth in the CAISO Tariff.

“Product” has the meaning set forth in Section 1.01.

“Product Payment” has the meaning set forth in Section 3.04 of Attachment 1.

“Product Price” has the meaning set forth in Section 1.04.

“Product Replacement Damage Amount” has the meaning set forth in Section 3.05(b) of Attachment 1.

“Project” has the meaning set forth in Section 1.02.

“Project Progress Report” has the meaning set forth in Section 4.06.

“Project Security” means Development Security or Performance Assurance.

“Protective Apparatus” means control devices (such as meters, relays, power circuit breakers and synchronizers) as specified in the interconnection agreement or related agreement for the Project or as SCE reasonably determines to be necessary for proper and safe operation of the Project in parallel with the T&D Provider’s electric system or the CAISO Controlled Grid.

“Prudent Electrical Practices” means those practices, methods and acts that would be implemented and followed by prudent operators of facilities or resources similar to the Project, in the Western United States, 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.

Prudent 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, WECC standards, and Applicable Laws.

Prudent 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 needs of the Project;

- (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 transmission 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 T&D Provider'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(s) and under both normal and emergency conditions.

“Qualified Amounts” means, subject to Section 3.03(b)(iii) of Attachment 1, the Metered Amounts, expressed in kWh, that qualify as renewable power under the requirements of the California Renewables Portfolio Standard.

“Qualifying Capacity” means the maximum amount of Resource Adequacy Benefits a generating facility could provide before an assessment of its Net Qualifying Capacity, as determined pursuant to the relevant methodology established by the CPUC. For purposes of determining “Qualifying Capacity”, it shall be assumed that the Generating Facility has achieved Full Capacity Deliverability Status.

“Qualifying Customer” has the meaning set forth in SCE's Community Solar Green Tariff.

“Qualified Reporting Entity” has the meaning set forth in the WREGIS Operating Rules, as applicable to the Generating Facility as the Registered Generating Unit.

“Quarter” or “Quarterly” means the first three calendar months beginning on the first day of the Delivery Period, and each subsequent three calendar month period.

“RA Compliance Obligations” means 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 or successor showings), in each case, an entity is required to make to the CAISO pursuant to the CAISO Tariff, to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, or to any Governmental Authority.

“RA Deficit Payments” has the meaning set forth in Section 1.06. *{SCE Comment: Full Capacity Deliverability projects only.}*

“RA Guarantee Date” has the meaning set forth in Section 1.06. *{SCE Comment: Full Capacity Deliverability projects only.}*

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

“Recovery Plan” has the meaning set forth in Section 4.07(a).

“Registered Generating Unit” has the meaning set forth in WREGIS Operating Rules, as applicable to the Generating Facility.

“Renewable Energy Credit” or “REC” has the meaning set forth in CPUC Decision D.08-08-028, as such definition may be modified by the CPUC or Applicable Law from time to time.

“Representatives” means the Party’s, or the Party’s Affiliates’, officers, directors, employees, Lenders, rating agencies, counsel, accountants and advisors.

“Required Material” means any permit, license, application, certification, design, specification, program, agreement, instrument, equipment, device, mechanism, or any other item in connection with the Project to be reviewed or approved by SCE or on SCE’s behalf, or requested or required of Seller by SCE or on SCE’s behalf, under this Agreement.

“Resold Product” has the meaning set forth in Section 1.05(c).

“Resource Adequacy” has the meaning used in Resource Adequacy Rulings.

“Resource Adequacy Benefits” means the rights and privileges attached to the Project relating to Capacity Attributes that satisfy any entity’s Resource Adequacy Requirements, as those obligations are set forth in any Resource Adequacy Rulings and shall include any local, zonal or otherwise locational attributes associated with the Project.

“Resource Adequacy Requirements” or “RAR” means the resource adequacy requirements applicable to an entity as established by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

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

“Resource Adequacy Rulings” means any CPUC decisions (including the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for load-serving entities to demonstrate compliance with the CPUC’s resource adequacy program), defining or relating to resource adequacy attributes or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority or the CAISO, as such decisions, rulings, laws, rules or regulations may be amended or modified from time to time.

“Resource ID” has the meaning set forth in the CAISO Tariff.

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

“SC Set-Up Fee” has the meaning set forth in Section 6.03(a) of Attachment 1.

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

“SCE Contract Administration” has the meaning set forth in Exhibit E.

“SCE Tariff” means the entire body of effective rates, rentals, charges, and rules, collectively, of SCE, including title page, preliminary statement, rate schedules, rules, sample forms, service area maps, and lists of contracts and deviations, all as may be revised from time to time, and which can be found at <http://www.sce.com/AboutSCE/Regulatory/tariffbooks/rules.htm>.

“Scheduling Coordinator” or “SC” has the meaning set forth in the CAISO Tariff.

“SEC” means the Securities and Exchange Commission.

“Security Incident” has the meaning set forth in Section 5.02(a).

“Security Interest” has the meaning set forth in Section 7.04.

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



“Seller’s Energy Delivery Obligation” has the meaning set forth in Section 3.05(a)(i) of Attachment 1.

“Settlement Interval” has the meaning set forth in the CAISO Tariff.

“Showing Month” means 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 CAISO Tariff.

“Site” means the real property on which the Project is, or will be located, as further described in Section 1.02 and Exhibit B. *{SCE Note: may require additional description in addition to Exhibit B (e.g., parcel map, legal description)}*

“Site Control” means that Seller shall:

- (a) Own the Site;
- (b) Be the lessee of the Site under a lease;
- (c) Be the holder of a right-of-way grant or similar instrument with respect to the Site; or
- (d) Be the managing partner or other person or entity authorized to act in all matters relating to the control and operation of the Site and the Project.

“Special Purpose Entity” has the meaning set forth in Section 9.02(a)(i).

“Station Use” means: (a) the electric energy produced by the Generating Facility that is used within the Generating Facility to power the lights, motors, control systems and other electrical loads that are necessary for operation; and (b) the electric energy produced by the Generating Facility that is consumed within the Generating Facility’s electric energy distribution system as losses.

“SCADA” has the meaning set forth in the CAISO Tariff.

“Subscribed Delivered Energy” means that portion of the Qualified Amounts for which SCE has received a Customer Subscription.

“Supplemental Lost Output” has the meaning set forth in Section 6.06 of Attachment 1.

“Supplemental Lost Output Report” has the meaning set forth in Section 6.06(b) of Attachment 1.

“Supply Plan” has the meaning, for Projects providing Capacity Attributes, set forth in the CAISO Tariff.

“T&D Provider” means any entity or entities (other than Seller, Customers, or their respective Affiliates) responsible for the interconnection of the Project with the distribution or transmission system.

“Tax Equity Financing” means a transaction or series of transactions involving one or more investors seeking a return that is enhanced by tax credits and/or tax depreciation and generally (i) described in Revenue Procedures 2001-28 (sale-leaseback (with or without “leverage”)), 2007-65 (flip partnership) or 2014-12 (flip partnership and master tenant partnership) as those revenue procedures are reasonably applied or analogized to the Project or (ii) contemplated by Section 50(d)(5) of the Internal Revenue Code of 1986, as amended (a pass-through lease).

“Telemetry System” means a system of electronic components that interconnects the Generating Facility, GMS and the CAISO as described in Section 5.02(e) of Attachment 1.

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

“Term Year” means a twelve (12) month period beginning on Initial Delivery Date and each successive twelve (12) month period thereafter.

“Termination Payment” means the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement, less any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date. For clarity, the Forward Settlement Amount is part of and included in the Termination Payment.

“TMY3” means Typical Meteorological Year 3 data set from the National Renewable Energy Laboratory (NREL) as found in the document “User’s Manual for TMY3 Data Sets” NREL/TP-581-43156, April, 2008 by S. Wilcox and W. Marion, located at <http://www.nrel.gov/docs/fy08osti/43156.pdf>.

“Unincluded Capacity” has the meaning set forth in Section 1.07(e)(i) of Attachment 1.

“Web Client” means a web-based system approved by SCE.

“WECC” means the Western Electricity Coordinating Council.

“WREGIS” means the Western Renewable Energy Generation Information System.

“WREGIS Certificate(s)” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules.

“WREGIS Operating Rules” means the rules published by the Western Electricity Coordination Council for the rules and operations of WREGIS.

\*\*\* End of EXHIBIT A \*\*\*

**EXHIBIT B**

**PROJECT DESCRIPTION**

*Project Description*

**PART I. GENERATING FACILITY DESCRIPTION.**

*{SCE Note: Seller must provide description of the Generating Facility equipment, systems, control systems and features, including a site plan drawing showing the general arrangement of the Generating Facility, and a single-line diagram(s) showing electrical arrangement of generating equipment, inverters, unit/service transformers, CAISO Controlled Grid interconnection, interconnection transformer(s), metering, breakers, and disconnects (as applicable). To the extent applicable, Seller must include the designation system by which Seller identifies individual generating units.}*

Name and Address of Generating Facility:

*[Project Name]*

*[Address]*

*[City, State Zip Code]*

Latitude and Longitude: \_\_\_\_\_ ° Lat, \_\_\_\_\_ ° Long.

Technology: *[specify fixed tilt OR single-axis tracking OR dual-axis tracking AND monocrystalline silicon OR polycrystalline silicon OR thin film].*

| <b>Item</b>                 | <b>Manufacturer</b> | <b>Model Number</b> | <b>Rating</b>   | <b>Quantity</b> | <b>Total Rating</b> |
|-----------------------------|---------------------|---------------------|---|-----------------|---------------------|
| <b>Photovoltaic Modules</b> |                     |                     | <i>[Rating, in W DC, of a single module]</i>                    |                 |                     |
| <b>Inverter</b>             |                     |                     | <i>[include temperature specific to rating, if applicable.]</i> |                 |                     |

ID# [Number], [Seller's Name]

[RFO Name]

|   |            |            |   |  |  |
|---|------------|------------|---|--|--|
|   |            |            | e.g. 800kVA<br>@ 50°C   |  |  |
| <b>Transformer</b>  | [optional] | [optional] | [include both<br>kVA rating<br>and high/low<br>voltage<br>rating] |  |  |
| <b>Primary Step Up<br/>Transformer</b><br><br>[if applicable] | [optional] | [optional] | [include both<br>kVA rating<br>and high/low<br>voltage<br>rating] |  |  |

[Unless stated otherwise, all fields in the table are required.]

## PART II. SITE DESCRIPTION.

{SCE Note: Seller must provide a legal description of the site, including a site map.}

## PART III. SITE PLAN.

{SCE Note: Seller to provide site plan drawing and a site map for insertion. Seller site plan drawing should show the general arrangement of the Generating Facility.}

## PART IV. SINGLE LINE DIAGRAMS.

### AC Single Line Diagram of Generating Facility

{SCE Comment: Seller to provide AC Single Line drawing for insertion. Please make sure it's legible.}

{SCE Comment: Seller to provide AC Single Line diagram(s) showing electrical arrangement of Generating Equipment, Inverters, Unit/Service Transformers, CAISO-Controlled Grid Interconnection, Interconnection Transformer(s), Metering, Breakers, and Disconnects, as applicable. To the extent applicable, Seller must include the designation system by which Seller identifies individual Generating Units.}

### DC Single Line Diagram(s) of [Solar Array of] Generating Facility

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ID# [Number], [Seller's Name]

[RFO Name]

*{SCE Comment: Seller to provide DC Single Line drawing for insertion. Must be on array level and must be legible.}*

*{SCE Comment: Seller to provide DC Single Line diagram(s) showing electrical arrangement of Generating Equipment, Inverters, Unit/Service Transformers, CAISO-Controlled Grid Interconnection, Interconnection Transformer(s), Metering, Breakers, and Disconnects, as applicable. To the extent applicable, Seller must include the designation system by which Seller identifies individual Generating Units.}*

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**\*\*\* End of EXHIBIT B \*\*\***

**EXHIBIT C****PROJECT PROGRESS REPORT**

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

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, as applicable. In accordance with Section 4.06, the report must be sent via e-mail in the form of a single Adobe Acrobat file or facsimile to SCE's, on the fifth (5th) Business Day of each month.

1. An executive summary;
2. An updated Milestone Schedule
3. PERT or GANT chart showing schedule, percent completion, and percent change from previous report of major items and activities, including milestones, Permits, technical studies, financing, and major equipment purchase orders showing the start dates, and projected completion dates;
4. Description of general work status on:
  - a. Engineering;
  - b. Procurement;
  - c. 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 emission credits in terms of impact on the Project's permitting schedule, overall Project schedule, and ability of Project to meet Expected Initial Delivery Date and/or Initial Delivery Deadline);
  - d. Major construction activities in the prior month;
  - e. Testing;
  - f. Electrical interconnection status; and
  - g. Any other required interconnections.
5. Forecast activities for next month;
6. Potential issues affecting the Project.
7. Enumeration and schedule of any support or actions requested of SCE.
8. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and the development of the project leading up to the delivery of the project on Initial Delivery Date.

9. Status of workforce development efforts, including whether and to what extent the project has employed individuals who reside in the Disadvantaged Community where the project is sited. *{SCE Note: CSGT projects only.}*

Seller must notify SCE in writing of its receipt of any of the following documents below, and make such documents available to SCE within two (2) Business Days after such receipt:

10. All material written commitments regarding construction work at the Project that could impact the completion schedule or Initial Delivery Date;
11. Executed work orders for construction of the Project;
12. Construction agreements;
13. Letters of intent;
14. Precedent agreements; and
15. Engineering assessments of the Project.

\*\*\* End of EXHIBIT C \*\*\*



**EXHIBIT D**

**MILESTONE 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, financing, engineering, acceptance testing, Seller’s Expected Initial Delivery Date, and proposed Delivery Period.

*[SCE Note: This list is illustrative only. Seller to insert specific list based on technology and Project]*

| Line | Projected Completion Date | Milestone  |
|------|---------------------------|--|
| 1    |                           | <b>Front End Engineering / Permits / Agreements</b>                                |
| 2    |                           | Submit Applicable Transmission Provider 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 Transmission Provider Interconnection Agreement                          |
| 8    |                           | Receive FERC Acceptance of Interconnection Agreement and Transmission Agreement(s) |
| 9    |                           | Receive CEC Certification and Verification or APCD permit if applicable            |

| Line | Projected Completion Date | Milestone   |
|------|---------------------------|---|
| 10   |                           | Obtain Control Of All Lands and Rights-Of-Way Comprising The Site             |
| 11   |                           | Receive CEC Full Notice To Proceed  |
| 12   |                           | Receive All Other Permits   |
| 13   |                           | <b>Financing</b>  |
| 14   |                           | Verify That Seller's Bank Has Received All Required Due Diligence Information |
| 15   |                           | Complete Bank Financing   |
| 16   |                           | <b>Engineering</b>  |
| 17   |                           | Execute EPC Contract  |
| 18   |                           | Begin Existing Site Re-Engineering  |
| 19   |                           | Begin Generating Facility Engineering Design                                  |
| 20   |                           | Lump Sum Estimate Preparation   |
| 21   |                           | Complete Existing Site Re-Engineering   |
| 22   |                           | Complete Generating Facility Engineering Design                               |
| 23   |                           | <b>Construction – Initial Site Work</b>                                       |
| 24   |                           | Begin Civil Tasks - CTG's   |
| 25   |                           | Begin Mechanical Tasks - U/G Piping   |
| 26   |                           | Begin Electrical Tasks - U/G Electrical                                       |
| 27   |                           | <b>Construction</b>   |

| Line | Projected Completion Date | Milestone  |
|------|---------------------------|--|
| 28   |                           | Begin Construction of the Project - Erect Equipment  |
| 29   |                           | Civil Tasks - Balance of Plant   |
| 30   |                           | Mechanical Tasks - A/G Piping  |
| 31   |                           | Electrical Tasks - A/G Electrical  |
| 32   |                           | Erect Generating Facility  |
| 33   |                           | Commission Generating Facility   |
| 34   |                           | Complete Construction of the Project   |
| 35   |                           | Commissioning  |
| 36   |                           | Begin Start-Up Activities - BOP Systems  |
| 37   |                           | Conference with SCE Contract Manager regarding startup activities <i>{SCE Comment: Conference should occur no later than 150 days prior to the Commercial Operation Date.}</i> |
| 38   |                           | Achieve Initial Operation  |
| 39   |                           | Demonstrate Contract Capacity  |
| 40   |                           | Expected Initial Delivery Date   |

*\*\*\* End of EXHIBIT D \*\*\**

## EXHIBIT E

### Notice

| <b>[SELLER'S NAME]</b><br>("Seller")   | <b>SOUTHERN CALIFORNIA EDISON COMPANY ("SCE")</b>  |
|--|--|
| All Notices are deemed provided in accordance with Section 14.02 if made to the address or facsimile numbers provided below: | Unless otherwise specified, all Notices are deemed provided in accordance with Section 14.02 if made to the address or facsimile numbers provided below:   |
| <b>Contract Administration:</b><br>Attn:<br>Phone:<br>Facsimile:   | <b>Contract Administration:</b><br>Attn: Director, Contract Management and Administration<br>Street: 2244 Walnut Grove Avenue<br>City: Rosemead, California 91770<br>Phone: 626-302-3126<br>Email: Energycontracts@sce.com |
|  | <b>Cybersecurity:</b><br>E-mail: cybersecurity@sce.com   |
| <b>Reference Numbers:</b><br>Duns:<br>Federal Tax ID Number:   | <b>Reference Numbers:</b><br>Duns: 006908818<br>Federal Tax ID Number: 95-1240335  |
| <b>Collateral:</b><br>Attn:<br>Street:<br>City:<br>Phone:<br>Email:  | <b>Collateral:</b><br>Attn: Manager of Risk Operations & Collateral Management<br>Street: 2244 Walnut Grove Avenue, G01 Quad 2A<br>City: Rosemead, California 91770<br>Phone: 626-302-3383<br>Email: scecollateral@sce.com |

| [SELLER'S NAME]<br>("Seller")   | SOUTHERN CALIFORNIA EDISON<br>COMPANY ("SCE")  |
|---|--|
| <b>Day-Ahead Operations:</b><br>Attn:<br>Phone:<br>Facsimile:<br>E-mail:  | <b>Day-Ahead Operations:</b><br>Attn: Manager of Day-Ahead Ops.<br>Scheduling Desk<br>Phone: 626-307-4425 or 626-307-4420<br>Facsimile: 626-307-4413<br>E-mail: presched@sce.com   |
| <b>Real-Time Scheduling:</b><br>Attn:<br>Phone:<br>Facsimile:<br>E-mail:  | <b>Real-Time Scheduling:</b><br>Attn: Manager of Real-Time Ops.<br>Operations Desk<br>Phone: 626-307-4405 or 626-307-4453<br>Facsimile: 626-307-4416<br>E-mail: realtime@sce.com   |
| <b>Outage Desk:</b><br>Phone:<br>E-mail:  | <b>Outage Desk:</b><br>Phone: 626-307-4420<br>E-mail: genoutages@sce.com   |
| <b>Payment Invoices:</b><br>Attn:<br>Phone:<br>Facsimile:<br>E-mail:  | <b>Payment Invoices:</b><br>Attn: Contract Settlements<br>Phone: 626-302-8908 or 626-302-6839<br>Facsimile: 626-302-3276<br>E-mail: PPFDPowerSettle@sce.com<br><br>Also submit one (1) copy to:<br>Contract Administration |
| <b>ACH Routing Information:</b><br><br>Financial Institution: [_____]<br>Branch: [_____]<br>Address: [_____]<br>City, State, & Zip: [_____]<br><br>Routing Number: [_____]<br>Account Number: [_____] | <b>ACH Routing Information:</b><br><br>Financial Institution:<br>Routing Number:<br>Account Number:  |

| [SELLER'S NAME]<br>("Seller")  | SOUTHERN CALIFORNIA EDISON<br>COMPANY ("SCE")   |
|--|---|
| <b>Wire Transfer:</b><br>BNK:<br>ABA:<br>ACCT:   | <b>Wire Transfer:</b><br>BNK:<br>ABA:<br>ACCT:  |
| Provide Notice of Event of Default to Contract Administration<br><br><b>With additional Notices of an Event of Default to:</b><br>Attn:<br>Phone:<br>Facsimile:<br>E-mail: | Provide Notice of Event of Default to Contract Administration<br><br><b>With additional Notices of an Event of Default for all Projects, to:</b><br>Attn: Director and Managing Attorney<br>Law Dept., Power Procurement<br>Southern California Edison Co.<br>Street: 2244 Walnut Grove, Ave.<br>City: Rosemead, California 91770<br>Email: PPLegalNotice@sce.com |
| <b>Lender:</b><br>Attn:<br>Phone:<br>Facsimile:<br>E-mail:   |   |

\*\*\* End of EXHIBIT E \*\*\*

**EXHIBIT F****FORM OF CONSENT TO COLLATERAL ASSIGNMENT AGREEMENT**

This Consent to Collateral Assignment Agreement (this “Consent”) is entered into among (i) Southern California Edison Company, a California corporation (“SCE”), (ii) *[Name of Seller]*, a *[Legal Status of Seller]* (the “Project Company”), and (iii) *[Name of Collateral Agent]*, a *[Legal Status of Collateral Agent]*, as Collateral Agent for the secured parties under the Financing Documents referred to below (such secured parties together with their successors permitted under this Consent in such capacity, the “Secured Parties”, and, such agent, together with its successors in such capacity, the “Collateral Agent”). SCE, Project Company and Collateral Agent are hereinafter sometimes referred to individually as a “Party” and jointly as the “Parties”. Capitalized terms used but not otherwise defined in this Consent shall have the meanings ascribed to them in the Agreement (as defined below).

**RECITALS**

The Parties enter into this Consent with reference to the following facts:

- A. Project Company and SCE have entered into that certain Renewable Power Purchase Agreement, dated as of *[Date]* *[List all amendments as contemplated by Section 3.4]* (“Agreement”), pursuant to which Project Company will develop, construct, commission, test and operate the Generating Facility (the “Project”) and sell the Product to SCE, and SCE will purchase the Product from Project Company;
- B. As collateral for Project Company’s obligations under the Agreement, Project Company has agreed to provide to SCE certain collateral, which may include Performance Assurance and Security Interests and other collateral described in the Agreement (collectively, the “Agreement Collateral”);
- C. Project Company has entered into that certain *[Insert description of financing arrangements with Lender]*, dated as of *[Date]*, among Project Company, the Lenders party thereto and the Collateral Agent (the “Financing Agreement”), pursuant to which, among other things, the Lenders have extended commitments to make loans to Project Company;
- D. As collateral security for Project Company’s obligations under the Financing Agreement and related agreements (collectively, the “Financing Documents”), Project Company has,

among other things, assigned all of its right, title and interest in, to and under the Agreement and Project's Company's owners have pledged their ownership interest in Project Company (collectively, the "Assigned Interest") to the Collateral Agent pursuant to the Financing Documents; and

- E. It is a requirement under the Financing Agreement and the Agreement that SCE and the other Parties hereto shall have executed and delivered this Consent.

## AGREEMENT

In consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties hereto hereby agree as follows:

### SECTION 1. CONSENT TO ASSIGNMENT, ETC.

#### 1.1 Consent and Agreement.

SCE hereby acknowledges:

- (a) notice of and consents to the assignment as collateral security to Collateral Agent, for the benefit of the Secured Parties, of the Assigned Interest; and
- (b) the right (but not the obligation) of Collateral Agent in the exercise of its rights and remedies under the Financing Documents, to make all demands, give all notices, take all actions and exercise all rights of Project Company permitted under the Agreement (subject to SCE's rights and defenses under the Agreement and the terms of this Consent) and accepts any such exercise; provided, however, that, insofar as the Collateral Agent exercises any such rights under Agreement or makes any claims with respect to payments or other obligations under the Agreement, the terms and conditions of the Agreement applicable to such exercise of rights or claims shall apply to Collateral Agent to the same extent as to Project Company.

#### 1.2 Project Company's Acknowledgement.

Each of Project Company and Collateral Agent hereby acknowledges and agrees that SCE is authorized to act in accordance with Collateral Agent's instructions, and that SCE shall bear no liability to Project Company or Collateral Agent in connection therewith, including any liability for failing to act in accordance with Project Company's instructions.



### 1.3 Right to Cure.

If Project Company defaults in the performance of any of its obligations under the Agreement, or upon the occurrence or non-occurrence of any event or condition under the Agreement which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable SCE to terminate or suspend its performance under the Agreement (an “Agreement Default”), SCE will not terminate or suspend its performance under the Agreement until it first gives written notice of such Agreement Default to Collateral Agent and affords Collateral Agent the right to cure such Agreement Default within the applicable cure period under the Agreement, which cure period shall run concurrently with that afforded Project Company under the Agreement. In addition, if Collateral Agent gives SCE written notice prior to the expiration of the applicable cure period under the Agreement of Collateral Agent’s intention to cure such Agreement Default (which notice shall include a reasonable description of the time during which it anticipates to cure such Agreement Default) and is diligently proceeding to cure such Agreement Default, notwithstanding the applicable cure period under the Agreement, Collateral Agent shall have a period of sixty (60) days (or, if such Agreement Default is for failure by the Project Company to pay an amount to SCE which is due and payable under the Agreement other than to provide Agreement Collateral, thirty (30) days, or, if such Agreement Default is for failure by Project Company to provide Agreement Collateral, [\_\_ ( \_\_)] Business Days) from the Collateral Agent’s receipt of the notice of such Agreement Default from SCE to cure such Agreement Default; provided, however, that (a) if possession of the Project is necessary to cure any such non-monetary Agreement Default and Collateral Agent has commenced foreclosure proceedings within sixty (60) days after notice of the Agreement Default and is diligently pursuing such foreclosure proceedings, Collateral Agent will be allowed a reasonable time, not to exceed one hundred eighty (180) days after the notice of the Agreement Default, to complete such proceedings and cure such Agreement Default, and (b) if Collateral Agent is prohibited from curing any such Agreement Default by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Project Company, then the time periods specified herein for curing an Agreement Default shall be extended for the period of such prohibition, so long as Collateral Agent has diligently pursued removal of such process, stay or injunction. Collateral Agent shall provide SCE with reports concerning the status of efforts to cure an Agreement Default upon SCE’s reasonable request.

### 1.4 Substitute Owner.

Subject to Section 1.7, the Parties agree that if Collateral Agent notifies (such notice, a “Financing Document Default Notice”) SCE that an event of default has occurred and is continuing under the Financing Documents (a “Financing Document Event of Default”) then, upon a judicial foreclosure sale, non-judicial foreclosure sale, deed in lieu of foreclosure or other transfer following a Financing Document Event of Default, Collateral Agent (or its designee) shall be substituted for Project Company (the “Substitute Owner”) under the Agreement, and, subject to Sections 1.7(b) and 1.7(c) below, SCE and Substitute Owner will recognize each other as counterparties under the Agreement and will continue to perform their respective obligations (including those obligations accruing to SCE and the Project Company prior to the existence of the Substitute Owner) under the Agreement in favor of each other in accordance with the terms thereof; provided, however, that before SCE is required to recognize the Substitute Owner, the Substitute Owner must have demonstrated to SCE’s reasonable satisfaction that the Substitute Owner has financial qualifications and operating experience [TBD] (a “Permitted Transferee”). For purposes of the foregoing, SCE shall be entitled to assume that any such purported exercise of rights by Collateral Agent that results in substitution of a Substitute Owner under the Agreement is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same.

#### 1.5 Replacement Agreements.

Subject to Section 1.7, if the Agreement is terminated, rejected or otherwise invalidated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Project Company, its owner(s) or guarantor(s), and if Collateral Agent 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) (“Replacement Owner”), SCE shall, and Collateral Agent shall cause Replacement Owner to, enter into a new agreement with one another for the balance of the obligations under the Agreement remaining to be performed having terms substantially the same as the terms of the Agreement with respect to the remaining Term (“Replacement Agreement”); provided, that before SCE is required to enter into a Replacement Agreement, the Replacement Owner must have demonstrated to SCE’s reasonable satisfaction that the Replacement Owner satisfies the requirements of a Permitted Transferee. For purposes of the foregoing, SCE is entitled to assume that any such purported exercise of rights by Collateral Agent that results in a Replacement Owner is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same. Notwithstanding the execution and delivery of a Replacement Agreement, to the extent

SCE is, or was otherwise prior to its termination as described in this Section 1.5, entitled under the Agreement, SCE may suspend performance of its obligations under such Replacement Agreement, unless and until all Agreement Defaults of Project Company under the Agreement or Replacement Agreement have been cured.

## 1.6 Transfer.

Subject to Section 1.7, a Substitute Owner or a Replacement Owner may assign all of its interest in the Project and the Agreement and a Replacement Agreement to a natural person, corporation, trust, business trust, joint venture, joint stock company, association, company, limited liability company, partnership, Governmental Authority or other entity (a "Person") to which the Project is transferred; provided, however, that the proposed transferee shall have demonstrated to SCE's reasonable satisfaction that such proposed transferee satisfies the requirements of a Permitted Transferee.

## 1.7 Assumption of Obligations.

(a) Transferee. Any transferee under Section 1.6 shall expressly assume in a writing reasonably satisfactory to SCE all of the obligations of Project Company, Substitute Owner or Replacement Owner under the Agreement or Replacement Agreement, as applicable, including posting and collateral assignment of the Agreement Collateral. Upon such assignment and the cure of any outstanding Agreement Default, and payment of all other amounts due and payable to SCE in respect of the Agreement or such Replacement Agreement, the transferor shall be released from any further liability under the Agreement or Replacement Agreement, as applicable.

(b) Substitute Owner. Subject to Section 1.7(c), any Substitute Owner pursuant to Section 1.4 shall be required to perform Project Company's obligations under the Agreement, including posting and collateral assignment of the Agreement Collateral; provided, however, that the obligations of such Substitute Owner shall be no more than those of Project Company under the Agreement.

(c) No Liability. SCE acknowledges and agrees that neither Collateral Agent nor any Secured Party shall have any liability or obligation under the Agreement as a result of this Consent (except to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner) nor shall Collateral Agent or any other Secured Party be obligated or required to (i) perform any of Project Company's obligations under the Agreement, except as provided in Sections 1.7(a) and 1.7(b) and to the extent Collateral Agent or a Secured Party is a Substitute Owner or

Replacement Owner, or (ii) take any action to collect or enforce any claim for payment assigned under the Financing Documents. If Collateral Agent becomes a Substitute Owner pursuant to Section 1.4 or enters into a Replacement Agreement, Collateral Agent shall not have any personal liability to SCE under the Agreement or Replacement Agreement and the sole recourse of SCE in seeking enforcement of such obligations against Collateral Agent shall be to the aggregate interest of the Secured Parties in the Project; provided, however, that such limited recourse shall not limit SCE's right to seek equitable or injunctive relief against Collateral Agent, or SCE's rights with respect to any offset rights expressly allowed under the Agreement, a Replacement Agreement or the Agreement Collateral.

#### 1.8 Delivery of Notices.

SCE shall deliver to Collateral Agent, concurrently with the delivery thereof to Project Company, a copy of each notice, request or demand given by SCE to Project Company pursuant to the Agreement relating to (a) an Agreement Default, (b) any claim regarding Force Majeure by SCE under the Agreement, (c) any notice of dispute under the Agreement, (d) any notice of intent to terminate or any termination notice, and (e) any matter that would require the consent of Collateral Agent pursuant to Section 1.11 or any other provision of this Consent. Collateral Agent acknowledges that delivery of such notice, request and demand shall satisfy SCE's obligation to give Collateral Agent a notice of Agreement Default under Section 1.3. Collateral Agent shall deliver to SCE, concurrently with delivery thereof to Project Company, a copy of each notice, request or demand given by Collateral Agent to Project Company pursuant to the Financing Documents relating to a default by Project Company under the Financing Documents.

#### 1.9 Confirmations.

SCE will, as and when reasonably requested by Collateral Agent from time to time, confirm in writing matters relating to the Agreement (including the performance of same by Project Company); provided, however, that such confirmation may be limited to matters of which SCE is aware as of the time the confirmation is given and such confirmations shall be without prejudice to any rights of SCE under the Agreement as between SCE and Project Company.

#### 1.10 Exclusivity of Dealings.

Except as provided in Sections 1.3, 1.4, 1.8, 1.9 and 2.1, unless and until SCE receives a Financing Document Default Notice, SCE shall deal exclusively with Project Company in connection with the performance of SCE's obligations under the Agreement. From and after such

time as SCE receives a Financing Document Default Notice and until a Substitute Owner is substituted for Project Company pursuant to Section 1.4, a Replacement Agreement is entered into or the Agreement is transferred to a Person to whom the Project is transferred pursuant to Section 1.6, SCE shall, until Collateral Agent confirms to SCE in writing that all obligations under the Financing Documents are no longer outstanding, deal exclusively with Collateral Agent in connection with the performance of SCE's obligations under the Agreement, and SCE may irrevocably rely on instructions provided by Collateral Agent in accordance therewith to the exclusion of those provided by any other Person.

1.11 No Amendments.

To the extent permitted by applicable Laws, SCE agrees that it will not, without the prior written consent of Collateral Agent (not to be unreasonably withheld, delayed or conditioned) (a) enter into any material supplement, restatement, novation, extension, amendment or modification of the Agreement (b) terminate or suspend its performance under the Agreement (except in accordance with Section 1.3) or (c) consent to or accept any termination or cancellation of the Agreement by Project Company.

SECTION 2. PAYMENTS UNDER THE AGREEMENT

2.1 Payments.

Unless and until SCE receives written notice to the contrary from Collateral Agent, SCE will make all payments to be made by it to Project Company under or by reason of the Agreement directly to Project Company. SCE, Project Company, and Collateral Agent acknowledge that SCE will be deemed to be in compliance with the payment terms of the Agreement to the extent that SCE makes payments in accordance with Collateral Agent's instructions.

2.2 No Offset, Etc.

All payments required to be made by SCE under the Agreement shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than that expressly allowed by the terms of the Agreement.

**SECTION 3. REPRESENTATIONS AND WARRANTIES OF SCE**

SCE makes the following representations and warranties as of the date hereof in favor of Collateral Agent:

**3.1 Organization.**

SCE is a corporation duly organized and validly existing under the laws of the state of its incorporation, and is duly qualified, authorized to do business and in good standing in every jurisdiction in which it owns or leases real property or in which the nature of its business requires it to be so qualified, except where the failure to so qualify would not have a material adverse effect on its financial condition, its ability to own its properties or its ability to transact its business. SCE has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the Agreement, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

**3.2 Authorization.**

The execution, delivery and performance by SCE of this Consent and the Agreement have been duly authorized by all necessary corporate or other action on the part of SCE and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of SCE which, if not obtained, will prevent SCE from performing its obligations hereunder or under the Agreement except approvals or consents which have previously been obtained and which are in full force and effect.

**3.3 Execution and Delivery; Binding Agreements.**

Each of this Consent and the Agreement is in full force and effect, have been duly executed and delivered on behalf of SCE by the appropriate officers of SCE, and constitute the legal, valid and binding obligation of SCE, enforceable against SCE in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

**3.4 No Default or Amendment.**

Except as set forth in Schedule A attached hereto: (a) Neither SCE nor, to SCE's actual knowledge, Project Company, is in default of any of its obligations under the Agreement; (b) SCE and, to SCE's actual knowledge, Project Company, has complied with all conditions precedent to the effectiveness of its obligations under the Agreement; (c) to SCE's actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either SCE or Project Company to terminate or suspend its obligations under the Agreement; and (d) the Agreement has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

**3.5 No Previous Assignments.**

SCE has no notice of, and has not consented to, any previous assignment by Project Company of all or any part of its rights under the Agreement, except as previously disclosed in writing and consented to by SCE.

**SECTION 4. REPRESENTATIONS AND WARRANTIES OF PROJECT COMPANY**

Project Company makes the following representations and warranties as of the date hereof in favor of the Collateral Agent and SCE:

**4.1 Organization.**

Project Company is a [Legal Status of Seller] duly organized and validly existing under the laws of the state of its organization, and is duly qualified, authorized to do business and in good standing in every jurisdiction in which it owns or leases real property or in which the nature of its business requires it to be so qualified, except where the failure to so qualify would not have a material adverse effect on its financial condition, its ability to own its properties or its ability to transact its business. Project Company has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the Agreement, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

#### 4.2 Authorization.

The execution, delivery and performance of this Consent by Project Company, and Project Company's assignment of its right, title and interest in, to and under the Agreement to the Collateral Agent pursuant to the Financing Documents, have been duly authorized by all necessary corporate or other action on the part of Project Company.

#### 4.3 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Project Company by the appropriate officers of Project Company, and constitutes the legal, valid and binding obligation of Project Company, enforceable against Project Company in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

#### 4.4 No Default or Amendment.

Except as set forth in Schedule B attached hereto: (a) neither Project Company nor, to Project Company's actual knowledge, SCE, is in default of any of its obligations thereunder; (b) Project Company and, to Project Company's actual knowledge, SCE, has complied with all conditions precedent to the effectiveness of its obligations under the Agreement; (c) to Project Company's actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either SCE or Project Company to terminate or suspend its obligations under the Agreement; and (d) the Agreement has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

#### 4.5 No Previous Assignments.

Project Company has not previously assigned all or any part of its rights under the Agreement.

### SECTION 5. REPRESENTATIONS AND WARRANTIES OF COLLATERAL AGENT

Collateral Agent makes the following representations and warranties as of the date hereof in favor of SCE and Project Company:



## 5.1 Authorization.

The execution, delivery and performance of this Consent by Collateral Agent have been duly authorized by all necessary corporate or other action on the part of Collateral Agent and Secured Parties.

## 5.2 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Collateral Agent by the appropriate officers of Collateral Agent, and constitutes the legal, valid and binding obligation of Collateral Agent as Collateral Agent for the Secured Parties, enforceable against Collateral Agent (and the Secured Parties to the extent applicable) in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

## SECTION 6. MISCELLANEOUS

### 6.1 Notices.

All notices and other communications hereunder shall be in writing, shall be deemed given upon receipt thereof by the Party or Parties to whom such notice is addressed, shall refer on their face to the Agreement (although failure to so refer shall not render any such notice or communication ineffective), shall be sent by first class mail, by personal delivery or by a nationally recognized courier service, and shall be directed (a) if to SCE or Project Company, in accordance with *[Notice Section of the Agreement]* of the Agreement, (b) if to Collateral Agent, to *[Collateral Agent Name]*, *[Collateral Agent Address]*, Attn: *[Collateral Agent Contact Information]*, Telephone: *[\_\_\_]*, Fax: *[\_\_\_]*, and (c) to such other address or addressee as any such Party may designate by notice given pursuant hereto.

### 6.2 Governing Law; Submission to Jurisdiction.

(a) THIS CONSENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND THIS CONSENT AND ALL MATTERS ARISING OUT OF THIS CONSENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, THE LAW

OF THE STATE OF CALIFORNIA WITHOUT REGARD TO ANY CONFLICTS OF LAWS PROVISIONS THEREOF THAT WOULD RESULT IN THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION. *[This Section will be modified, if necessary, to match the Governing Law Section of the Agreement.]*

(b) All disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Consent shall be governed by the dispute resolution provisions of the Agreement. Subject to the foregoing, any legal action or proceeding with respect to this Consent and any action for enforcement of any judgment in respect thereof may be brought in the courts of the State of California or of the United States of America for the Central District of California, and, by execution and delivery of this Consent, each Party hereby accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts and appellate courts from any appeal thereof. Each Party further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to its notice address provided pursuant to Section 6.1 hereof. Each Party hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Consent brought in the courts referred to above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Nothing herein shall affect the right of any Party to serve process in any other manner permitted by law.

### 6.3 Headings Descriptive.

The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

### 6.4 Severability.

In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

6.5 Amendment, Waiver.

Neither this Consent nor any of the terms hereof may (a) be terminated, amended, supplemented or modified, except by an instrument in writing signed by SCE, Project Company and Collateral Agent or (b) waived, except by an instrument in writing signed by the waiving Party.

6.6 Termination.

Each Party's obligations hereunder are absolute and unconditional, and no Party has any right, and shall have no right, to terminate this Consent or to be released, relieved or discharged from any obligation or liability hereunder until SCE has been notified by Collateral Agent that all of the obligations under the Financing Documents shall have been satisfied in full (other than contingent indemnification obligations) or, with respect to the Agreement or any Replacement Agreement, its obligations under such Agreement or Replacement Agreement have been fully performed.

6.7 Successors and Assigns.

This Consent shall be binding upon each Party and its successors and assigns permitted under and in accordance with this Consent, and shall inure to the benefit of the other Parties and their respective successors and assignee permitted under and in accordance with this Consent. Each reference to a Person herein shall include such Person's successors and assigns permitted under and in accordance with this Consent.

6.8 Further Assurances.

SCE hereby agrees to execute and deliver all such instruments and take all such action as may be necessary to effectuate fully the purposes of this Consent.

6.9 Waiver of Trial by Jury.

TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS CONSENT OR ANY MATTER ARISING HEREUNDER. EACH PARTY FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS

LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

6.10 Entire Agreement.

This Consent and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Consent and any such agreement, document or instrument, the terms, conditions and provisions of this Consent shall prevail.

6.11 Effective Date.

This Consent shall be deemed effective as of the date upon which the last Party executes this Consent.

6.12 Counterparts; Electronic Signatures.

This Consent may be executed in one or more counterparts, each of which will be deemed to be an original of this Consent and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Consent and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this Consent as to the Parties and may be used in lieu of the original Consent for all purposes.

*[Remainder of Page Left Intentionally Blank.]*

ID# [Number], [Seller's Name]

[RFO Name]

IN WITNESS WHEREOF, the Parties hereto have caused this Consent to be duly executed and delivered by their duly authorized officers on the dates indicated below their respective signatures.

|  |   |
|--|---|
| <p><i>[NAME OF PROJECT COMPANY],</i><br/><i>[Legal Status of Project Company].</i></p>   | <p>SOUTHERN CALIFORNIA EDISON COMPANY,<br/>a California corporation.</p>              |
| <p><b>By:</b><br/>_____<br/><i>[Name]</i><br/><i>[Title]</i><br/><br/>Date: _____</p>  | <p><b>By:</b><br/>_____<br/><i>[Name]</i><br/><i>[Title]</i><br/><br/>Date: _____</p> |
| <p><i>[NAME OF COLLATERAL AGENT],</i><br/><i>[Legal Status of Collateral Agent].</i></p> <p><b>By:</b><br/>_____<br/><i>[Name]</i><br/><i>[Title]</i><br/><br/>Date: _____</p> |   |

**SCHEDULE A**

[Describe any disclosures relevant to representations and warranties made in Section 3.4]

**SCHEDULE B**

[Describe any disclosures relevant to representations and warranties made in Section 4.4]

**EXHIBIT G**

**FORM OF LETTER OF CREDIT**

**IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT**

Bank Reference Number: \_\_\_\_\_

Issuance Date:

Issuing Bank:

[insert bank name and address]

Applicant:

[insert applicant name and address]

Beneficiary:

Southern California Edison Company

2244 Walnut Grove Avenue

GO#1, Quad 2A

Rosemead, CA 91770

Attn: Manager of Risk Operations and Collateral Management

Available Amount: [insert amount and spell out]

Expiration Date: [insert date]

Ladies and Gentlemen:

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

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



“Expiration Date”).

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

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

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

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

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

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

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

This Letter of Credit is not transferable or assignable. Any purported transfer or assignment shall

be void and of no force or effect.

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

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

Banking charges shall be the sole responsibility of the Applicant.

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

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

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

AUTHORIZED SIGNATURE for Bank

By

Name: [print name]

Title: [print title]

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**ATTACHMENT A**

**DRAWING CERTIFICATE**

TO [ISSUING BANK NAME & ADDRESS]

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT  
REFERENCE NUMBER: \_\_\_\_\_

DATE: \_\_\_\_\_

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

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

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

[ ]C. The Beneficiary is entitled to retain all or part of the Development Security (as defined in the Agreement).

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

Authorized Signature for Beneficiary:

SOUTHERN CALIFORNIA EDISON COMPANY

By:

Name: [print name]

Title: [print title]

**ATTACHMENT B**

*SIGHT DRAFT*

[INSERT DATE]

TO:

[ISSUING BANK NAME & ADDRESS]

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

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

[INSERT WIRING INSTRUCTION]

\_\_\_\_\_  
AUTHORIZED SIGNATURE  
SOUTHERN CALIFORNIA EDISON COMPANY

NAME: [PRINT NAME]

TITLE: [PRINT TITLE]

**EXHIBIT H  
OPERATIONAL NOTICE FORMS**

AVAILABILITY NOTICE

Operating Day: \_\_\_\_\_

Station: \_\_\_\_\_ Issued By: \_\_\_\_\_

Unit: \_\_\_\_\_ Issued At: \_\_\_\_\_

Unit 100% Available No Restrictions: \_\_\_\_\_

| Hour Ending | Available Capacity (MW) | Comments |
|-------------|-------------------------|----------|
| 1:00        |                         |          |
| 2:00        |                         |          |
| 3:00        |                         |          |
| 4:00        |                         |          |
| 5:00        |                         |          |
| 6:00        |                         |          |
| 7:00        |                         |          |
| 8:00        |                         |          |
| 9:00        |                         |          |
| 10:00       |                         |          |
| 11:00       |                         |          |
| 12:00       |                         |          |
| 13:00       |                         |          |
| 14:00       |                         |          |

ID# [Number], [Seller's Name]

[RFO Name]

|       |  |  |
|-------|--|--|
| 15:00 |  |  |
| 16:00 |  |  |
| 17:00 |  |  |
| 18:00 |  |  |
| 19:00 |  |  |
| 20:00 |  |  |
| 21:00 |  |  |
| 22:00 |  |  |
| 23:00 |  |  |
| 0:00  |  |  |

Comments: \_\_\_\_\_

\_\_\_\_\_



**EXHIBIT I**  
**INTENTIONALLY OMITTED**  
**\*\*\* End of EXHIBIT I \*\*\***



**EXHIBIT J**  
INTENTIONALLY OMITTED  
\*\*\* *End of EXHIBIT J* \*\*\*

**EXHIBIT K*****Seller's Estimate of Lost Output***

Lost Output, as used in Section 6.06 of Attachment 1, that is limited to Lost Output Events described in Subsections (a), (b), or (d) of the definition of Lost Output Event shall be estimated by Seller in accordance with the procedures described in this Exhibit K. Lost Output as a consequence of Lost Output Events described in Subsection (c) of the definition of Lost Output Event shall be determined by SCE in accordance with the definition of Curtailment Lost Output and shall not be included in the Lost Output Workbook defined in this Exhibit K.

Seller shall (1) collect the measurement data and perform the engineering calculations specified below in one (1) or more Microsoft Excel Workbooks (the "Lost Output Workbook") provided in a form and naming convention approved by SCE and (2) electronically send the Lost Output Workbook to an address provided by SCE.

SCE shall have the right to verify all data by inspecting measurement instruments and reviewing Generating Facility Operating records.

Seller shall update the Lost Output Workbook each month and shall include the latest revision of the Lost Output Workbook with its monthly Lost Output Report.

1. Log of Lost Output Events.

The log of Lost Output Events must be created on a single, dedicated worksheet that is arranged with:

- (a) One (1) column for a unique Lost Output Event number;
- (b) One (1) column for the Term Year number;
- (c) One (1) column for the start date;
- (d) One (1) column for the start time;
- (e) One (1) column for the end date;
- (f) One (1) column for the end time;
- (g) One (1) column for the duration;
- (h) One (1) column for the cause;

- (i) One (1) column for the total of Metered Amounts during all of the Settlement Intervals of the Lost Output Event, recorded as set forth in Item 4(i) in this Exhibit K;
  - (j) One (1) column for the total of the Lost Output *preliminary* results during all of the Settlement Intervals of the Lost Output Event, calculated as set forth in Item 4(m) in this Exhibit K;
  - (k) One (1) column for the total of the Lost Output *final* results during all of the Settlement Intervals of the Lost Output Event, calculated as set forth in Item 4(n) in this Exhibit K; and
  - (l) One (1) row for each Lost Output Event.
2. Generating Facility Energy Yield Curve.

Seller shall create a table to estimate the Generating Facility's Metered Amounts, in kWhs, as a function of the recorded plane of array insolation, in kWh per square meter, at the Site as described in Exhibit K (the "Generating Facility Energy Yield Curve") on a single dedicated worksheet that is arranged with:

- (a) One (1) column for an item number;
- (b) One (1) column for the plane of array insolation;
- (c) One (1) column for the manufacturer's estimate of the electric energy that can be produced by a single Inverter Block Unit at each increment of plane of array insolation;
- (d) Multiple columns for an energy yield curve which estimates the electric energy that could be produced by the entire Generating Facility at each plane of array insolation increment and number of in service Inverter Block Units calculated by:
  - (i) Multiplying the Inverter Block Unit manufacturer's estimate of the electric energy that will be produced by a single unit, set forth in Item 2(c);
  - (ii) Times the total number of in service Inverter Block Units; and then
  - (iii) Adjusting the results for the estimated impacts of one (1) Inverter Block Unit on another and for electric losses within the Generating Facility;
- (e) Multiple columns for each Term Year energy yield curve which includes a simple average of all Metered Amount data points, set forth in Item 3(f), at each plane of array insolation increment and number of in service Inverter Block Units; and

- (f) One (1) row for each watt-hour per square meter of plane of array insolation.

Seller shall also create a single chart which plots all of energy yield curves set forth in Item 2(d) and Item 2(e) of this Exhibit K on the Generating Facility Energy Yield Curve worksheet.

3. Plane of Array Insolation Data Collection.

Seller shall record Settlement Interval plane of array insolation, in watt-hours per square meter, and Metered Amounts in the Settlement Interval in the Lost Output Workbook on individual Term Year worksheets.

Each Term Year worksheet must be arranged with:

- (a) One (1) column for an item number;
- (b) One (1) column for the date;
- (c) One (1) column for the beginning time;
- (d) One (1) column for the weekday;
- (e) One (1) column for each recorded plane of array insolation measurement;
- (f) One (1) column for each Metered Amounts quantity;
- (g) One (1) column for a forecast of Metered Amounts determined by:
  - (i) Multiplying the recorded plane of array insolation measurement set forth in Item 3(e) of this Exhibit K;
  - (ii) Times the appropriate value in the Generating Facility Energy Yield Curve, set forth in Item 2(e) of this Exhibit K, for the first Term Year;
- (h) One (1) column for the number of Inverter Block Units in service; and
- (i) One (1) row for each Settlement Interval period.

4. Detailed Estimate of Lost Output.

Seller's detailed estimate of the Lost Output amounts during the Delivery Period shall be presented on a single worksheet organized as follows:

- (a) One column for an item number;

- (b) One (1) column for the Lost Output Event number;
- (c) One (1) column for the state date;
- (d) One (1) column for the start time;
- (e) One (1) column for the end date;
- (f) One (1) column for the end time;
- (g) One (1) column for the weekday;
- (h) One (1) column for the plane of array insolation;
- (i) One (1) column for Metered Amounts;
- (j) One (1) column for the number of Inverter Block Units in service.
- (k) One (1) column for a preliminary estimate of the Metered Amounts that would have been produced by the Generating Facility, but for the Lost Output Event:
  - (i) Multiplying the plane of array insolation:
  - (ii) Times the appropriate initial energy yield curve as follows:
    - (1) For the first eleven (11) months of the first Term Year the appropriate initial energy yield curve must be the energy yield curve set forth in Item 2(d) of this Exhibit K;
    - (2) For the first eleven (11) months of any Term Year, other than the first Term Year, the appropriate initial energy yield curve must be the energy yield curve set forth in Item 2(e) of this Exhibit K for the previous Term Year;
- (l) One (1) column for a final estimate of the Metered Amounts that would have been produced by the Generating Facility, but for the Lost Output Event calculated by:
  - (i) Multiplying the plane of array insolation;
  - (ii) Times the final energy yield curve from Item 2(e) of this Exhibit K for the Term Year being calculated;

- (m) One (1) column for the preliminary estimate of Lost Output calculated by:
  - (i) Subtracting the actual Metered Amount quantities set forth in Item 4(i) of this Exhibit K;
  - (ii) From the preliminary estimate of the Metered Amounts that would have been produced by the Generating Facility, but for the Lost Output Event, calculated in Item 4(k); and
- (n) One (1) column for the final estimate of Lost Output calculated by
  - (i) Subtracting the actual Metered Amount quantities set forth in Item 4(i) of this Exhibit K;
  - (ii) From the estimate of Metered Amounts that would have been produced by the Generating Facility, but for the Lost Output Event, calculated in Item 4(l) of this Exhibit K; and
- (o) One (1) row for each Settlement Interval.

5. Generating Facility Performance Factor Calculation.

Seller shall calculate a Generating Facility performance factor value for each calendar month and each Term Year on a dedicated worksheet organized with three tables.

- (a) The first table must contain the monthly Metered Amount totals and must consist of:
  - (i) One (1) column for the month number;
  - (ii) One (1) column for the month name;
  - (iii) One (1) column for the year number;
  - (iv) One (1) column for the monthly Metered Amount totals for each Term Year from the plane of array insolation data collection worksheet column set forth in Item 3(f) of this Exhibit K; and
  - (v) One (1) row for each month;
- (b) The second table must contain the monthly totals of forecasted Metered Amount and must consist of:
  - (i) One (1) column for the month number;

- (ii) One (1) column for the month name;
  - (iii) One (1) column for the year number;
  - (iv) One (1) column for the monthly totals of forecasted Metered Amount for each Term Year from the plane of array insolation data collection worksheet column set forth in Item 3(g) of this Exhibit K; and
  - (v) One (1) row for each month; and
- (c) The third table must contain monthly performance factors and must consist of:
- (i) One (1) column for the month number;
  - (ii) One (1) column for the month name;
  - (iii) One (1) column for the year number;
  - (iv) One (1) column for a monthly Generating Facility performance factor result and a Term Year Generating Facility performance factor results calculated by:
    - (1) Dividing the appropriate value in the first table;
    - (2) By the appropriate value in the second table;
  - (v) One (1) row for each month; and
  - (vi) One (1) row for the Term Year Generating Facility performance factor results.

6. Periodic Review of Lost Output Calculation.

From time to time, SCE may review the variation in the Lost Output preliminary and final results to determine if other variables, including temperature, precipitation, solar altitude or azimuth angles or other parameters measured pursuant to Exhibit L, should be incorporated into the Lost Output calculations.

7. Assignment of Lost Output Estimate to an Independent Consultant.

The Parties can by mutual agreement elect to have the estimate of Lost Output prepared by an independent consultant.

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\*\*\* End of EXHIBIT K \*\*\*

EXHIBIT L

Meteorological Station Specifications

Pursuant to Section 5.02(f), Seller shall install and maintain a minimum of one (1) stand-alone meteorological equipment station for each one (1) square mile (or portion thereof) of the Site. Each station shall be equipped with instruments and equipment that meet or exceed those specifications set forth in the CAISO's PIRP/EIRP protocol and are compatible with the requirements of SCE. SCE and Seller acknowledge that SCE may update this Exhibit L from time to time in order to accommodate industry standards, the CAISO PIRP/EIRP protocol and the needs of SCE.

SCE and Seller shall develop the technical specifications for meteorological stations, which will meet these basic requirements.

Seller shall maintain the meteorological station in accordance with Prudent Electrical Practices and equipment specifications. Seller shall perform annual calibrations of all instruments. In addition, any solar irradiance sensor must be cleaned weekly or after storm events, following manufacturers recommended cleaning procedures.

PART I. EQUIPMENT STATIONS.

(a) Each equipment station shall be comprised of the following:

- (i) One (1) heated wind sensor and direction sensor;
- (ii) One (1) shielded and aspirated air temperature sensor;
- (iii) One (1) relative humidity sensor;
- (iv) One (1) barometric pressure sensor (with DCP sensor);

(i) One (1) secondary standard thermopile pyranometer for each collector plane orientation in the Site with the sensor(s) oriented at the same inclination and aspect as the collector plane(s);  
*{SCE Note: For fixed tilt Solar projects}*

A minimum of one thermopile pyranometer for each inverter block mounted in a representative location on an associated tracker. Such thermopile pyranometers shall include either:



- (1) One (1) secondary standard thermopile pyranometer mounted on a tracker associated with each inverter block, or
- (2) For each equipment station, at least one (1) secondary standard thermopile pyranometer mounted on a tracker associated with an inverter block near the equipment station, and for the thermopile pyranometers associated with the remaining balance of inverter blocks, first class and second class thermopile pyranometers may be installed only if they are calibrated and adjusted in accordance with Section 5.02(f) of the Agreement;  
*{SCE Note: For tracking Solar projects}*

- (vi) One (1) total global radiation sensor horizontal to the ground plane (only 1 such sensor shall be required under this Agreement); and
- (vii) One (1) diffuse radiation sensor (only 1 such sensor shall be required under this Agreement).

(b) In addition, Seller shall report:

- (i) Solar altitude angle;
- (ii) Solar azimuth angle;
- (iii) Precipitation;
- (iv) Individual tracking assembly angle set points; and
- (v) The actual tracking assembly angles.

(c) All sensors shall be set at a height location representing the height from ground level of the solar collection point, for example, two (2) meters above ground level.

## PART II. ATTRIBUTES OF METEOROLOGICAL STATION LOCATIONS.

The station location(s) should be unencumbered by any shadow or equipment. The station tower is to be placed in front of the solar collectors on the southern side of the Site.

## PART III. COMMUNICATION.

Seller shall communicate meteorological data to SCE via a system consistent with SCE's employed methods at the time of installation. The equipment installed will need to be approved by SCE.

## PART IV. EQUIPMENT REQUIREMENTS.

SCE currently requires equipment with quality levels, compatibility and functional specifications that meet or exceed those of the equipment set forth below in this Item 5. Any equipment different from that listed below must have the approval of SCE before installation at the Site.

### (a) MET System.

(i) GroundWork Zenith or equivalent including following modules and functions:

- Data acquisition system including Campbell Scientific CR1000X datalogger or equivalent with 72 MB Flash memory and 2GB memory card for data logging and storage.
- Uninterruptible power supply including solar photovoltaic module and UL 508A listed power enclosure with Campbell Scientific CH200 charging regulator or equivalent and battery.
- Array-mounted enclosure with terminal blocks for landing tracker-mounted thermopile pyranometer wiring.

(ii) GroundWork Orbit or equivalent, including the following modules and functions:

- Array-mounted enclosure with terminal blocks for landing thermopile pyranometer cables at each inverter block without an associated MET system.

### (b) Sensors.

(i) Tower-mounted Lufft WS500 all-in-one weather sensor or equivalent with the following specifications:

- Wind speed (m/s) and direction (°): accuracy +/- 0.3 m/s with 0.1 m/s resolution, <3° RMSE >1.0 m/s with 0.1° resolution.

- Ambient air temperature (°C): accuracy +/- 0.2°C with 0.1°C resolution.
  - Barometric Pressure (hPa): accuracy +/- 0.5 mbar with 1 mbar resolution.
  - Relative Humidity (%): accuracy +/- 2% with 0.1% resolution.
- (ii) Tower-mounted TE525 tipping bucket rain gauge or equivalent with accuracy +/- 1% (up to 2.54 mm/hr) and 0.254 mm resolution.
- (iii) Tower-mounted Delta-T SPN1 Sunshine Pyranometer or equivalent for site diffuse horizontal irradiance with accuracy +/-5% (daily integral) with 0.6 W/m<sup>2</sup> resolution.
- (iv) Tower-mounted Hukseflux SR30 or equivalent secondary standard thermopile pyranometer with heating and ventilation for site global horizontal irradiance.
- (v) Array-mounted Hukseflux SR30 or equivalent secondary standard thermopile pyranometer with heating and ventilation for site plane of array irradiance.
- (c) Powering.
- Power enclosure with 115 VAC integration and backup uninterruptible power supply with a minimum of five (5) days of autonomy in the event of AC power loss.
- (d) Communication.
- (i) Data served via Modbus or DNP3 over Ethernet, Fiber optic, or RS485
- (ii) Output variables mapped according to a standardized, well-documented data map.

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\*\*\* End of EXHIBIT L \*\*\*