

An EDISON INTERNATIONAL Company

## RENEWABLE POWER PURCHASE AND SALE AGREEMENT

between

### SOUTHERN CALIFORNIA EDISON COMPANY

and

COSO CLEAN POWER, LLC

(QFID #3103)

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- A. Definitions.
- B. Generating Facility and Site Description.
- C. Notice List.
- D. Forecasting and Scheduling Requirements and Procedures.
- E. [Intentionally Deleted].
- F. Energy Replacement Damage Amount.
- G. Seller's Milestone Schedule.
- H. Milestone Progress Reporting Form.
- I. Form of Guaranty Agreement.
- J. Non-Disclosure Agreement.
- K. Time of Delivery Periods and Energy Payment Allocation Factors.
- L. Procedure for Partial or Full Return of Agreement Deposit.
- M. Seller's Estimate of Lost Output.
- N. Form of Letter of Credit.
- O. ISO Charges and ISO Sanctions.
- P. ISO Change Cost Payment Calculation.

### RENEWABLE POWER PURCHASE AND SALE AGREEMENT

#### between

#### SOUTHERN CALIFORNIA EDISON COMPANY

and

### COSO CLEAN POWER, LLC

(QFID #3103)

#### **PREAMBLE**

This Renewable Power Purchase and Sale Agreement, together with the exhibits attached hereto, by and between the Parties (collectively, the "Agreement") is made and effective as of the following date: November 15, 2006 ("Effective Date").

This Agreement is entered into between:

- Southern California Edison Company ("SCE"), a California corporation, whose principal place of business is at 2244 Walnut Grove Avenue, Rosemead, California 91770,
- (ii) Coso Clean Power, LLC ("Seller"), a Delaware limited liability company, whose principal place of business is at 565 Fifth Avenue, 29<sup>th</sup> Floor, New York, New York 10017; and
- (iii) For the limited purposes set forth herein, the following Owners (as defined below): Coso Power Developers ("CPD"), Coso Finance Partners ("CFP") and Coso Energy Developers ("CED").

SCE, Seller and, for the limited purposes described herein, Owners (and each of them) are sometimes referred to herein individually as a "Party" and jointly as "Parties."

Capitalized terms in this Agreement shall have the meanings set forth in Exhibit A.

### RECITALS

SCE and Seller enter into this Agreement with reference to the following agreements:

- (i) SCE Long Term Power Purchase Agreement between Southern California Edison Company and CPD, a California general partnership which is an assignee of China Lake Joint Venture 2, a joint venture between California Energy Company and Caithness Geothermal 160 Ltd., dated February 1, 1985, together with all appendices thereto, including Appendix A, the Interconnection Facilities Agreement, and any modifications or amendments thereto (collectively, "PPA No. 3029").
  - PPA No. 3029 terminates on January 11, 2010 and concerns the Initial Generating Facility Units, which are owned by CPD.
- (ii) SCE Long Term Power Purchase Agreement between Southern California Edison Company and CFP, a California general partnership which is an assignee of China Lake Joint Venture, a joint venture between California Energy Company and Caithness Geothermal 1960 Ltd., dated June 4, 1984, together with all appendices thereto, including Appendix A, the Interconnection Facilities Agreement, and any modifications or amendments thereto (collectively, "PPA No. 3008").
  - PPA No. 3008 terminates on August 18, 2011 and concerns the Intermediate Generating Facility Units, which are owned by CFP.
- (iii) SCE Long Term Power Purchase Agreement between Southern California Edison Company and CED, a California general partnership which is an assignee of China Lake Joint Venture, a joint venture between California Energy Company, Inc. and Caithness Geothermal 1980, Ltd., dated February 1, 1985 and all appendices thereto, including Appendix A, the Interconnection Facilities Agreement, and any modifications or amendments thereto (collectively, "PPA No. 3030").
  - PPA No. 3030 terminates on March 12, 2019 and concerns the Final Generating Facility Units, which are owned by CED.

CPD, CFP, and CED are each referred to individually as "Owner" and collectively as "Owners" hereinafter.

Seller is willing to Operate, and have all rights required to Operate, an electric energy Generating Facility which qualifies as of the Effective Date as an eligible renewable energy resource under the State of California Renewable Portfolio Standard Program as codified at California Public Utilities Code Section 399.11, et seq. In addition, Seller is willing to sell to SCE, and has or will have acquired from Owners all rights required to sell to SCE, pursuant to the terms and conditions set forth herein, all electric energy produced by the Generating

Facility and all other electric energy produced directly or indirectly from any wells on the real property held by Seller pursuant to the Leases, together with all Environmental Attributes, Capacity Attributes and Resource Adequacy Benefits associated with such electric energy.

SCE is willing to purchase all electric energy delivered by Seller to SCE generated by such Generating Facility together with all Environmental Attributes, Capacity Attributes and Resource Adequacy Benefits pursuant to the terms and conditions set forth herein.

During the Initial Term Period of the Agreement, the contemplated Generating Facility will consist of the three generating units, the Initial Generating Facility Units, whose outputs were originally sold under PPA No. 3029.

During the Intermediate Term Period, the Generating Facility will consist of the Initial Generating Facility Units and the three Intermediate Generating Facility Units, whose outputs were originally sold under PPA No. 3008.

During the Final Term Period, the three Final Generating Facility Units, whose outputs were originally sold under PPA No. 3030, will be added to the Generating Facility, which will consist of all of the Initial, Intermediate and Final Generating Facility Units.

Nothing in these recitals shall be construed to restrict or change in any way the right of Seller to replace or modify any Initial, Intermediate, or Final Generating Facility Units pursuant to Section 1.01(d) of this Agreement.

### ARTICLE ONE. SPECIAL CONDITIONS

- 1.01 Generating Facility.
  - (a) Name: Coso Clean Power.
  - (b) Location of Site: The real property described in Exhibit B.
  - (c) Eligible Renewable Energy Resource Type: Geothermal.
  - (d) Generating Facility: As defined in Exhibit A and including, but not limited to the following three (3) groups of Generating Facility units to be brought on sequentially as set forth herein:
    - (i) The three Generating Facility units whose outputs were initially sold under PPA No. 3029 and which are identified and described as Units 4, 5, and 6 in Exhibit B (the "Initial Generating Facility Units");
    - (ii) The three Generating Facility units whose outputs were originally sold under PPA No. 3008 and which are identified and described as Units 1, 2, and 3 in Exhibit B (the "Intermediate Generating Facility Units"); and
    - (iii) The three Generating Facility units whose outputs were originally sold under PPA No. 3030 and which are identified and described as Units 7, 8, and 9 in Exhibit B (the "Final Generating Facility Units").

The Initial, Intermediate and Final Generating Facility Units are further identified and described in Exhibit B. Seller may at any time replace or modify any or all of the units which constitute the Generating Facility provided that the minimum electrical generating capacity of the Generating Facility after any such replacements or modifications shall not be less than the Net Contract Capacity in effect immediately prior to such modifications or replacements and the maximum electrical generating capacity installed at the Generating Facility after such modifications or replacements shall not exceed the Maximum Net Contract Capacity.

- (e) Net Contract Capacity:
  - (i) It is anticipated that each group of Generating Facility units (i.e., the Initial Generating Facility Units, the Intermediate Generating Facility Units and the Final Generating Facility Units) will provide 68 MW of capacity such that, as of the Effective Date, the original Initial, Intermediate and Final Net Contract Capacity shall be as follows:

Initial Net Contract Capacity:

68 MW

Intermediate Net Contract Capacity:

136 MW

Final Net Contract Capacity:

204 MW

- (ii) Initial, Intermediate or Final Net Contract Capacity may be adjusted in the manner indicated below to a quantity different than that indicated in Section 1.01(e)(i) above if Seller specifies an adjusted Initial, Intermediate or Final Net Contract Capacity by a Notice to be given to SCE and to be effective as follows:
  - 1. Seller may adjust the Initial Net Contract Capacity, provided that such Notice must be given on or before January 11, 2008 and shall be effective immediately upon being given;
  - 2. Seller may adjust the Intermediate Net Capacity with respect only to the 68 MW to be provided by the Intermediate Generating Facility Units, provided that such Notice must be given by June 1, 2009 and shall be effective immediately upon being given; and
  - 3. Seller may adjust the Final Net Contract Capacity with respect only to the 68 MW to be provided by the Final Generating Facility Units, provided that such Notice must be given on or before June 1, 2017 and shall be effective immediately upon being given for any decrease in capacity below the Final Net Contract Capacity set forth in Section 1.01(e)(i) or, for any increase in capacity, upon the posting of additional Agreement Deposit equal to the product of \$20 times each additional kW of capacity in excess of the Final Net Contract Capacity set forth in Section 1.01(e)(i).
- (iii) Intermediate and Final Net Contract Capacity may be further be adjusted as follows:

Starting on June 1, 2011, and on every second June 1 thereafter during the Term through June 1, 2017, Seller may re-nominate the Intermediate Net Contract Capacity, effective as of the following January 1, by providing SCE with Notice of an adjustment to the Intermediate Net Contract Capacity. For example, the next potential re-nomination date for the Intermediate Net Contract Capacity

pursuant to this subsection (iii) after June 1, 2011 shall be June 1, 2013, with any re-nomination made June 1, 2013 to be effective January 1, 2014.

In addition, starting on June 1, 2019, and on every second June 1 thereafter during the Term, Seller may re-nominate the Final Net Contract Capacity, effective as of the following January 1, by providing SCE with Notice of an adjustment to Final Net Contract Capacity. Any Notices provided pursuant to this subsection (iii) shall specify the adjusted Intermediate or Final Net Contract Capacity amount, as appropriate.

For each adjustment made pursuant to this Section 1.01(e)(iii), the quantity of the adjusted Intermediate or Final Net Contract Capacity can never vary by more than plus or minus (+/-) ten (10) percent of the quantity of the Intermediate or Final Net Contract Capacity immediately prior to the adjustment, unless otherwise agreed to by SCE in its sole discretion.

- (iv) No adjustment to Initial, Intermediate, or Final Net Contract Capacity under Sections 1.01(e)(ii) or Section 1.01(e)(iii) shall cause such adjusted Initial, Intermediate or Final Contract Capacity to exceed fifteen (15) percent above 204 MW (i.e., 234.6 MW) (the "Maximum Net Contract Capacity").
- (v) Initial, Intermediate and Final Net Contract Capacity may also be subject to reduction as set forth in Section 3.05(d).
- (vi) If the Initial Net Contract Capacity is adjusted under Section 1.01(e)(ii) or decreased under Section 3.05(d), the quantity of the adjusted or decreased Initial Net Contract Capacity shall be considered the Initial Net Contract Capacity for all purposes under this Agreement until the Intermediate Start Up Date.

If the Intermediate Net Contract Capacity is adjusted under Section 1.01(e)(ii) or Section 1.01(e)(iii), or decreased under Section 3.05(d), the quantity of the adjusted or decreased Intermediate Net Contract Capacity shall be considered the Intermediate Net Contract Capacity quantity for all purposes under this Agreement until the earlier of another adjustment under Section 1.01(e)(iii) or the Final Start Up Date.

If the Final Net Contract Capacity is adjusted under Section 1.01(e)(ii) or Section 1.01(e)(iii), or decreased under Section 3.05(d), the quantity

of the adjusted or decreased Final Net Contract Capacity shall be considered the Final Net Contract Capacity quantity for all purposes under this Agreement until another adjustment is made under Section 1.01(e)(iii).

# (f) Expected Net Energy Production:

The Expected Net Energy Production for each Calculation Period (as defined below) shall be the value calculated in accordance with the following formula:

EXPECTED NET ENERGY PRODUCTION, in kWh

 $= A \times B \times C$ 

### Where:

- A = Initial, Intermediate or Final Net Contract Capacity, as applicable during the relevant Calculation Period, in kW.
- B = 90% capacity factor.
- C = Total hours in the relevant Calculation Period (e.g., 8,760 hours per year times 2 years in a Calculation Period with no Leap Years).

Calculation of the total hours for a year during any relevant Calculation Period shall include an additional twenty-four (24) hours for any Leap Year.

For any Calculation Period during which a change in Net Contract Capacity occurs, calculation of the Expected Net Energy Production shall be prorated according to the length of time each Net Contract Capacity is in effect during such Calculation Period.

By way of example, for the Calculation Period beginning on January 12, 2010 and ending on December 31, 2011, which includes Net Contract Capacity from both the Initial Generating Facility Units and the Intermediate Generating Facility Units, and assuming the applicable Net Contract Capacities set forth in Section 1.01(e)(i) above have not been changed, the Initial Term Period commences on January 12, 2010 and the Intermediate Term Period commences on August 19, 2011, the Expected Net Energy Production shall be equal to the sum of:

(68,000 kW X 0.90 X 8496 hours) for the first partial year of the Calculation Period with only the Initial Generating Facility Units, from January 12, 2010 through December 31, 2010 +

(68,000 kW X 0.90 X 5352 hours) for the portion of the second year of the Calculation Period with only the Initial Generating Facility Units, from

January 1, 2011 through August 18, 2011, +

(136,000 kW X 0.90 X 3408) for the remainder of the Calculation Period, from August 19, 2011 through December 31, 2011, with both the Initial and Intermediate Generating Facility Units

# (g) Calculation Periods:

Seller shall calculate the Expected Net Energy Production pursuant to Section 1.01(f) above with reference to one of the following periods of time (each, a "Calculation Period"):

(1)	January 12, 2010 to and including December 31, 2011;
(2)	January 1, 2012 to and including December 31, 2013;
(3)	January 1, 2014 to and including December 31, 2015;
(4)	January 1, 2016 to and including December 31, 2017;
(5)	January 1, 2018 to and including December 31, 2019;
(6)	January 1, 2020 to and including December 31, 2021;
(7)	January 1, 2022 to and including December 31, 2023;
(8)	January 1, 2024 to and including December 31, 2025;
(9)	January 1, 2026 to and including December 31, 2027;
(10)	January 1, 2028 to and including December 31, 2029; and
(11)	January 1, 2030 through any remaining portion of the Term in 2030.

In the event that the Initial Term Period commences at an earlier or a later time than January 12, 2010 pursuant to the provisions of this Agreement, the initial Calculation Period may be lengthened or shortened, as appropriate, to commence upon a date agreed upon by the Parties, but shall terminate on December 31, 2011 as set forth above, unless otherwise agreed by the Parties. In the event of any extension of the Term due to Force Majeure or any other provision herein or as otherwise agreed to by the Parties, the final Calculation Period set forth above may be extended up to and including December 31, 2031 and, if necessary, one or more additional Calculation Periods automatically shall be added to this Agreement, commencing upon January 1, 2032, each for two years or less, as applicable. Any revisions to the

Calculations Periods shall be set forth in an amendment to this Agreement.

# 1.02 Start-Up Deadlines.

The "Start-Up Deadlines" for this Agreement are as follows:

- (a) The Initial Start-Up Deadline shall be January 12, 2010;
- (b) The Intermediate Start-Up Deadline shall be August 19, 2011; and
- (c) The Final Start-Up Deadline shall be March 13, 2019;

(or such other dates as provided in this Agreement or as may be agreed to in a writing signed by both Parties). By providing Notice to SCE on or before January 12, 2010 in the case of the Initial Start-Up Deadline, August 19, 2011 in the case of the Intermediate Start-Up Deadline, or March 13, 2019 in the case of the Final Start-Up Deadline, Seller may extend any or all of such Start-Up Deadlines on a day-for-day basis beyond the relevant Start-Up Deadline anticipated above for each day that Seller is unable, solely as a result of delays caused by the ISO and to no extent caused by Seller, to execute an interconnection agreement for the transmission of electricity generated by the Initial, Intermediate and Final Generating Facility Units, as applicable; provided, however, (i) in no event shall any such day-for-day extension of the Initial Start-Up Deadline cause such Start-Up Deadline to extend beyond January 12, 2013 and (ii) the extension of any Start-Up Deadline pursuant to this Section 1.02 shall be separate from an extension of any other Start-Up Deadline, which such other extension (if any) must independently meet the conditions and Notice requirements of this Section 1.02.

#### 1.03 Term.

The Term shall commence as set forth in Section 2.03(a) and shall end on the last day of the calendar month which is two hundred and forty (240) months from the month in which the Term commences.

### 1.04 Energy Price.

Subject to SCE's option to adjust the Energy Price and Performance Assurance Amount in accordance with Section 1.06 of this Agreement, the Energy Price shall be a fixed price of eighty-nine dollars and ninety seven cents (\$89.97) per MWh.

#### 1.05 Performance Assurance Amount.

Eighty-one million four hundred thirty-five thousand dollars (\$81,435,000) to be divided equally for Initial (during the Initial Term Period), Intermediate (during the Intermediate Term Period) or Final (during the Final Term Period) Net Contract

Capacity, each subject to SCE's option to adjust the Energy Price and the Performance Assurance Amount in accordance with Section 1.06 of this Agreement.

1.06 SCE's Option to Adjust Energy Price and Performance Assurance Amount; EDR Collateral Amount.

SCE, in its sole discretion, shall have the option to adjust the Energy Price and the applicable Performance Assurance Amount to any one of the following three combinations:

Energy Price	Applicable Performance Assurance Amount
\$89.97 per MWh	\$81,435,000
\$86.56 per MWh	\$63,615,000
\$76.75 per MWh	Zero

*Provided, however,* in the event that SCE selects the Energy Price equal to \$76.75 per MWh with the corresponding Performance Assurance Amount equal to Zero dollars (\$0) above (the "Low Price Point"), Seller shall be obligated to post an additional collateral amount (the "EDR Collateral Amount") pursuant to Seller's obligations in Section 12.03(a) with respect to EDR proceedings.

The EDR Collateral Amount shall be calculated in accordance with the following formula:

### EDR COLLATERAL AMOUNT = A x B x C x D

Where A= Initial, Intermediate or Final Net Contract Capacity, in MW

B= \$76.75 per MWh

C= 90% Capacity Factor

D= 720 hours (i.e., 30-day month)

To exercise its option to adjust the Energy Price and the applicable Performance Assurance Amount in accordance with this Section, SCE shall, on or before the date that is twenty-three (23) months prior to the first day of the Term, send Seller Notice of the Energy Price and applicable Performance Assurance Amount that SCE has elected. Notwithstanding the foregoing sentence or any other provision of this Agreement, if anytime after the later of CPUC Approval or March 31, 2007, Seller provides SCE with Notice of Seller's good-faith intention to obtain financing for the Generating Facility or the Portfolio, SCE shall within thirty (30) days of the date of

such Notice exercise its option to adjust the Energy Price and the applicable Performance Assurance Amount.

Upon Seller's receipt of any Notice from SCE which exercises the option granted SCE in this Section, this Agreement shall be deemed to have been automatically amended to reflect such elected Energy Price and applicable Performance Assurance Amount, and both Parties will execute all documents and instruments necessary to document such amendment to this Agreement.

- 1.07 Seller's Guarantor.
  - (a) Guarantor: An entity that may from time to time become party to a Guaranty Agreement in accordance with Section 8.02(d).
  - (b) Guaranty Amount: To be determined if there is a Guarantor.
  - (c) Cross Default Amount: To be supplied if there is a Guarantor.
- 1.08 Assignment by Owners of Certain Rights and Interests to Seller.

As described in an Assignment Agreement between the Owners and Seller dated November 14, 2006 (the "Assignment Agreement") and in an Operating Agreement ("Operating Agreement") dated November 14, 2006, the Owners have assigned, and the Seller has accepted the assignment of, certain rights and interest of the Seller in order to enable Seller's performance under this Agreement.

\*\*\* End of ARTICLE ONE \*\*\*

# ARTICLE TWO. TERM AND CONDITIONS PRECEDENT; TERMINATION

2.01 Effective Date and Term.

This Agreement shall become effective on the Effective Date, although, as described herein, many of the rights and responsibilities of the Parties commence with the beginning of the Term.

- 2.02 Obligations Prior to Commencement of Term.
  - (a) CPUC Filing and Approval of this Agreement.
    - (i) Within forty-five (45) days after the Effective Date, SCE shall file with the CPUC the appropriate request for CPUC Approval.
    - (ii) SCE shall seek such approval expeditiously, including promptly responding to any requests for information related to the request for approval from the CPUC.
    - (iii) Seller shall use commercially reasonable efforts to support SCE in obtaining CPUC Approval.
    - (iv) SCE shall have no obligation to seek rehearing or to appeal a CPUC decision which fails to approve the Agreement or to contain findings required for CPUC Approval without conditions or modifications unacceptable to either Party.
  - (b) Seller's Interconnection Agreements.

Seller shall exercise diligence in obtaining a FERC-accepted interconnection agreement for each of the Initial, Intermediate and Final Generating Facility Units and any transmission, distribution or other service agreements required to transmit electric energy from such Generating Facility Units to the Delivery Point.

(c) Seller's Regulatory and Governmental Filings.

On and after the Effective Date, Seller shall maintain and take all necessary steps with the appropriate Governmental Agency to extend:

- (i) An application or applications, or other appropriate request or requests with the appropriate Governmental Authority for all Permits; and
- (ii) An application or other appropriate request to the CEC for CEC Certification and Verification.

Seller shall expeditiously maintain, extend or seek, as appropriate, all Permits and the CEC Certification and Verification, including promptly responding to any requests for information related to the Permits and CEC Certification and Verification from the requesting authority.

- 2.03 Conditions Precedent to Commencement of Term.
  - (a) Commencement of Term.

The Term (and the Initial Term Period) shall commence on the last to occur of the following:

- (i) SCE has obtained or waived CPUC Approval, as provided herein;
- (ii) Seller shall have complied with those provisions set forth in Section 3.10(c); and
- (iii) Each of the conditions below (the "Initial Start-Up Conditions") has been met to SCE's reasonable satisfaction as of the Initial Selected Date:
  - (1) Seller has obtained and/or maintained CEC Certification and Verification;
  - (2) Seller has executed, extended or maintained, as applicable, all necessary Transmission Provider and ISO agreements;
  - (3) SCE has been and continues to be authorized by the ISO to Schedule the electric energy produced by the Initial Generating Facility Units with the ISO;
  - (4) Seller has made the demonstration in accordance with the procedures set forth in Exhibit L for the Initial Generating Facility Units;
  - (5) The Initial Generating Facility Units are Operating in parallel with the applicable Transmission Provider's electric system;
  - (6) Seller shall be Forecasting and delivering electric energy from the Initial Generating Facility Units to SCE at the Delivery Point;
  - (7) Seller has installed and paid for all metering service and related equipment for the Generating Facility units required by SCE, the ISO and the Transmission Provider, including three

separate ISO-Approved Meters, one for the Initial Generating Facility Units, one for the Intermediate Generating Facility Units and one for the Final Generating Facility Units. Each of the ISO-Approved Meters and other equipment must be fully functioning;

- (8) Seller has posted with SCE the Performance Assurance required for the Initial Net Contract Capacity to be provided during the Initial Term Period pursuant to Section 1.05 or Section 1.06, as applicable; and
- (9) SCE and Seller have executed all subordinated security interest and mortgage documents required by Section 8.04.

The Initial Selected Date must be no more than sixty (60) and no less than fourteen (14) days before the Initial Start-Up Deadline.

Seller shall provide at least five (5) Business Days advance Notice to SCE of the Initial Selected Date.

- 2.04 Conditions Precedent to Commencement of Intermediate and Final Term Period.
  - (a) Commencement of Intermediate Term Period.

The Intermediate Term Period shall not commence unless the conditions below (the "Intermediate Start-Up Conditions") have been met to SCE's reasonable satisfaction as of the Intermediate Selected Date and conditions (3) through (8) of the Initial Start-Up Conditions remain satisfied:

- (i) Seller has obtained and/or maintained CEC Certification and Verification;
- (ii) Seller has executed, extended or maintained, as applicable, all necessary Transmission Provider and ISO agreements;
- (iii) Seller has made the demonstration in accordance with the procedures set forth in Exhibit L for the Intermediate Generating Facility Units;
- (iv) SCE has been and continues to be authorized by the ISO to Schedule the electric energy produced by the Intermediate Generating Facility Units with the ISO;
- (v) The Intermediate Generating Facility Units are Operating in parallel with the applicable Transmission Provider's electric system;

- (vi) Seller shall be Forecasting and delivering electric energy from the Intermediate Generating Facility Units to SCE at the Delivery Point;
- (vii) Seller has posted with SCE the Performance Assurance required for the Intermediate Net Contract Capacity to be provided during the Intermediate Term Period pursuant to Section 1.05 or Section 1.06, as applicable;
- (viii) SCE and Seller have executed all subordinated security interest and mortgage documents required by Section 8.04 with respect to the Intermediate Generating Facility Units, if any;

The Intermediate Selected Date must be no more than sixty (60) and no less than fourteen (14) days before the Intermediate Start-Up Deadline; and

Seller shall provide at least five (5) Business Days advance Notice to SCE of the Intermediate Selected Date.

- (b) Commencement of Final Term Period.
  - (i) The Final Term Period shall not commence unless the conditions listed in Section 2.04(a) above (except that all references in the conditions to "Intermediate" shall be changed to "Final") (as changed, the "Final Start-Up Conditions") have been met to SCE's reasonable satisfaction as of the Final Selected Date and conditions (3) through (8) of the Initial Start-Up Conditions and conditions (iii) through (vii) of the Intermediate Start-Up Conditions remain satisfied.
  - (ii) The Final Selected Date must be no more than sixty (60) and no less than fourteen (14) days before the Final Start-Up Deadline.
  - (iii) Seller shall provide at least five (5) Business Days advance Notice to SCE of the Final Selected Date.
- 2.05 Termination Rights of the Parties.
  - (a) Termination Rights of Both Parties.

Either Party shall have the right to terminate the Agreement on Notice, which shall be effective five (5) Business Days after such Notice is given in the following circumstances:

(i) If CPUC Approval has not been obtained within one hundred eighty (180) days after SCE files the request for CPUC Approval and a

- Notice of termination is given on or before the two hundred tenth (210th) day after SCE files the request for CPUC Approval;
- (ii) If any of the Permits or the CEC Certification and Verification has not been obtained and/or maintained after eighteen (18) months from the Effective Date and a Notice of termination is given on or before the end of the nineteenth (19th) month after the Effective Date.
- (b) Termination Rights of SCE.
  - (i) In the event that Seller has extended the Initial Start-Up Deadline pursuant to Section 1.02 to the maximum amount allowed therein (i.e., January 12, 2011), and Seller remains unable to execute an agreement with the ISO or any organization responsible for system interconnection concerning interconnection due to a delay caused by the ISO or any organization responsible for system interconnection, then, subject to Seller's right to extend the Initial Start-Up Deadline pursuant to Section 3.05(b), SCE may terminate this Agreement and return Seller's Agreement Deposit upon thirty (30) days notice to Seller. Such Notice shall be effective five (5) Business Days after Seller's receipt of the Notice.
  - (ii) SCE shall have the termination right set forth in Section 3.05(b) with respect to Seller's failure to meet the Initial Start-Up Deadline.
- (c) Uncured Defaults.

Upon the occurrence of an Event of Default, the Non-Defaulting Party may terminate this Agreement as set forth in Section 6.02.

(d) End of Term.

At the end of the Term as set forth in Section 1.03, this Agreement shall automatically terminate.

- 2.06 Rights and Obligations Surviving Termination.
  - (a) Survival of Rights and Obligations Generally.

The rights and obligations that are intended to survive any termination of this Agreement are all those rights and obligations that this Agreement expressly provides shall survive termination and those which arise from Seller's or SCE's covenants, agreements, representations, and warranties applicable to, or to be performed, at or during any time period prior to or as a result of the termination this the Agreement, including:

- (i) Seller's right to return of any Agreement Deposit posted under Section 3.05, if applicable;
- (ii) Seller's obligation to pay the Energy Replacement Damage Amount under Section 3.06(b).
- (iii) The obligation to make a Termination Payment under Section 6.03, if applicable;
- (iv) The indemnity obligations to the extent provided in Section 10.03(c);
- (v) The obligation of confidentiality set forth in Section 10.10;
- (vi) The right to pursue remedies under Section 6.02, if applicable;
- (vii) The right to receive a Termination Payment under Section 6.03, if applicable;
- (viii) The limitation of damages under Article Seven;
- (ix) The obligation of SCE to make Energy Payments under Section 4.02 for energy Scheduled and delivered to SCE prior to termination;
- (x) The obligation of Seller to make payment for ISO Charges and ISO Sanctions that are attributable to Seller's actions or omissions during the Term pursuant to Section 3.20 and Exhibit O;
- (xi) The covenants and indemnifications regarding the limitations on Seller's and Seller's Affiliates' ability to offer, make or agree to third party sales as set forth in Section 2.06(b); and
- (xii) The obligation to post and maintain Performance Assurance pursuant to Section 8.02 and the EDR Collateral Amount pursuant to Section 12.03(a)(v), if applicable.

Notwithstanding the foregoing, the rights and obligations intended to survive a termination of this Agreement prior to the commencement of the Term shall be limited to those set forth in subclauses (i), (iv)-(v) and (x)-(xii) immediately above, *provided* that a Party's right to receive, and a Party's obligation to pay, any liabilities that are due and owing as of such termination of this Agreement shall survive the termination.

(b) SCE's Rights of First Offer to Sales from The Generating Facility After Certain Terminations.

If Seller terminates the Agreement, as provided in Section 2.05(a)(ii) or Section 5.04 (based upon a Force Majeure as to which Seller is the Claiming Party), or if SCE terminates the Agreement as provided in Sections 2.05(b), 3.05(b), or based upon an Event of Default arising either from the termination of the Assignment Agreement as provided in Section 6.01(j) or the amendment of the Assignment Agreement or the Operating Agreement in violation of the terms of this Agreement as provided in Section 6.01(k), neither Seller nor Seller's Affiliates may sell, or enter into an agreement to sell, electric energy, Environmental Attributes, Capacity Attributes, or Resource Adequacy Benefits associated with or attributable either to any Generating Facility unit that is part of the Generating Facility under this Agreement or any Additional Geothermal Well Products to a party other than SCE for a period of two (2) years following the effective date of such termination.

The prohibition on contracting and sale in the preceding sentence shall not apply if, prior to entering into the contract or making a sale to a party other than SCE, Seller or Seller's Affiliates provides SCE with a written offer to sell the electric energy, Environmental Attributes, Capacity Attributes and Resource Adequacy Benefits to SCE on terms and conditions materially similar to the terms and conditions contained in this Agreement and SCE fails to accept such offer within forty-five (45) days after SCE's receipt thereof.

In addition, if any of PPA Nos. 3008, 3029, or 3030 terminates as a result of a breach attributable to a party to such PPA other than SCE, then from the date of such termination until the end of the Term hereunder, neither Seller nor Seller's Affiliates may sell, or enter into an agreement to sell, electric energy, or any environmental attributes, capacity attributes and resource adequacy benefits associated with such electric energy from the underlying units subject to such terminated PPA or any Additional Geothermal Well Products without first offering SCE all such electric energy and associated environmental attributes, capacity attributes and resource adequacy benefits from such units on the same terms as, or terms no less favorable to SCE than, those of this Agreement.

Seller shall indemnify and hold SCE harmless from all benefits lost and other damages sustained by SCE as a result of any breach by Seller of its covenants contained within this Section 2.06(b).

\*\*\* End of ARTICLE TWO \*\*\*

### ARTICLE THREE. SELLER'S OBLIGATIONS

3.01 Conveyance of Entire Output, Conveyance of Environmental Attributes and Capacity Attributes.

Seller shall Forecast and convey the *entire* Delivered Amounts during the Term to SCE and SCE shall take delivery of the same.

In addition, Seller shall dedicate and convey to SCE any and all Environmental Attributes, Capacity Attributes and Resource Adequacy Benefits generated or attributable to, the Generating Facility during the Term to SCE and SCE shall be given sole title to all such Capacity Attributes, Environmental Attributes and Resource Adequacy Benefits.

Seller shall, at its own cost, take all reasonable actions and execute all documents or instruments reasonably necessary to effectuate the use of the Capacity Attributes, Environmental Attributes and Resource Adequacy Benefits for SCE's sole benefit throughout the Term. Such actions shall include:

- (a) Cooperating with and encouraging the regional entity responsible for resource adequacy administration to certify or qualify the Initial, Intermediate and Final Net Contract Capacity, as applicable, for resource adequacy purposes;
- (b) Testing the Generating Facility in order to certify the Initial, Intermediate and Final Net Contract Capacity, as applicable, for resource adequacy purposes;
- (c) Complying with all current and future ISO tariff or other applicable provisions that address resource adequacy, including but not limited to provisions regarding performance obligations and penalties; and
- (d) Committing to SCE the full Initial, Intermediate and Final Net Contract Capacity during the applicable Term Period.

Subject to Section 6.02(c), SCE will have the exclusive right, at any time or from time-to-time during the Term, to sell, assign, convey, transfer, allocate, designate, award, report or otherwise provide any and all such Capacity Attributes, Environmental Attributes or Resource Adequacy Benefits to third parties.

SCE shall be responsible for any costs associated with SCE's accounting for or otherwise claiming Environmental Attributes, Capacity Attributes and Resource Adequacy Benefits.

Seller shall convey title to and risk of loss of all Delivered Amounts to SCE at the Delivery Point.

Subject to Section 6.02(c), from the Effective Date, Seller shall not sell any Product to any entity other than SCE, except that in the event of an Extraordinary SCE Force Majeure, Seller may, but shall not be obligated to, sell the electric energy produced by the Generating Facility to a third party but such third party sales may take place only during the period that SCE is not accepting Seller's energy.

### 3.02 Resource Adequacy Benefits.

Seller grants, pledges, assigns and otherwise commits to SCE the full Initial, Intermediate and Final Net Contract Capacity during the applicable Term Period, in order for SCE to meet its resource adequacy obligations under any Resource Adequacy Rulings.

Seller also represents, warrants and covenants to SCE that Seller:

- (a) Has not used, granted, pledged, assigned or otherwise committed; and
- (b) Will not, during the Term of this Agreement use, grant, pledge, assign or otherwise commit, any portion of the Generating Facility to meet the resource adequacy requirements of, or to confer Resource Adequacy Benefits upon, any entity other than SCE.
- 3.03 Exclusive Right to Additional Geothermal Well Products.

Subject to Section 6.02(c), neither Seller nor Seller's Affiliates may sell, or enter into an agreement to sell, any Additional Geothermal Well Products to a party other than SCE for the Term of this Agreement and any sales of Additional Geothermal Well Products to SCE shall be on terms (including energy price) substantially similar to, or no less favorable to SCE than, those set forth in this Agreement.

### 3.04 Permits and ISO Agreements.

- (a) Seller shall be responsible for causing Affiliates to obtain and maintain any and all interconnection and transmission service rights and Permits required to effect delivery of the electric energy from the Generating Facility to the Delivery Point.
- (b) Seller shall pay all Transmission Provider costs and any other charges directly caused by, associated with, or allocated to the interconnection of the Generating Facility to the Transmission Provider's electric system, and delivery of electric energy from Seller's Generating Facility at the Delivery Point.
- (c) Seller shall secure all required ISO agreements, certifications and approvals required to effect delivery of the electric energy from the Generating Facility

to the Delivery Point, including a Participating Generator Agreement and a Meter Service Agreement.

- (i) Seller's Participating Generator Agreement, Schedule 1, shall:
  - (1) List all generating units in the Generating Facility as a single aggregated unit; and
  - (2) Indicate that the electrical generating capacity from the Generating Facility is contracted to SCE under a bi-lateral agreement; and
- (ii) Seller's Meter Service Agreement, Schedule 1 shall treat all generating units in the Generating Facility as a single generating unit with a single electric energy meter.

# 3.05 Agreement Deposit.

(a) Posting the Agreement Deposit.

Seller shall post and thereafter maintain an Agreement Deposit equal to twenty dollars (\$20) for each kilowatt of Final Net Contract Capacity specified in Section 1.01(e)(i), as may be adjusted from time to time pursuant to Sections 1.01(e)(ii), Section 1.01(e)(iii), or Section 3.05(d).

One-half of the Agreement Deposit shall be posted within thirty (30) days following the Effective Date, with the remainder to be posted within thirty (30) days following CPUC Approval. Any additional Agreement Deposit to be posted in connection with a nomination to increase the Final Net Contract Capacity pursuant to Section 1.01(e)(ii) must be posted within 30 days of such Notice of such adjustment.

The Agreement Deposit shall be held by SCE as security for Seller maintaining the Generating Facility until (and including) the Start-Up Deadlines and demonstrating the Initial Net Contract Capacity, the Intermediate Net Contract Capacity and the Final Net Contract Capacity in accordance with the procedures set forth in Exhibit L by the Initial, Intermediate or Final Start-Up Deadline, as applicable. The Agreement Deposit shall be in the form of either a cash deposit or a Letter of Credit.

Any Agreement Deposit posted in cash shall bear simple interest at a rate equal to the Federal Funds Effective Rate. The calculation of any such interest shall be determined in accordance with Section 8.02(b) of this Agreement.

If Seller establishes the Agreement Deposit by means of a Letter of Credit, such Letter of Credit shall be provided substantially in the form of Exhibit N.

(b) Forfeiture of the Agreement Deposit for Failure to Fulfill Initial Start-Up Conditions by the Initial Selected Date; Extension of Start-Up Deadlines.

Subject to Seller's right to extend the Initial Start-Up Deadline as provided in this Section 3.05(b), Section 1.02, and Section 5.03 (for Force Majeure where Seller is the Claiming Party), in the event that the Initial Start-Up Conditions are not or cannot be met by the Initial Start-Up Deadline (including due to any termination of this Agreement as a result of an Event of Default by Seller occurring prior to the Initial Startup Deadline), SCE shall be entitled to retain the entire Agreement Deposit and terminate this Agreement and, subject to Section 2.06(b), neither Party shall have liability for damages for failure to deliver or purchase Product after the effective date of such termination.

Seller may elect to extend the Initial, Intermediate or Final Start-Up Deadline by paying to SCE Daily Delay Liquidated Damages in an amount equal to one percent (1%) of the Agreement Deposit per day for each day (or portion thereof) from and including the Initial, Intermediate or Final Start-Up Deadline, as applicable, to and excluding the Initial, Intermediate or Final Selected Date ("Daily Delay Liquidated Damages").

To extend a Start-Up Deadline, Seller must, at the earliest possible time, but no later than 6 a.m. on the first day of the proposed extension, provide SCE with Notice of its election to extend the Start-Up Deadline along with its estimate of the duration of the extension and its payment of Daily Delay Liquidated Damages for the full estimated Start-Up Deadline extension period.

Seller may further extend the Start-Up Deadline beyond the original Start-Up Deadline extension period subject to the advance Notice, estimation and payment terms applicable to the original Start-Up Deadline extension.

The Daily Delay Liquidated Damages payments applicable to days included in any Start-Up Deadline extension shall be nonrefundable and are in addition to and not to be considered part of the Agreement Deposit.

Seller shall 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 a Start-Up Deadline was actually extended.

In no event may Seller extend any one Start-Up Deadline for more than a total of one hundred eighty (180) days by the payment of Daily Delay Liquidated Damages.

Notwithstanding any other provision of this Agreement, SCE's retention of the full Agreement Deposit and the receipt of Daily Delay Liquidated Damages under this Section 3.05(b) (if applicable), together with SCE's rights under Section 2.06(b), shall be SCE's sole and exclusive remedy with respect to Seller's failure to satisfy the Initial Start-Up Conditions on or prior to the Initial Start-Up Deadline provided, however, that to the extent that any facts giving rise to a failure to cause the Initial Start-Up Conditions to be satisfied by the Initial Start-Up Deadline also independently give rise to a breach of any other provision of this Agreement, SCE may pursue any other remedies available to SCE under this Agreement that do not require payment of money damages in addition to SCE's retention of the full Agreement Deposit and receipt of Daily Delay Liquidated Damages pursuant to this Section 3.05(b), provided further that nothing in this Section 3.05(b) shall limit SCE's right to enforce any obligations that survive termination of this Agreement.

(c) Return of Agreement Deposit.

The Agreement Deposit shall be returned to Seller in accordance with the procedure set forth in Exhibit L in each of the following circumstances:

- (i) This Agreement is terminated in accordance with Section 2.05(a) or Section 2.05(b)(i). Otherwise,
- (ii) One third (1/3) of the Agreement Deposit shall be returned upon satisfaction of each of the Initial Start-Up Conditions by the Initial Start-Up Deadline or any extended Initial Start-Up Deadline as provided in Section 3.05(b) and demonstration of the full Initial Net Contract Capacity in accordance with the procedure set forth in Exhibit L during the Initial Capacity Test;
- (iii) One third (1/3) of the Agreement Deposit shall be returned upon satisfaction of each of the Intermediate Start-Up Conditions by the Intermediate Start-Up Deadline or any extended Intermediate Start-Up Deadline as provided in Section 3.05(b) and demonstration by such date of the full Intermediate Net Contract Capacity in accordance with the procedures set forth in Exhibit L; and
- (iv) The final one third (1/3) of the Agreement Deposit (plus any additional Agreement Deposit posted pursuant to Section 1.01(e)(ii) for an increase in Final Net Contract Capacity) shall be returned upon

satisfaction of each of the Final Start-Up Conditions by the Final Start-Up Deadline or any extended Final Start-Up Deadline as provided in Section 3.05(b) and demonstration by such date of the *full* Final Net Contract Capacity in accordance with the procedures set forth in Exhibit L.

(d) Deficient Demonstration of Net Contract Capacity;
 Partial Forfeiture and Partial Return of the Agreement Deposit.

If,

on or before the Initial Start-Up Deadline, Seller has satisfied all of the Initial Start-Up Conditions Start-Up as provided in Section 3.05(b), but is only able to demonstrate a portion of the Initial Net Contract Capacity; or

on or before the Intermediate Start-Up Deadline, Seller is only able to demonstrate a portion of the Intermediate Net Contract Capacity; or

on or before the Final Start-Up Deadline, Seller is only able to demonstrate a portion of the Final Net Contract Capacity,

(each demonstration to be made in accordance with the procedure set forth in Exhibit L )(the "Demonstrated Initial, Intermediate or Final Net Contract Capacity," as applicable)

then Seller shall only be entitled to a return of the portion of the Agreement Deposit equal to the product of twenty dollars (\$20) per kilowatt times the kilowatts of Demonstrated Initial, Intermediate or Final Net Contract Capacity (without interest), as applicable

and, Seller shall forfeit and SCE shall be entitled to retain any remaining Agreement Deposit after the demonstration of the Final Net Contract Capacity.

In addition,

the Initial, Intermediate or Final Net Contract Capacity shall be reduced to the Demonstrated Initial, Intermediate or Final Net Contract Capacity as of the first day of the Initial, Intermediate or Final Term Period, as applicable;

the Expected Net Energy Production shall be adjusted pursuant to Section 1.01(f), and

neither Party shall have any liability for failure to purchase or deliver Product associated with or attributable to capacity in excess of the Demonstrated Initial, Intermediate or Final Net Contract Capacity, as applicable ("Unincluded Capacity");

provided that, neither Seller nor Seller's Affiliates may sell, or enter into an agreement to sell, electric energy, Environmental Attributes, or Capacity Attributes associated with or attributable to Unincluded Capacity from a Generating Facility unit that is part of the Generating Facility under this Agreement to a party other than SCE for a period of two (2) years following SCE's Notice to Seller of its partial forfeiture of the Agreement Deposit pursuant to Exhibit L.

The prohibition on contracting and sale in the preceding sentence shall not apply if, prior to entering into the contract or making a sale to a party other than SCE, Seller or Seller's Affiliates provide SCE with a written offer to sell the electric energy, Environmental Attributes, and Capacity Attributes related to Unincluded Capacity to SCE on terms and conditions materially similar to or not less favorable to SCE than the terms and conditions contained in this Agreement and SCE fails to accept such offer within forty-five (45) days after SCE's receipt thereof.

- 3.06 Seller's Energy Delivery Performance Requirements.
  - (a) Seller's Energy Delivery Obligation.

Upon the commencement of the Initial Term Period, Seller shall be subject to the following electric energy delivery performance requirements and damages for failure to perform as follows. Seller's Energy Delivery Obligation for each Calculation Period shall be equal to ninety percent (90%) of the Expected Net Energy Production as calculated for that Calculation Period pursuant to Section 1.01(f).

(b) Quarterly Statements of Metered Amounts and Lost Output.

- (i) SCE shall prepare and provide to Seller within thirty (30) days after the end of each calendar quarter during each Calculation Period quarterly statements (each a "Quarterly Statement") showing the sum of Seller's Metered Amounts plus Lost Output for such completed calendar quarter, the pro rata portion of Seller's Energy Delivery Obligation for such calendar quarter and, for informational and not billing purposes, any estimated Energy Replacement Damage Amount (as calculated in accordance with Exhibit F) that has accrued for such Calculation Period as of the end of such calendar quarter. SCE's Quarterly Statement shall be accompanied by a statement of all facts and information relied upon by SCE in formulating its calculation methodologies, including annotated work papers and source data.
- (ii) Seller shall have forty-five (45) days after receipt of a Quarterly Statement to review the statement and provide Notice to SCE of any dispute Seller has with the reported Metered Amounts, Lost Output, pro rata portion of Seller's Energy Delivery Obligation or estimate of Energy Replacement Damage Amount for such Quarterly Statement. Seller's Notice shall include Seller's calculation of the Metered Amounts, Lost Output, pro rata portion of Seller's Energy Delivery Obligation or estimated Energy Replacement Damage Amount for the Calculation Period as of the end of such calendar quarter, and all facts and information relied upon by Seller in formulating its calculation methodologies and claims, including annotated work papers and source data.
- (iii) The Parties shall negotiate in good faith for a maximum of thirty (30) days to resolve any disputed portion of such Quarterly Statement and shall, as part of such good faith negotiations, promptly provide information or data relevant to the dispute as each Party may possess which is requested by the other Party.
- (c) Event of Deficient Energy Deliveries.

At the end of each Calculation Period, if the sum of Seller's Metered Amounts plus any Lost Output during the preceding Calculation Period does not equal or exceed Seller's Energy Delivery Obligation for such Calculation Period, then an "Event of Deficient Energy Deliveries" shall be deemed to have occurred.

- (d) Energy Replacement Damage Amount.
  - (i) If an Event of Deficient Energy Deliveries occurs during a Calculation Period, as determined in accordance with Section 3.06(b), the Parties

acknowledge that the damages sustained by SCE associated with Seller's failure to meet Seller's Energy Delivery Obligation for such Calculation Period would be difficult or impossible to determine, or that obtaining an adequate remedy would be unreasonably time consuming or expensive, and therefore agree that Seller shall pay SCE as liquidated damages the "Energy Replacement Damage Amount," which is intended to compensate SCE for Seller's failure to perform, irrespective of whether SCE actually purchased such replacement electric energy by reason of Seller's failure to perform.

- (ii) Within ninety (90) days of the end of the applicable Calculation Period, SCE shall calculate any Energy Replacement Damage Amount as set forth in Exhibit F, and shall provide Notice to Seller of any Energy Replacement Damage Amount owing, including a detailed explanation of, and rationale for, its calculation methodology, annotated work papers and source data; provided that, subject to Section 3.06(b)(i) above, SCE's Notice shall not include amounts that are inconsistent with previously provided Quarterly Statements.
- (iii) Seller shall have thirty (30) days after receipt of SCE's Notice to pay the entire Energy Replacement Damage Amount calculated by SCE pursuant to Exhibit F; provided, however if Seller in good faith wishes to dispute any portion of the Energy Replacement Damage Amount, Seller may either:
  - (1) Elect to utilize EDR by providing Notice of its request for EDR within ten (10) days of its receipt of SCE's calculation of the Energy Replacement Damage Amount, in accordance with Section 12.03(a)(ii); or
  - (2) Pay any undisputed portion of the Energy Replacement
    Damage Amount and provide Notice to SCE of the portion
    Seller disputes along with a detailed explanation of, and
    rationale for, Seller's calculation methodology, annotated work
    papers and source data within the aforementioned thirty (30)
    day payment period.

If Seller has selected the option under Section 3.06(d)(iii)(2), the Parties shall negotiate in good faith to resolve any disputed portion of the Energy Replacement Damage Amount and shall, as part of such good faith negotiations, promptly provide information or data relevant to the dispute as each Party may possess which is requested by the other Party.

If the Parties are unable to resolve a dispute regarding any Energy Replacement Damage Amount within thirty (30) days after the sending of a Notice of dispute by Seller, either Party may submit the dispute to mediation or ADR, as provided in Article Twelve.

(e) Continuing Obligations of Seller.

Notwithstanding any payment of an Energy Replacement Damage Amount, an ongoing EDR or ADR proceeding or any dispute regarding a Quarterly Statement, Seller shall remain obligated to convey all electric energy generated by the Generating Facility and all Environmental Attributes, Resource Adequacy and Capacity Attributes to SCE during the Term, as provided in Section 3.01.

- 3.07 Metering, Communications and Telemetry.
  - (a) ISO Approved Meter.

Seller shall:

- (i) Execute a Meter Service Agreement with the ISO, pursuant to the ISO Tariff; and
- (ii) Install and pay for any and all metering services and related equipment required by SCE, the ISO, and the Transmission Provider.

Such equipment shall include, but not be limited to, an ISO-Approved revenue quality meter, ISO approved data processing gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting all electric energy, in real time, produced by the applicable Generating Facility units, less Station Use for such units (collectively the "ISO-Approved Meter").

SCE requires a separate ISO Approved Meter for the Initial Generating Facility Units, the Intermediate Generating Facility Units and the Final Generating Facility Units. Each of the three required ISO Approved Meters must be installed and functioning by the Initial Start-Up Deadline, as provided in Section 2.03(a)(iii).

- (b) Access to ISO-Approved Meters.
  - (i) Subject to Section 3.16, Seller shall grant SCE reasonable access to the meters for meter readings and any purpose necessary to effectuate this Agreement.

Seller shall promptly provide SCE access to all meter data and data acquisition services both in real time, and at later times as SCE may reasonably request.

(ii) Prior to the Initial Term Period, Seller shall provide instructions to the ISO granting authorizations or other documentation sufficient to provide SCE with access to the ISO-Approved Meters and to Seller's settlement data on OMAR.

Seller shall promptly inform SCE of meter quantity changes after becoming aware of, or being informed of, any such changes by the ISO.

- (c) ISO-Approved Meter Maintenance.
  - (i) Seller shall test and calibrate the ISO-Approved Meters, as necessary, but in no event shall the period between testing and calibration dates be greater than twenty-four (24) months.
  - (ii) Seller shall replace the ISO-Approved Meter battery at least once every thirty-six (36) months.
    - Notwithstanding the foregoing, in the event any ISO-Approved Meter battery fails, Seller shall replace such battery within one (1) day of its failure.
  - (iii) Seller shall use ISO-certified test and calibration technicians to perform any work associated with the ISO Approved Meter.
  - (iv) Seller shall inform SCE of test and calibration dates, provide SCE with access to observe and witness such testing and calibration, and provide SCE certified results of tests and calibrations within thirty (30) days after completion.
- (d) Action by Affiliates of Seller.

Seller may fulfill its obligations to take any actions required by this Section 3.07 by causing an Affiliate of Seller to take such action as required by this Section 3.07.

### 3.08 Site Control.

- (a) At all times on and after the Effective Date, Owners shall have Site Control, which means that each Owner shall either:
  - (i) Own the portion of the Site attributable to its electric energy generating facility project and related Generating Facility units (each a "Project");
  - (ii) Be the lessee of the portion of the Site attributable to its Project under the Leases (or the Lease governing the portion of the Site attributable to its Project) or any other lease acceptable to SCE in its reasonable discretion;
  - (iii) Be the holder of a right-of-way grant or similar instrument with respect to the portion of the Site attributable to its Project; or
  - (iv) Be the managing partner or other person or entity authorized to act in all matters relating to the control and Operation of the portion of the Site attributable to its Project and the portion of the Generating Facility attributable to its Project.
- (b) Seller shall provide SCE with prompt Notice of any change in the status of Owner's Site Control.
- (c) Seller shall provide SCE with Notice of the status of Owner's Site Control prior to the Effective Date.

### 3.09 Site Location.

This Agreement is specific to the Site as the Site is defined in Exhibit A.

- 3.10 Operation and Record Keeping.
  - (a) Seller shall cause its Affiliates to Operate the Generating Facility in accordance with Prudent Electrical Practices.
  - (b) Commencing upon the date on which all ISO agreements have been executed by Seller and continuing throughout the Term of this Agreement, Seller shall comply with all provisions of the ISO Tariff.
  - (c) Prior to commencement of the Initial Term Period:
    - (i) Seller shall demonstrate to SCE's reasonable satisfaction that Seller has executed all necessary Transmission Provider and ISO agreements;

- (ii) Seller shall provide to SCE the DLF and TLF, as applicable, used by the Transmission Provider in the administration of the transmission service agreement for the Generating Facility;
- (iii) Seller shall demonstrate to SCE's reasonable satisfaction that Seller has complied with its obligations with respect to the ISO Approved Meter(s) as set forth in Section 3.07(a); and
- (iv) Seller shall have furnished to SCE all insurance documents required under Section 10.11(b).
- (d) Seller shall keep a daily operations log for the Generating Facility that shall include information on availability, maintenance outages, circuit breaker trip operations requiring a manual reset, and any significant events related to the Operation of the Generating Facility, including, but not limited to:
  - (i) Real and reactive power production;
  - (ii) Changes in Operating status;
  - (iii) Protective apparatus operations; and
  - (iv) Any unusual conditions found during inspections.

Changes in generator output setting shall also be logged for Seller's generators) if they are "block-loaded" to a specific kW capacity.

In addition, Seller shall maintain complete records of the Generating Facility's fuel consumption if a biomass or landfill generating facility, steam consumption if a geothermal generating facility, maintenance performed, kilowatts, kilowats and kilowatt-hours generated and settings or adjustments of the generator control equipment and protective devices.

Such information shall be provided or made available to SCE within twenty (20) days after any Notice.

(e) Seller shall keep a maintenance log for the Generating Facility that shall include information on power production, fuel consumption and efficiency (if applicable), availability, maintenance (both breakdown and preventative) performed, outages, changes in operating status, inspections, manufacturer recommended services and replacement, electrical characteristics of the generators, control settings or adjustments of equipment and protective devices.

Information maintained pursuant to this Section 3.10(e) shall be kept for seven (7) years from the time it was created and shall be provided or made available to SCE within twenty (20) days after any Notice.

(f) Upon Notice from SCE, Seller shall promptly curtail the production of the Generating Facility. Such Notice shall be provided to Seller only in the event SCE, as Seller's Scheduling Coordinator, is instructed by the ISO to curtail Seller's Generating Facility in order to respond to an ISO Forecasted Over-Generation Condition, an ISO Declared Over-Generation Condition or an Emergency. SCE shall provide Seller a copy of any written curtailment instruction.

Notwithstanding the foregoing, except as may be required in order to respond to any Emergency, SCE shall:

- (i) Limit the duration of any curtailment order to a maximum of fifteen (15) consecutive hours;
- (ii) Not issue more than one curtailment order during any twenty four (24) hour period; and
- (iii) Limit the curtailment duration in any Term Year to a maximum of two hundred (200) hours.
- (g) At least thirty (30) days prior to the commencement of the Initial Term Period, Seller shall provide SCE with all facility and metering information as may be requested by SCE, including, but not limited to, the following:
  - (i) For each ISO Approved Meter:
    - (1) Generating Station/Unit ID;
    - (2) ISO Global Resource ID;
    - (3) ISO Meter Device ID;
    - (4) Password;
    - (5) Data path (network (ECN) or modem);
    - (6) If modem, phone number;
    - (7) Copy of meter certification;
    - (8) List of any ISO metering exemptions (if any);

- (9) Description of any compensation calculations such as transformer losses and line losses.
- (ii) For the Generating Facility:
  - (1) Utility transmission/distribution one line diagram;
  - (2) Physical location, address or descriptive identification;
  - (3) Latitude and longitude;
  - (4) Telephone number on site;
  - (5) Telephone number of control room;
  - (6) Telephone number for operational issues;
  - (7) Telephone number for administrative issues.
- (h) Seller shall collect the measurement data and perform the engineering calculations specified below in one Microsoft Excel Workbook (the "Workbook") provided in a form and naming convention approved by SCE. The Workbook shall be designed to accommodate data and calculation results for all hours of all Term Years. Seller shall provide SCE with an updated version of the Workbook by the last month in each Term Year.
  - (i) Data Collection.

Seller shall record average hourly measurements for the following Generating Facility Operating parameters and geothermal fluid ("geofluid") working conditions.

Each parameter shall be input into a dedicated worksheet in the Workbook which shall be arranged with one column for each Term Year and one row for each hour.

- (1) Ambient Weather Conditions.
  - (A) Wind speed in miles per hour;
  - (B) Wind direction in degrees measured clockwise from north;
  - (C) Wet bulb temperature in degrees Fahrenheit;
  - (D) Dry bulb temperature in degrees Fahrenheit; and
  - (E) Barometric pressure in inches Hga.

- (2) Generating Facility Operating Data.
  - (A) Metered Amounts in kWh;
  - (B) Sum of all high pressure geothermal steam ("geosteam" flows entering the Generating Facility in pounds per hour;
  - (C) Sum of all low pressure geosteam flows entering the Generating Facility in pounds per hour;
  - (D) Average high pressure geosteam temperature entering the Generating Facility in degrees Fahrenheit;
  - (E) Average low pressure geosteam temperature entering the Generating Facility in degrees Fahrenheit;
  - (F) Average high pressure geosteam pressure entering the Generating Facility in psia;
  - (G) Average low pressure geosteam pressure entering the Generating Facility in psia;
  - (H) Average temperature of the lowest pressure steam separator drain fluid in degrees Fahrenheit;
  - (I) Average geofluid temperature exiting the power block for re-injection in degrees Fahrenheit;
  - (J) Average geofluid pressure exiting the power block for re-injection in psia; and
  - (K) Average steam turbine condenser pressure in psia.
- (i) Seller shall provide SCE with copies of any annual reports (excluding interim drafts thereof) prepared to evaluate wellhead power availability and, as they become available, any long-term evaluations and assessments (excluding interim drafts thereof) of the geothermal resource utilized by the Generating Facility. Each such long-term evaluation and assessment shall reflect changes since the long-term evaluation and assessment most recently provided to SCE by Seller under this Section (i).
- (j) Seller may fulfill its obligation to take any action required under this Section 3.10 by causing an Affiliate of Seller to take such action as required by this Section 3.10.
- 3.11 Obtaining Scheduling Coordinator Services.

- (a) Seller shall comply with all applicable ISO Tariff procedures, protocol, rules and testing required for SCE to submit SC Schedules for the electric energy produced by the Generating Facility.
- (b) Cooperation with SCE as Scheduling Coordinator.
  - (i) At least thirty (30) days prior to commencement of the Initial Term Period, Seller shall take all actions and execute and deliver to SCE all documents necessary to authorize or designate SCE as Seller's Scheduling Coordinator throughout the Term of this Agreement.
  - (ii) Seller shall not authorize or designate any other party to act as Scheduling Coordinator, nor shall Seller perform, for its own benefit, the duties of Scheduling Coordinator.
- (c) Replacement of Scheduling Coordinator.

At least forty five (45) days prior to the end of the Term, or as soon as practicable before the date of any termination of this Agreement prior the end of the Term, Seller shall take all actions necessary to terminate the designation of SCE as Seller's Scheduling Coordinator. These actions include, but shall not be limited to:

- (i) Seller shall submit to the ISO a designation of a new Scheduling Coordinator for Seller to replace SCE;
- (ii) Seller shall cause the newly designated Scheduling Coordinator to submit a letter to the ISO accepting the designation; and
- (iii) Seller shall inform SCE of the last date on which SCE will be Seller's Scheduling Coordinator.

# 3.12 Forecasting.

Seller shall Forecast or cause to be Forecasted electric energy, in MWhs, in accordance with the provisions of Exhibit D.

### 3.13 Scheduled Outages.

(a) No later than five (5) Business Days prior to the date required by the ISO for delivery of schedules for planned outages (which such ISO required delivery dates are currently January 15th, April 15th, July 15th and October 15th of each calendar year during the Term, and at least sixty (60) days prior to Initial Synchronization, Seller shall submit to SCE its schedule of proposed planned outages ("Outage Schedule") for the subsequent twenty four-month period

using an SCE-provided web-based system ("Web Client"). If Seller fails to submit an Outage Schedule for any period as required under this Section 3.14, then Seller shall not be permitted to schedule or have any planned outages with respect to such period. SCE shall provide Notice to Seller in the event that the ISO changes the ISO required delivery dates for schedules for planned outages. In addition, no later than thirty (30) days prior to October 15 of each year, Seller shall submit to SCE its estimate of its planned outages for the following year.

- (b) Seller shall provide the following information for each proposed planned outage:
  - (i) Start date and time;
  - (ii) End date and time; and
  - (iii) Capacity expected to be online, in MW, during the planned outage.
- (c) Within twenty (20) Business Days after SCE's receipt of an Outage Schedule, SCE shall notify Seller in writing of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Electrical Practices, accommodate SCE's requests regarding the timing of any planned outage.
- (d) Seller shall cooperate with SCE to arrange and coordinate all Outage Schedules with the ISO.
- (e) In the event a condition occurs at the Generating Facility which causes Seller to revise its planned outages, Seller shall provide Notice to SCE, using the Web Client, of such change (including, an estimate of the length of such planned outage) as soon as practicable after the condition causing the change becomes known to Seller.
- (f) Seller shall promptly prepare and provide to SCE upon request, using the Web Client, all reports of actual or forecasted outages that SCE may reasonably require for the purpose of enabling SCE to comply with Section 761.3 of the California Public Utilities Code or any Applicable Law mandating the reporting by investor owned utilities of expected or experienced outages by electric energy generating facilities under contract to supply electric energy.

3.14 Progress Reporting Toward Meeting Milestone Schedule.

Seller shall use commercially reasonable efforts to meet the Milestone Schedule and avoid or minimize any delays in meeting such schedule. Seller shall provide a monthly written report of its progress toward meeting the Milestone Schedule using the procedures set forth in Exhibit H.

Seller shall include in such report a list of all letters, notices, applications, approvals, authorizations, filings, permits and licenses relating to any Transmission Provider, Governmental Authority or the ISO and shall provide any such documents as may be reasonably requested on Notice from SCE.

In addition, Seller shall advise SCE as soon as reasonably practicable of any problems or issues of which it is aware which may materially impact its ability to meet the Milestone Schedule.

3.15 Provision of Information.

Seller shall promptly provide to SCE copies of:

- (a) All agreements with providers of distribution, transmission or interconnection services for the Generating Facility and all amendments thereto, which may be redacted by Seller to eliminate any portions reasonably believed by Seller to contain confidential information;
- (b) All applications and approvals relating to CEC Certification and Verification and any other permits;
- (c) All final and revised copies of reports, studies and analyses furnished by the ISO, Seller's Transmission Consultant, or any Transmission Provider, and any ISO correspondence related thereto, concerning the transmission of electric energy from the Generating Facility to the Delivery Point; and
- (d) All notifications of adjustments in the DLF and TLF, as applicable, used by the Transmission Provider in the administration of the transmission service agreement for the Generating Facility within thirty (30) days of receiving such notification from the Transmission Provider.

# 3.16 SCE's Access Rights.

Upon reasonable prior Notice to Seller, and subject to the access policies of which Edison has been made aware that are mandated by any third party which may own any portion of the Site to which SCE seeks access, SCE shall have the right of ingress and egress to examine the Site and Generating Facility during regular business hours for any purpose reasonably connected with this Agreement or the exercise of any and

all rights of SCE under Applicable Law or its tariff schedules and rules on file with the CPUC.

During any such examination, SCE shall comply with all Site safety rules of which Seller has made SCE aware (including, but not limited to, the laws, rules and regulations of the United States government, the State of California and any other bodies, agencies and departments having jurisdiction over the Site) during such examination, and SCE shall indemnify Seller for any claims arising directly from the conduct of SCE, in violation of any rules of which SCE has been made aware, in accordance with Section 10.03.

3.17 Obtaining and Maintaining CEC Certification and Verification.

Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification throughout the entirety of the Term, *provided*:

- (a) This obligation shall not apply to the extent that Seller is unable to obtain or maintain the CEC Certification and Verification using commercially reasonable efforts because of (i) a change in RPS Legislation occurring after the Effective Date, or (ii) a change in Applicable Laws directly impacting CEC Certification and Verification occurring after the Effective Date; and
- (b) The term "commercially reasonable efforts" in subsection (a) above shall not require Seller to pay or incur more than fifty thousand dollars (\$50,000) per year to obtain and maintain such CEC Certification and Verification.
- 3.18 Notice of Cessation or Termination of Service Agreements.

Seller shall provide Notice to SCE within three (3) Business Days after termination of, or cessation of service under, any agreement necessary for the interconnection to the Transmission Provider's electric system or transmission of the electric energy to the Delivery Point, for Forecasting or delivering to SCE, or for metering the Metered Amounts.

- 3.19 Lost Output Report.
  - (a) Monthly Report; SCE Review.

Commencing on the Initial Selected Date and continuing throughout the Term, Seller shall prepare and provide to SCE a Lost Output Report by the tenth (10th) Business Day of each month in accordance with Exhibit M.

SCE shall have thirty (30) days after receipt of Seller's monthly Lost Output Report to review such report.

Upon SCE's request, Seller shall promptly provide to SCE any additional data and supporting documentation necessary for SCE to audit and verify any matters in the Lost Output Report.

(b) Disputes of Lost Output.

If SCE disputes the calculations in Seller's Lost Output Report, it shall provide Notice to Seller within thirty (30) days after receipt of Seller's Lost Output Report and include SCE's calculations and other data supporting its position.

The Parties shall negotiate in good faith to resolve any dispute. If the Parties are unable to resolve a dispute within thirty (30) days after SCE's giving the dispute Notice, either Party may submit the dispute to mediation and/or arbitration as provided in Article Twelve.

Seller shall have no right to claim any Lost Output for any month that was not identified in the original Lost Output Report for that month; *provided that*, Seller may supplement the amount of Lost Output claimed ("Supplemental Lost Output") for the month with a supplemental Lost Output Report ("Supplemental Lost Output Report") if Seller can demonstrate that it neither knew nor could it have known through the exercise of reasonable diligence about the Supplemental Lost Output within the foregoing thirty (30) day period and Seller provides the Supplemental Lost Output Report within ten (10) Business Days after learning the facts which provide the basis for the Supplemental Lost Output claim.

(c) Energy Replacement Damage Amount Calculation.

The Lost Output amount that shall be used in the Energy Replacement Damage Amount calculation, set forth in Exhibit F, shall be the amount calculated after the end of the last month of the Calculation Period.

- 3.20 ISO Charges and ISO Sanctions.
  - (a) Upon commencement of the Initial Term Period and continuing throughout the Term, Seller shall be responsible for all ISO Charges incurred as a result of any Energy Deviations that exceed the Performance Tolerance Band (as defined in Exhibit O) and all ISO Sanctions pursuant to Exhibit O.
  - (b) Seller shall make payments for ISO Charges and ISO Sanctions in accordance with those provisions set forth in Exhibit O.

- (c) If Seller disputes any ISO Charge or ISO Sanction, Seller shall provide Notice of such dispute within five (5) Business Days of becoming aware of such ISO Charge or ISO Sanction.
- 3.21 Seller Remains Liable under this Agreement.

Nothing in this Agreement shall prohibit Seller from contracting with third parties, including its Affiliates, for the provision of services related to the Operation of the Generating Facility; provided however, Seller acknowledges and agrees that Seller is and shall remain liable for the performance of all of Seller's duties and obligations set forth in this Agreement, including each obligation set forth in this Article Three.

\*\*\* End of ARTICLE THREE \*\*\*

### ARTICLE FOUR. SCE'S OBLIGATIONS

# 4.01 Obligation to Pay.

For Seller's *full* compensation under this Agreement, SCE shall make monthly Energy Payments to Seller during the Term, calculated in the manner described in Section 4.02.

SCE shall not be obligated to pay Seller for any electric energy under this Agreement prior to the commencement of the Term (*provided*, *however*, that SCE will continue to purchase Energy and Capacity under PPA Nos. 3008, 3029 and 3030 in accordance with their terms, until such PPAs terminate during the Term) or any electric energy that is not or cannot be Scheduled as a result of any circumstance, including:

- (a) An outage of the Generating Facility;
- (b) A Force Majeure under Article Five;
- (c) A reduction or curtailment of Scheduled Amounts ordered by the ISO; or
- (d) A reduction or curtailment of Scheduled Amounts pursuant to the terms of an agreement with a Transmission Provider.

# 4.02 Energy Payment Calculations.

For the purpose of calculating monthly Energy Payments, Scheduled Amounts shall be time-differentiated according to the time period and season of delivery ("TOD Periods") and weighted by the Energy Payment Allocation Factors set forth in Exhibit K.

As set forth in Exhibit K, TOD Periods for the winter season shall be mid-peak, off-peak and super off-peak and TOD Periods for the summer season shall be on-peak, mid-peak and off-peak.

Monthly Energy Payments shall equal the sum of the monthly TOD Period Energy Payments for all TOD Periods in the month. Each monthly TOD Period Energy Payment shall be calculated pursuant to the following formula, where "n" is the TOD Period being calculated:

# $TOD PERIOD_n ENERGY PAYMENT = A x B x C$

#### Where:

- A = Energy Price specified in Section 1.04 or Section 1.06, as applicable, in \$/kWh (i.e., \$89.97/MWh/1000).
- B = Energy Payment Allocation Factor for the TOD Period being calculated.
- C = The sum of Scheduled Amounts in all hours for the TOD Period being calculated in kWh.

# 4.03 Payments.

(a) Payment and Payment Adjustments.

SCE shall, no later than thirty (30) days after the end of each calendar month during Initial Synchronization and during the Term (or the last day of the month if the month is February), or the last Business Day of the month if such 30<sup>th</sup> day (or 28<sup>th</sup> or 29<sup>th</sup> day for February) is a weekend day or holiday, do each of the following:

- (i) Send a statement to Seller showing:
  - (1) The Scheduled Amounts for each TOD Period during the month for which the payment is being made;
  - (2) A calculation of the amount payable to Seller for the month pursuant to Section 4.02;
  - (3) The ISO Charges and ISO Sanctions pursuant to Exhibit O, which will be available approximately one hundred twenty (120) days following the last day of a calendar month (for electrical deliveries during that month) or thirty (30) days after the ISO final settlement data is available to SCE for such deliveries, whichever is sooner; and
  - (4) A calculation of the net amount due Seller; and
- (ii) Send to Seller, via wire transfer, SCE's payment of said net amount, plus simple interest at the Interest Rate for each day or portion thereof that the payment is wire-transferred later than such date.

(b) Adjustments for Meter Inaccuracy.

In the event SCE determines that a calculation of Metered Amounts for any purpose hereunder, ISO Charges or ISO Sanctions is incorrect as a result of inaccurate meters, the correction of data by the ISO in OMAR or a recalculation of ISO Charges or ISO Sanctions by the ISO,

SCE shall promptly recompute Metered Amounts, ISO Charges or ISO Sanctions for the period of the inaccuracy based upon an adjustment of inaccurate meter readings in accordance with the ISO Tariff.

SCE shall also promptly recompute any payment affected by any meter or ISO Charge or ISO Sanction inaccuracy. Any amount due from SCE to Seller, or Seller to SCE, as the case may be, shall be made as an adjustment to the next monthly payment statement that is calculated after SCE's recomputation using corrected measurements.

In the event that the recomputation results in a net amount owed to SCE after netting any amounts owing to Seller as shown on the next monthly statement, any such additional amount still owing to SCE may, in SCE's discretion either be netted against amounts owed to Seller in any subsequent monthly payments to Seller or invoiced to Seller, in which case Seller must pay the amount owing to SCE within twenty (20) days after receipt of such invoice.

SCE may make payment adjustments arising from a recalculation of ISO Charges or ISO Sanctions or as a result of inaccurate meters after the end of the Term provided that the Parties shall be deemed to have waived any such payment adjustments which are not communicated as provided in this Section 4.03(b) within twenty-eight (28) months from the end of the Term.

Adjustment payments for meter inaccuracy shall not bear interest.

(c) Netting Rights.

Each Party reserves the right to net amounts that would otherwise be due to the other Party under this Agreement in payment of any amounts owing and unpaid by such other Party to such reserving Party under this Agreement, subject to the limitations on netting rights provided in Section 12.03(a)(iv)(b). Nothing in this Section 4.03 shall limit either Party's rights under applicable tariffs.

(d) Waiver.

Except as provided in Section 4.03(b) and as otherwise provided in this Section 4.03(d), if within forty-five (45) days after receipt of SCE's payment statement, Seller does not give Notice to SCE of an error,

then Seller shall be deemed to have waived any error in SCE's payment statement, computation and payment, and the payment statement shall be conclusively deemed correct and complete;

provided, however, that if an error is identified by Seller as a result of settlement, audit or other information provided to Seller by the ISO after the expiration of the original forty-five (45) day period, Seller shall have an additional forty-five (45) days from the date on which it receives the information from the ISO in which to give Notice to SCE of the error identified by such settlement, audit or other information.

If Seller identifies an error in Seller's favor and SCE agrees that the identified error occurred, SCE shall reimburse Seller for the amount of the underpayment caused by the error and apply the additional payment to the next monthly payment statement that is calculated.

If Seller identifies an error in SCE's favor and SCE agrees that the identified error occurred, SCE may net the amount of overpayment caused by the error against amounts otherwise owed to Seller in connection with the next monthly payment statement that is calculated.

Late payments to Seller resulting from SCE's errors, or overpayments to Seller by SCE, shall bear simple interest at the Interest Rate from the date due (or, in the case of overpayments by SCE, commencing five (5) Business Days from the date SCE provides Notice of such overpayments to Seller) until paid;

provided, however, that changes made because of settlement, audit or other information provided by the ISO and not available to SCE when it rendered its original payment statement shall not bear interest.

In the event that the recomputation results in a net amount still owing to SCE after netting the amounts owed to SCE against any amounts owed to Seller in the payment statement, as described above, then, SCE may, in its discretion, either net this net remaining amount owed to SCE against amounts owed to Seller in any subsequent monthly payment statements to Seller or invoice Seller for such amount, in which case Seller must pay the amount owing to SCE within twenty (20) days after receipt of such invoice.

In the event that either Party disputes in good faith a payment or claimed errors in a payment statement, such Party may elect to utilize EDR by

providing a Notice of request for EDR within ten (10) days after receipt of the disputed statement, in accordance with Section 12.03(a)(ii).

4.04 Scheduling Coordinator.

Upon commencement of the Initial Term Period, SCE shall act as Scheduling Coordinator (without receiving remuneration for such services other than as set forth in Section 4.05) on behalf of Seller, and shall submit bids and Schedules to the ISO in accordance with ISO Tariff protocols.

- (a) Duties as Scheduling Coordinator.
  - (i) SCE shall submit all notices and updates required under the ISO Tariff regarding the Generating Facility's status to the ISO.
  - (ii) In the event SCE believes that any ISO Charge or ISO Sanction is incorrect and disputable under the ISO Tariff or upon Notice by Seller of any dispute of an ISO Charge or ISO Sanction, SCE shall dispute any such ISO Charge or ISO Sanction in accordance with the procedures set forth under the ISO Tariff.
- (b) Termination of Scheduling Coordinator.

SCE shall submit a letter to the ISO identifying the date on which SCE resigns as Seller's Scheduling Coordinator, on the first to occur of either:

- (i) Thirty (30) days prior to the end of the Term; or
- (ii) The date of any early termination of this Agreement.

#### 4.05 ISO Charges.

Except as set forth in Section 3.20 and Exhibit O, SCE shall:

- (a) Be responsible for ISO Charges; and
- (b) Receive all ISO revenues (including credits and other payments) incurred or received as a result of providing Scheduling Coordinator services or attributable to generation from the Generating Facility, including costs and revenues associated with ISO dispatches.

\*\*\* End of ARTICLE FOUR \*\*\*

### ARTICLE FIVE. FORCE MAJEURE

5.01 No Default for Force Majeure.

Neither Party shall be considered to be in default in the performance of any of its obligations set forth in this Agreement; except for obligations to pay money, when and to the extent failure of performance is caused by Force Majeure.

5.02 Requirements Applicable to the Claiming Party.

If a Party, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due under this Agreement, that Party (the "Claiming Party"), shall be excused from whatever performance is affected by the Force Majeure to the extent so affected.

In order to be excused from its performance obligations hereunder by reason of Force Majeure:

- (a) The Claiming Party, within fourteen (14) days after the initial occurrence of the claimed Force Majeure, must give the other Party Notice describing the particulars of the occurrence; and
- (b) The Claiming Party must provide timely evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement.

The suspension of the Claiming Party's performance due to Force Majeure shall be of no greater scope and of no longer duration than is required by the Force Majeure.

In addition, the Claiming Party shall use commercially reasonable and diligent efforts to remedy its inability to perform.

This section shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Claiming Party, are contrary to its interest.

It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be at the sole discretion of the Claiming Party.

When the Claiming Party is able to resume performance of its obligations under this Agreement, the Claiming Party shall give the other Party prompt Notice to that effect.

# 5.03 Start-Up Deadline Extension.

If Force Majeure occurs prior to the Initial, Intermediate or Final Start-Up Deadlines which prevents Seller from satisfying the Initial, Intermediate or Final Start-Up Conditions or any of the other conditions precedent to the commencement of the Initial Term Period, the Intermediate Term Period or the Final Term Period, as applicable, *then* the applicable Start-Up Deadline shall, subject to Seller's compliance with its obligations as the Claiming Party under Section 5.02, be extended on a day-for-day basis for the duration of the Force Majeure.

#### 5.04 Termination.

Either Party may terminate this Agreement on Notice, which shall be effective five (5) Business Days after such Notice is provided, in the event of Force Majeure which materially and adversely affects the operations of such Party and extends for more than three hundred sixty-five (365) consecutive days ("One-Year Force Majeure Period"); provided that if the Claiming Party can demonstrate to the reasonable satisfaction of the other Party, at least one hundred and eighty (180) days before the expiration of the One Year Force Majeure Period, that the Claiming Party has a plan to remedy and terminate the Force Majeure event within one hundred eighty (180) consecutive days following the expiration of the One-Year Force Majeure Period, and the Claiming Party has, in the reasonable determination of the other Party, been making commercially reasonable efforts to comply with its plan throughout the Force Majeure event, then neither Party shall have the right to terminate this Agreement under this Section 5.04 unless the Claiming Party fails to remedy and terminate the Force Majeure event within the one hundred and eighty (180) day period following expiration of the One Year Force Majeure Period.

\*\*\* End of ARTICLE FIVE \*\*\*

#### ARTICLE SIX. EVENTS OF DEFAULT: REMEDIES

6.01 Events of Default.

An "Event of Default" shall mean, with respect to a Defaulting Party, the occurrence of any of the following:

- (a) 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, if:
  - (i) Such misrepresentation or breach of warranty is not remedied within five (5) Business Days after Notice; or
  - (ii) Such inaccuracy is not capable of a cure, but the non-breaching Party's damages resulting from such inaccuracy can reasonably be ascertained and the payment of such damages is not made within ten (10) Business Days after a Notice of such damages is provided by the non-breaching Party to the breaching Party;

provided that, any breach of Seller's representation and warranty under Section 10.02(d) deemed to be made after the Effective Date shall constitute an Event of Default only under the circumstances set forth in Section 6.01(h) below.

(b) The failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default or to the extent excused by a Force Majeure) if such failure is not remedied within thirty (30) days after Notice of such failure (or such shorter period as may be specified below), which Notice sets forth in reasonable detail the nature of the failure;

provided that, if such failure is not reasonably capable of being cured within the thirty (30) day cure period specified above, the Party shall have such additional time (not exceeding an additional one hundred twenty (120) days) as is reasonably necessary to cure such failure, so long as such Party promptly commences and diligently pursues such cure;

- (c) A Party fails to:
  - (i) make when due any payment in a material amount (including not making when due any material portion of a payment) required under this Agreement; or
  - (ii) post and maintain the Agreement Deposit, pursuant to Section 3.05;

- and any such failure under Section 6.01(c)(i) and Section 6.01(c)(ii) is not cured within five (5) Business Days after Notice of such failure;
- (d) The failure of such Party to satisfy the creditworthiness and collateral requirements in Article Eight and such failure is not cured within ten (10) Business Days after Notice of such failure;
- (e) Such Party 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 transfere entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- (f) With respect to Seller's Guarantor, if applicable:
  - (i) If any representation or warranty made by a Guarantor in connection with this Agreement 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 and the misrepresentation or breach of warranty is not remedied within five (5) Business Days after Notice;
  - (ii) The failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after Notice;
  - (iii) A Guarantor becomes Bankrupt;
  - (iv) The failure of a Guarantor's Guaranty Agreement to SCE to be in full force and effect for purposes of this Agreement (other than in accordance with its terms);
  - (v) A Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of any Guaranty Agreement given to SCE;
  - (vi) The occurrence and continuation of a default, event of default or other similar condition or event with respect to Guarantor under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in the aggregate amount of not less than the Cross Default Amount, which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable; or

- (vii) The occurrence and continuation of a default, event of default or other similar condition or event with respect to Guarantor under one or more agreements or instruments, individually or collectively, in making on the due date therefore one or more payments, individually or collectively, in the aggregate amount of not less than the Cross-Default Amount.
- (g) With respect to Seller, if at any time during the Term:
  - (i) Owners do not own the Generating Facility or otherwise have the authority over the Generating Facility as required in Section 3.08(a);
  - (ii)Owner has not cured a failure with respect to Section 3.08(a) within the earlier of (a) thirty (30) days of the occurrence of an event which results in such failure and which is or results in a material adverse change in Owner's ability to own, or in the ability of Affiliates of Seller to operate, the Generating Facility on the Site, (b) thirty (30) days after providing the Notice in accordance with Section 3.08(b) or (c) ninety (90) days after the occurrence of the event which results in such failure but which is not and does not result in a material adverse change in Owner's ability to own, or in the ability of Affiliates of Seller to operate, the Generating Facility on the Site; provided however, Owner shall not be deemed to have lost Site Control solely because Owner has been temporarily ordered off of, or otherwise denied access to, the Site by the United States Navy (a "Forced Withdrawal") but can nevertheless during such Forced Withdrawal, cause an Affiliate of Seller operate the Generating Facility remotely. If during any Forced Withdrawal, the Generating Facility cannot be operated remotely, such inability to either access the Site or operate the Site remotely shall not be considered a loss of Site Control unless and until it persists for more than 365 consecutive days;
  - (iii) Seller fails to provide SCE with evidence that the indebtedness incurred with respect to any Restricted Financing has received a credit rating of "B" (or the equivalent) or better from S&P or Moody's at the time of incurrence of such Restricted Financing, provided that, if Seller has previously provided a credit rating to SCE hereunder with respect to a Restricted Financing, Seller must, to avoid an Event of Default hereunder, provide to SCE a credit rating from the same credit rating agency (i.e., S&P or Moody's) for any subsequent Restricted Financing.
  - (iv) The Metered Amounts plus Lost Output in any consecutive six (6) month period are not at least ten percent (10%) of the Expected Initial,

Intermediate or Final Annual Net Energy Production, as applicable, set forth in Section 1.01(f) and Seller fails to demonstrate to SCE's reasonable satisfaction, within ten (10) Business Days after Notice from SCE, a legitimate reason for such failure;

- (v) The hourly average Metered Amounts in any twenty-four (24) hour interval, in kWh/hr, exceeds one hundred fifteen percent (115%) of the Initial (during the Initial Term Period), Intermediate (during the Intermediate Term Period) or Final (during the Final Term Period) Net Contract Capacity as set forth in Section 1.01(e), as amended pursuant to this Agreement, (an "Event of Excess Deliveries"), without the prior written consent of SCE, and within ten (10) Business Days after Notice, Seller fails to demonstrate to SCE's satisfaction that it has identified the reason that the Event of Excess Deliveries occurred and that it has or is employing best efforts to ensure that no additional Events of Excess Deliveries will occur during the Term;
- (vi) Seller intentionally or knowingly delivers, or attempts to deliver, at the Delivery Point for sale under this Agreement electric energy that was not in fact generated by the Generating Facility;
- (vii) Seller removes from the Site equipment upon which the Net Contract Capacity has been based, except for the purposes of modification, replacement, refurbishment, repair or maintenance, and such Site equipment is not returned to the Site within five (5) Business Days after Notice from SCE;
- (viii) The Generating Facility consists of an ERR type(s) different than that specified in Section 1.01(b);
- (ix) The Generating Facility fails to qualify as an ERR, or any electrical output from the Generating Facility sold or to be sold to SCE hereunder fails to qualify as output from an ERR; or
- (x) The Generating Facility fails to qualify as a QF as required by Section 10.02(d)(iv);
  - provided, however, that an Event of Default shall not have occurred under Section 6.01(g)(viii), Section 6.01(g)(ix) or Section 6.01(g)(x) if the failure to qualify results from an amendment or modification after the Effective Date of:
  - (1) The RPS Legislation; or

- (2) Other Applicable Laws directly precluding the Generating Facility from being classified as an ERR or QF or directly preventing the qualification of the Generating Facility's electrical output as output from an ERR or QF, and Seller has used commercially reasonable efforts under Section 3.17 to obtain CEC Certification and Verification.
- (h) Seller fails to specify an Initial, Intermediate or Final Selected Date within the timeframes set forth in Section 2.03(a)(iii), Section 2.04(a) or Section 2.04(b), as applicable and such failure is not cured within five (5) Business Days after Notice from SCE;
- (i) Termination of, or cessation of service under, any agreement necessary for the interconnection of the Generating Facility to the Transmission Provider's electric system or transmission of the electric energy to the Delivery Point, for Scheduling to SCE, or for metering the Metered Amounts and such service is not reinstated, or alternative arrangements implemented, within one hundred and twenty (120) days after such termination or cessation;
- (j) Termination of the Assignment Agreement;
- (k) Amendment of either the Assignment Agreement or the Operating Agreement without SCE's written consent (which consent shall not be unreasonably withheld);
- (l) Seller fails to install, pay for or maintain any ISO-Approved Meters as required under Section 3.07;
- (m) Seller defaults under any Security Document and such default is not cured within the applicable cure period, if any, set forth in such Security Document, or Seller repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of, any of the Security Documents;
- (n) Seller fails to comply with the provisions of Section 3.03 regarding exclusive rights of SCE to additional electric energy produced directly or indirectly from any Additional Geothermal Wells; or
- (o) Seller fails to take any actions reasonably necessary to effectuate the use of Resource Adequacy Benefits for SCE's sole benefit as specified in Section 3.02.
- 6.02 Early Termination.

- (a) If an Event of Default shall have occurred, there will be no opportunity for cure except as specified in Section 6.01 or in Section 6.02(c).
- (b) The Party taking the default (the "Non-Defaulting Party") shall have the right:
  - (i) To designate, by Notice, a day, no earlier than twenty (20) calendar days after the Notice is effective, as an "Early Termination Date;"
  - (ii) To immediately suspend performance under the Agreement; and
  - (iii) To pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages), except to the extent that such remedies are limited by the terms of this Agreement.
- (c) Upon the occurrence and continuation of an Event of Default by SCE under Section 6.01(c)(i), or upon the initiation by SCE of EDR with respect to notice by Seller to SCE of default by SCE under Section 6.01(c)(i), Seller shall have the right, but not the obligation, to mitigate the damages caused by SCE due to such event, all in accordance with the procedure set forth in this Section 6.02(c). In no way shall the exercise by Seller of the foregoing mitigation right constitute a waiver by SCE of any its rights, claims or defenses hereunder, including any claim that the Seller's exercise of mitigation rights is improper.

Should Seller elect to mitigate its damages, it shall provide Notice to SCE of its election from any date after the date of such Notice ("Election Date") and may sell all electrical energy, electrical generating capacity, Environmental Attributes or Resource Adequacy Benefits from the Generating Facility to one or more third parties on such terms and conditions as Seller, in its sole discretion, may elect. No such sale shall constitute a breach by Seller hereunder solely because such sale was made.

If Seller elects to mitigate its damages as provided in this Section 6.02(c), Seller may only designate an Early Termination Date based upon the Event of Default which was the basis for the election if SCE fails to send a Notice designating an Intended Cure Date within ninety (90) days after the Election Date.

Upon receipt by Seller of a Notice from SCE that SCE intends to cure the payment Event of Default (which Notice shall include the date of the proposed cure) (herein, the "Intended Cure Date"), Seller shall promptly prepare and provide a statement to SCE which sets forth:

- (i) The original outstanding amount that triggered the Event of Default plus simple interest on such amount at the Interest Rate (the "Default Amount"); and
- (ii) To the extent then calculable, a good faith estimate of:
  - (1) the difference between:
    - (I) The greater of (i) amounts actually received or to be received by Seller from the sale of any Product from the Generating Facility beginning on the Election Date through the Estimated Restart Date, or (ii) reasonable market prices for the sale of any such Product for the term of the actual sale; and
    - (II) The Energy Price which would have been received by Seller from SCE under this Agreement through such period, and
  - (2) Fees, expenses and charges which Seller has reasonably incurred or will reasonably incur in connection with its mitigating sales in accordance with this Section; provided that Seller shall be solely responsible for, and shall not include as part of its estimate of Cover Damages (as defined below), any fees, costs, expenses and charges that it may incur to terminate, liquidate or wind up any mitigating transaction entered into by Seller for a term exceeding thirty (30) days (collectively, the "Cover Damages").

SCE shall pay to Seller on the Intended Cure Date, an amount equal to the estimated Default Amount plus the estimated Cover Damages, subject to SCE's rights in the event of a good faith dispute over Seller's estimates of the Default Amount or Cover Damages as set forth below.

Upon receipt of such payment by Seller, Seller shall promptly unwind any forward transactions related to the third party sales, provided that the Parties shall not reinstate full performance under this Agreement until the date specified by Seller, which shall be no greater than thirty (30) days after the end of the month that Seller received such payment (herein, the "Estimated Restart Date").

Within sixty (60) days after the Estimated Restart Date, Seller shall deliver to SCE an additional statement which sets forth the actual Default Amount and Cover Damages for the period from the Election Date through the Estimated

Restart Date. SCE shall then pay to Seller within forty-five (45)days of receipt of such subsequent statement, an amount equal to (X) the actual Default Amount plus the actual Cover Damages <u>less</u> (Y) the amount of any payments made on the Intended Cure Date for the estimated Default Amount plus the Cover Damages.

Once SCE has made all payments for the Default Amount plus the actual Cover Damages, Seller agrees that it shall no longer have any rights and remedies hereunder (including the right to terminate) at law or in equity with respect to the Event of Default giving rise to Seller's mitigation as described above.

If SCE in good faith disputes any estimate by Seller hereunder of the Default Amount or Cover Damages, it may elect to utilize EDR by providing Notice of a request for EDR to Seller within ten (10) days after receipt of the disputed calculation, in accordance with Section 12.03(a)(ii).

# 6.03 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 sum of all amounts owed by the Defaulting Party under this Agreement, less any amounts owed by the Non-Defaulting Party to the Defaulting Party under this Agreement (the "Termination Payment").

In the event that SCE is the Defaulting Party, then the Non-Defaulting Party may include in its calculation of any amounts it is owed by the Defaulting Party the value of any lost income tax credits Seller would have earned under applicable Federal Production Tax Credit Legislation from the Early Termination Date to the end of the Term as if an Early Termination Date had not occurred.

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

The Termination Payment shall be made by the Party who owes such payment (i.e., either the Defaulting Party or the Non-Defaulting Party as indicated on the Notice) within ten (10) Business Days after the Notice is provided.

If either Party in good faith disputes the calculation of the Termination Payment, it may elect EDR but must provide Notice to the other Party of such election within ten (10) days after receipt of the disputed calculation in accordance with Section 12.03(a)(ii). In the event that a Party is to receive a Termination Payment for an Early Termination Date, such Termination Payment, once paid in full and credited

to the account of the receiving Party, shall be the sole and exclusive remedy for the breach that was the basis of the designation of such Early Termination Date; *provided*, that nothing in this Section 6.03 shall limit either Party's right to enforce any obligations which survive termination of this Agreement.

\*\*\* End of ARTICLE SIX \*\*\*

### ARTICLE SEVEN. LIMITATIONS OF LIABILITIES

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 SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL 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 10.16 (INJUNCTIVE RELIEF), IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

UNLESS EXPRESSLY HEREIN PROVIDED, INCLUDING THE PROVISIONS OF SECTION 10.03(a) (INDEMNITY), NEITHER PARTY SHALL 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 AND DO NOT CONSTITUTE A PENALTY.

NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, THE VALUE, IF ANY, OF ANY PRODUCTION TAX CREDITS, DETERMINED ON AN

AFTER-TAX BASIS, LOST DUE TO SCE'S DEFAULT, SHALL BE DEEMED DIRECT TO THE EXTENT LOST PRODUCTION TAX CREDITS ARE RECOVERABLE UNDER THIS AGREEMENT. NOTHING IN THIS SECTION PREVENTS, OR IS INTENDED TO PREVENT SCE FROM PROCEEDING AGAINST OR EXERCISING ITS RIGHTS WITH RESPECT TO ANY SECURED INTERESTS IN COLLATERAL.

\*\*\* End of ARTICLE SEVEN \*\*\*

# ARTICLE EIGHT. CREDIT AND COLLATERAL REQUIREMENTS

#### 8.01 Financial Information.

If requested by one Party, the other Party shall deliver:

- (a) Within one hundred twenty (120) days following the end of each fiscal year, a copy of its and its Guarantor's, if any, annual report containing audited consolidated financial statements for such fiscal year;
- (b) Within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its and its Guarantor's, if any, quarterly report containing unaudited consolidated financial statements for such fiscal quarter.

In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles;

provided that, should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the producing party diligently pursues the preparation, certification and delivery of the statements.

#### 8.02 Performance Assurance.

(a) Posting Performance Assurance.

On or before the commencement of each of the Initial Term Period, the Intermediate Term Period, and the Final Term Period, Seller shall post, as set forth in Sections 1.05 and 1.06, one-third (1/3) of the Performance Assurance Amount with SCE.

The Performance Assurance due to SCE by Seller shall be as set forth in Section 1.05 and 1.06.

The Performance Assurance Amount shall be posted to SCE at all times during the Term and thereafter until such time as Seller has satisfied all monetary obligations which survive any termination of this Agreement, not to exceed:

- (i) For an uncured Event of Default of Seller or Seller's Guarantor, one year following the Early Termination Date; and
- (ii) For all other circumstances, one hundred eighty (180) days following the termination of the Agreement; provided that SCE shall, within sixty (60) days following the termination of the Agreement, return to

Seller fifty-percent (50%) of the amount of any Performance Assurance Amount that remains posted (i.e., has not been drawn upon by SCE as authorized hereunder) as of that time.

The Performance Assurance Amount shall be either in the form of cash or Letter of Credit acceptable to SCE, provided that on the commencement of the Term, if Seller has posted the Agreement Deposit in the form of cash or a Letter of Credit and SCE has not either returned the Agreement Deposit to Seller or given Seller Notice, pursuant to Exhibit L, of its determination regarding the disposition of the Agreement Deposit by such date, then Seller may withhold the portion of the Performance Assurance Amount equal to the Agreement Deposit held by SCE until three (3) Business Days following the later of Seller's receipt or forfeiture of the Agreement Deposit or any portion thereof pursuant to Section 3.05 or SCE's Notice to Seller pursuant to Exhibit L of its determination regarding the disposition of the Agreement Deposit. SCE shall accept a Guaranty Agreement, in accordance with Section 8.02(d). from a Guarantor acceptable to SCE to satisfy Seller's Performance Assurance obligation in lieu of cash or Letter of Credit as set forth in Section 8.02(c). Such Guaranty shall be for the Performance Assurance Amount. At such time that Seller proposes to satisfy its Performance Assurance obligation by means of a Guaranty Agreement, Seller shall submit to SCE a Notice containing (x) financial statements and other information regarding the proposed Guarantor, (y) the proposed Cross Default Amount and (z) Credit Ratings and other relevant information provided by S&P or Moody's. SCE shall approve both the Guarantor and the Cross Default Amount in its discretion.

(b) Interest Payments on Cash.

Performance Assurance posted in cash shall bear simple interest at a rate equal to the Federal Funds Effective Rate.

Seller shall provide a monthly invoice to SCE that sets forth the calculation of the interest amount due and SCE shall make payment thereof by the later of the third Local Business Day:

- (i) Of the first month after the last month to which the invoice relates; or
- (ii) After the day on which such invoice is received;

in either case, so long as no Event of Default has occurred and is continuing with respect to the Seller or no Early Termination Date for which any unsatisfied payment obligation of Seller exists has occurred or been designated as a result of an Event of Default by Seller.

On or after the occurrence of an Event of Default by Seller or an Early Termination Date as a result of an Event of Default by Seller, SCE shall retain any such interest amount as additional Performance Assurance hereunder 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.

(c) Letters of Credit.

Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions:

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

### Seller shall:

- (1) Renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit;
- (2) If the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide alternative Performance Assurance acceptable to SCE at least forty-five (45) Business Days prior to the expiration of the outstanding Letter of Credit; and
- (3) If the bank issuing a Letter of Credit fails to honor SCE's properly documented request to draw on an outstanding Letter of Credit, provide alternative Performance Assurance acceptable to SCE within one (1) Business Day after such refusal, or five (5) Business Days after such refusal if SCE's draw requests result from Seller's failure to provide alternative Performance Assurance acceptable to SCE where a Letter of Credit is expiring as described in Section 1.C. of Attachment A to Exhibit N:
- (ii) Upon the occurrence of a Letter of Credit Default, Seller shall provide to SCE either a substitute Letter of Credit or alternative Performance Assurance acceptable to SCE, in each case on or before the first Business Day after the occurrence thereof (or the tenth (10th) Business Day after the occurrence thereof if only Section 1.a) in the definition of "Letter of Credit Default" in Exhibit A applies);

(iii) Upon, or at any time after, the occurrence and continuation of an Event of Default by Seller, or if an Early Termination Date has occurred or been designated as a result of an Event of Default by Seller for which there exist any unsatisfied payment obligations, then SCE may draw on any undrawn portion of any outstanding Letter of Credit upon submission to the bank issuing such Letter of Credit of one or more certificates specifying that such Event of Default or Early Termination Date has occurred and is continuing.

Cash proceeds received by SCE from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for the Seller's obligations to SCE and SCE shall have the rights and remedies set forth in Section 8.03 with respect to such cash proceeds.

Notwithstanding SCE's receipt of cash proceeds of a drawing under the Letter of Credit, Seller shall remain liable for any:

- (1) Failure to provide sufficient Performance Assurance; or
- (2) Any amounts owing to SCE and remaining unpaid after the application of the amounts so drawn by SCE.
- (iv) In all cases, the costs and expenses of establishing, renewing, substituting, canceling, and increasing the amount of a Letter of Credit shall be borne by Seller.
- (d) Guaranty Agreement.

If Seller's Performance Assurance obligation is satisfied by a Guaranty Agreement, it shall be in the form of Exhibit I executed by a Guarantor acceptable to SCE meeting the Credit Rating requirements for a Guarantor set forth immediately below. The Guarantor shall maintain a Credit Rating of at least:

- (i) "BBB-" from S&P and "Baa3" from Moody's, if it is rated by both S&P and Moody's; or
- (ii) "BBB-" from S&P or "Baa3" from Moody's if it is rated by either S&P or Moody's but not by both.

If at any time the Guarantor fails to maintain such Credit Ratings, the Seller shall provide to SCE Performance Assurance in the form of cash or a Letter of Credit, or a replacement Guaranty Agreement from a person or entity acceptable to SCE within five (5) Business Days.

8.03 First Priority Security Interest in Cash or Cash Equivalent Collateral.

To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to SCE a present and continuing first-priority security interest ("Security Interest") in, and lien on (and right of setoff against), and assignment of the Performance Assurance, all cash collateral and cash equivalent collateral (but excluding any of Seller's accounts receivable resulting from the generation of electricity from the Generating Facility pursuant to this Agreement) and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of SCE, and Seller agrees to take such action as SCE reasonably requires in order to perfect SCE's Security Interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting there from or from the liquidation thereof.

Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, SCE may do any one or more of the following:

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

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

- 8.04 Subordinated Security Interests and Mortgage.
  - (a) Prior to the commencement of each of the Initial Term Period, Intermediate Term Period and Final Term Period, as security for Seller's performance and any amounts owed by Seller to SCE pursuant to this Agreement, Owners, Seller or SCE, as the case may be, shall execute, deliver, file and record, as appropriate, separate agreements, documents, fixture filings, financing statements or instruments (the "Security Documents") under which Owners or Seller, as applicable, will grant to SCE, in a form reasonably acceptable to SCE and subject to characterization as real or personal property in SCE's sole discretion, fully perfected security interest(s), or mortgage lien(s) in the

Generating Facility and in any and all real and personal property rights, contractual rights, or other rights that Seller and Owners require in order to construct or Operate the Generating Facility (collectively the "Secured Interests").

Seller and each Owner expressly grant SCE the right to file and or record, as appropriate, such fixture filings, financing statements and other Security Documents in order to perfect its security interests in the Generating Facility.

The Secured Interests shall be subordinate in right of payment, priority and remedies only to the interests of Lender (or its assignee or designee) in accordance with the terms of the subordination, intercreditor or other agreements to be mutually agreed upon by Seller, SCE and Lender. Any such subordination documents shall state that SCE's Secured Interests shall be junior and subordinate to the lien securing the senior debt of Lender with respect to the right of payment, priority and remedies, including, but not limited to, provisions which state SCE will not exercise any remedies or share in any proceeds of collateral until all senior debt is paid in full.

(b) The Secured Interests shall not include the pledge, assignment, or other interest in the ownership interest in Seller.

The Parties and Owners shall confirm, define, and perfect the Secured Interests by executing, delivering, filing, and recording, at the expense of Seller, the Security Documents.

In addition, each Owner and Seller agree to file and expressly grants SCE the right to file or, in the case of a fixture filing record, such Uniform Commercial Code financing statements and to take such further action and execute such further instruments as shall reasonably be required by SCE to confirm and continue the validity, priority, and perfection of the Secured Interests, which in all events shall be junior and subordinate to the lien securing the senior debt of Lender.

The granting of the Secured Interests shall not be to the exclusion of, nor be construed to limit the amount of any further claims, causes of action or other rights accruing to SCE by reason of any breach or default by Seller under this Agreement or the termination of this Agreement prior to the expiration of the Final Term Period.

The Secured Interests shall be discharged and released, and SCE shall take any steps reasonably required to effect and record such discharge and release, upon the expiration of the Term and satisfaction by Seller of all of its obligations hereunder.

- Seller shall reimburse SCE for its reasonable costs associated with the discharge and release of the Secured Interests.
- (c) The Security Documents shall provide that if SCE acts to obtain title to the Generating Facility pursuant to the interests provided by Seller pursuant to Section 8.04(a) (which in all events shall be junior and subordinate to the interests of Lender), Seller shall take all steps necessary to transfer all Permits and licenses necessary to Operate the Generating Facility to SCE, and shall diligently prosecute and cooperate in such transfers.

#### 8.05 Credit and Collateral Covenants.

- (a) Seller and each Owner shall, from time to time as requested by SCE, execute, acknowledge, record, register, deliver and/or file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid and enforceable under all applicable laws the Security Documents and the rights, liens and priorities of SCE with respect to the Security Interest and the Secured Interests provided for herein and therein;
- (b) Seller shall provide prompt Notice to SCE of any Restricted Financing and, as part of such Notice, supply to SCE evidence that the indebtedness incurred with respect to the Restricted Financing has received a credit rating of "B" (or the equivalent) or better from Moody's or S&P, provided that, if Seller has previously provided a Credit Rating to SCE hereunder with respect to a Restricted Financing, Seller must provide to SCE a credit rating from the same credit rating agency for any subsequent Restricted Financing;
- (c) Except for liens which secure a Restricted Financing; are created by the Security Documents; or are materialmen's, mechanic's, workers' or repairmen's liens arising in the ordinary course of business (that are not incurred in connection with the obtaining of any loan, advance or credit) for amounts which are not yet due or are being contested in good faith by appropriate proceedings and do not, in the aggregate materially impair the use or value of Seller's assets, Seller shall not create, incur, assume or suffer to be created by it or by any other person or entity, any lien on Seller's interest (or any part thereof) in this Agreement, the Site, or the Generating Facility. Seller shall promptly provide Notice to SCE of any attachment or the imposition of any lien against Seller's interest (or any part thereof) in the Site, this Agreement or the Generating Facility.

- (d) During any period during which a Seller is a Defaulting Party and until the resolution of the relevant default or Event of Default, which such resolution shall include the payment in full of any amounts that are finally determined to be owed by Seller to SCE, 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;
  - provided, however, Seller may make ordinary course distributions (including distributions to parent entities) for the payment of debt; and
- (e) Seller may include the Generating Facility in a financing of a Portfolio of projects generating electrical power, provided that SCE is the sole purchaser of power generated by any projects in such Portfolio and that the entity incurring any debt in such Portfolio financing have a credit rating of "B" from either S&P or Moody's.

#### 8.06 Waivers.

SELLER AGREES THAT SELLER WILL NOT AT ANY TIME INSIST UPON, PLEAD, CLAIM OR TAKE THE BENEFIT OR ADVANTAGE OF ANY LAW NOW OR HEREAFTER IN FORCE PROVIDING FOR ANY APPRAISEMENT, VALUATION, STAY OF EXECUTION, EXEMPTION, EXTENSION OR REDEMPTION, OR REQUIRING FORECLOSURE OF ANY RIGHTS GRANTED TO SCE BY SELLER UNDER ANY DEED OF TRUST BEFORE EXERCISING ANY OTHER REMEDY GRANTED HEREUNDER.

\*\*\* End of ARTICLE EIGHT \*\*\*

### ARTICLE NINE. GOVERNMENTAL CHARGES

9.01 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.

9.02 Governmental Charges.

Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority ("Governmental Charges") on or with respect to the Delivered Amounts (and any contract associated with the Delivered Amount) and the Scheduled Amounts arising prior to and at the Delivery Point, including, but not limited to, ad valorem taxes and other taxes attributable to the Generating Facility, land, land rights or interests in land for the Generating Facility.

SCE shall pay or cause to be paid all Governmental Charges on or with respect to the Scheduled Amounts from the Delivery Point. In the event Seller is required by law or regulation 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 law or regulation to remit or pay Governmental Charges which are Seller and Owners' responsibility hereunder, SCE may deduct such amounts from payments to Seller made pursuant to Article Four.

If SCE elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse SCE for such amounts upon request. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

9.03 Providing Information to Taxing Authorities.

Seller, Owners or SCE, as necessary, shall provide information concerning the Generating Facility to any requesting taxing authority.

\*\*\* End of ARTICLE NINE \*\*\*

### ARTICLE TEN. MISCELLANEOUS

10.01 Representations and Warranties.

On 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, and all permits and agreements necessary to interconnect, maintain interconnection and Operate the Generating Facility in the case of Seller, 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 law, rule, regulation, order or the like applicable to it;
- (d) This Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;
- (e) 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 adversely affect its ability to perform under the Agreement;
- (f) 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;
- (g) 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;
- (h) 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; and
- (i) It has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of the Product as contemplated in this Agreement.

- 10.02 Additional Seller Warranties and Covenants; Representations, Warranties and Covenants of Owners.
  - (a) Seller covenants that it will deliver to SCE the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person.
  - (b) Seller covenants that it will not amend or modify the Assignment Agreement or the Operating Agreement without the express written consent of SCE, which shall not be unreasonably withheld.
  - (c) Seller represents, warrants and covenants that it holds and will hold throughout the Term, the rights to all Environmental Attributes, Capacity Attributes and Resource Adequacy Benefits, which it has conveyed and has committed to convey to SCE hereunder.
    - SELLER DISCLAIMS ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, REGARDING THE RECOGNITION, EXISTENCE, VALUE, CHARACTERIZATION, ACCOUNTING TREATMENT OR OTHER TREATMENT TO BE AFFORDED BY ANY GOVERNMENTAL AUTHORITY OR MARKET PARTICIPANT OF ANY ENVIRONMENTAL ATTRIBUTES, RESOURCE ADEQUACY BENEFITS AND/OR CAPACITY ATTRIBUTES ASSOCIATED WITH THE GENERATING FACILITY.
  - (d) Seller covenants that, throughout the Term:
    - (i) Subject to Section 3.17, it will take reasonable steps to ensure that the Generating Facility will qualify and be certified by the CEC as an ERR;
    - (ii) The Generating Facility output delivered to SCE will qualify as generation from an ERR under the requirements of the RPS Legislation;
    - (iii) Seller shall maintain and remain in compliance with all required Permits and all other consents, orders or similar requirements imposed by any Governmental Authority in order to Operate the Generating Facility and to perform its obligations hereunder; and
    - (iv) The Generating Facility will meet all applicable QF requirements contained in FERC's rules (18 Code of Federal Regulations Section 292) implementing the Public Utility Regulatory Policies Act of 1978 (16 U.S.C.A. Section 796, et seq.).

- (e) Representations, Warranties and Covenants of Owners.
  - (i) CPD owns the Initial Generating Facility Units.
  - (ii) CFP owns the Intermediate Generating Facility Units.
  - (iii) CED owns the Final Generating Facility Units.
  - (iv) CPD, CFP, and CED are each duly authorized to execute and deliver the Assignment Agreement and to assign to Seller all rights and interests assigned to Seller in the Assignment Agreement.
  - (v) All SCE Revenue is as of the Effective Date, and shall be for the Term of this Agreement, allocated by Seller to the Owners pursuant to, and as described in, the Assignment Agreement.
  - (vi) Neither the entry by the Owners into the Assignment Agreement nor the terms of the Assignment Agreement violate the terms of any debt to which an Owner is subject as of the Effective Date.
  - (vii) No Owner may, in or by any refinancing after the Effective Date of debt existing as of the Effective Date or by any other agreement or means, amend or modify the Assignment Agreement or the Operating Agreement without first receiving the written consent of SCE to such modification (which consent shall not be unreasonably withheld).
  - (viii) CPD, CFP and CED each represent, acknowledge and agree that they have received fair and adequate consideration for the rights and interests that they have transferred to Seller, or that they have agreed to transfer to Seller, in the Assignment Agreement.

# 10.03 Indemnity.

(a) Each Party as indemnitor shall defend, hold harmless and indemnify the other Party and the directors, officers, employees, and agents of such other Party against and from any and all loss, liability, damage, claim, cost, charge, demand, or expense (including any direct, indirect, or consequential loss, liability, damage, claim, cost, charge, demand, or expense, including attorneys' fees) for injury or death to persons, including employees of either Party, and physical damage to property including property of either Party arising out of or in connection with the gross negligence or willful misconduct of the indemnitor relating to its obligations under this Agreement.

This indemnity shall apply notwithstanding the active or passive negligence of the indemnitee.

However, neither Party shall be indemnified hereunder for its loss, liability, damage, claim, cost, charge, demand or expense resulting from its sole negligence or willful misconduct.

- (b) Each Party releases and shall defend, hold harmless and indemnify the other Party from any and all loss, liability, damage, claim, cost, charge, demand or expense arising out of or in connection with any breach made by the other Party of its representations and warranties in Sections 10.01 and 10.02.
- (c) The provisions of this Section 10.03 shall not be construed to relieve any insurer of its obligations to pay any insurance claims in accordance with the provisions of any valid insurance policy.
- (d) Except as otherwise provided in Sections 10.03(a) and 10.09(f), neither Party shall be liable to the other Party for consequential damages incurred by such other Party.
- (e) Notwithstanding anything to the contrary in this Agreement, if Seller fails to comply with the provisions of Section 10.11, Seller shall, at its own cost, defend, hold harmless and indemnify SCE, its directors, officers, employees, and agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, or expense of any kind or nature (including any direct, indirect, or consequential loss, damage, claim, cost, charge, demand, or expense, including attorneys' fees and other costs of litigation), resulting from 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 10.11.

The inclusion of this Section 10.03(e) is not intended to create any express or implied right in Seller to elect not to provide the insurance required under Section 10.11.

- (f) Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.
- (g) Seller shall defend, hold harmless and indemnify SCE against any cost and/or penalty imposed upon SCE as a result of Seller's failure to fulfill its obligations regarding Resource Adequacy Benefits as set forth under Section 3.01 and Section 3.02.

- (h) SCE shall indemnify Seller for claims arising from any violation of Site safety rules of which it is aware during its examinations of the Site, as provided in Section 3.16.
- (i) All indemnity rights shall survive the termination of this Agreement for twelve (12) months.

### 10.04 Assignment.

- (a) Except as provided in Section 10.05 or in the case of an assignment by Seller to a Permitted Transferee, 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 Change of Control of Seller (whether voluntary or by operation of law) shall be deemed an assignment and shall require the prior written consent of SCE, which consent shall not be unreasonably withheld; provided that a direct or indirect transfer of any equity interest in the Seller shall not be considered a Change of Control if such transfer is to one or more Permitted Transferees.

## 10.05 Consent to Collateral Assignment.

Subject to the provisions of this Section 10.05, Seller shall have the right to assign this Agreement as collateral for any financing or refinancing of the Generating Facility.

In connection with any financing or refinancing of the Generating Facility by Seller, SCE and Seller shall in good faith work with Lender to agree upon a consent to collateral assignment of this Agreement ("Collateral Assignment Agreement").

The Collateral Assignment Agreement shall be in form and substance agreed to by SCE, Seller and Lender, and shall include, among others, the following provisions:

- (a) SCE shall give Notice of an Event of Default by Seller, to the person(s) to be specified by Lender in the Collateral Assignment Agreement, prior to exercising its right to terminate the Agreement as a result of such Event of Default;
- (b) Lender shall have the right to cure an Event of Default by Seller in accordance with the provisions of the Agreement;
- (c) Following an Event of Default by Seller under this Agreement, SCE may require Seller or Lender to provide to SCE a report concerning

- (i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;
- (ii) Impediments to the cure plan or its development;
- (iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and
- (iv) Any other information which SCE may reasonably require related to the development, implementation and timetable of the cure plan.

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

- (d) Lender shall have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to SCE prior to the end of any cure period indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under the Agreement;
  - provided that, such cure period may, in SCE's sole discretion, be extended by no more than an additional one hundred eighty (180) days;
- (e) Lender shall have the right to consent prior to any termination of the Agreement which does not arise out of an Event of Default;
- (f) Lender shall receive prior Notice of and the right to approve material amendments to the Agreement, which approval shall not be unreasonably withheld, delayed or conditioned;
- (g) In the event Lender, directly or indirectly, takes possession of, or title to the Generating Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender shall assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, SCE and Lender as set forth in the Collateral Assignment Agreement);

provided that, Lender shall have no personal liability for any monetary obligations of Seller under the Agreement which are due and owing to SCE as of the assumption date; provided, however, that prior to such assumption, if SCE advises Lender that SCE will require that Lender cure (or cause to be

cured) any Event of Default existing as of the possession date in order to avoid the exercise by SCE (in its sole discretion) of SCE's right to terminate the Agreement in respect of such Event of Default, *then* Lender at its option; and in its sole discretion, may elect to either:

- (i) Cause such Event of Default to be cured, or
- (ii) Not assume this Agreement;
- (h) If Lender elects to sell or transfer the Generating Facility (after Lender directly or indirectly, takes possession of, or title to the Generating Facility), or sale of the Generating Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender must cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer.

Such sale or transfer may be made only to an entity with financial qualifications (including, collateral support and any other additional security as may be required by SCE) and operating experience equivalent to Seller as of the Effective Date reasonably satisfactory to SCE; and

(i) If this Agreement is rejected in Seller or Owners' Bankruptcy or otherwise terminated in connection therewith and if Lender or its designee, directly or indirectly, takes possession of, or title to, the Generating Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender shall or shall cause its designee to promptly enter into a new agreement with SCE having substantially the same terms as this Agreement.

#### 10.06 Abandonment.

Except as provided under Section 10.05(g), neither Seller nor Owners shall relinquish their possession and control of the Generating Facility without the prior written consent of SCE.

For purposes of this Section 10.06, Seller shall have been deemed to relinquish possession of the Generating Facility if Seller has ceased work on the Generating Facility or the Generating Facility has ceased production and delivery of the Product, and such cessation is not a result of an event of Force Majeure, for a consecutive thirty (30) day period.

10.07 Governing Law.

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

#### 10.08 Notices.

All notices, requests, statements or payments shall be made as specified in Exhibit C.

Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile.

Notice provided in accordance with this Section 10.08 shall be deemed given as follows:

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

Notice shall be effective on the date deemed given, unless a different date for a specific 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, statements or payments for this Generating Facility must reference the QFID number set forth on the title page to this Agreement.

#### 10.09 General.

(a) This Agreement constitutes the entire agreement between the Parties relating to its subject matter.

- (b) This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.
- (c) Except to the extent provided for herein, no amendment or modification to this Agreement shall be enforceable unless reduced to a writing signed by all Parties.
- (d) This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).
- (e) Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.
- (f) The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation.
- (g) The word "or" when used in this Agreement shall include the meaning "and/or" unless the context unambiguously dictates otherwise.
- (h) The headings used herein are for convenience and reference purposes only. Words having well-known technical or industry meanings shall have such meanings unless otherwise specifically defined herein.
- (i) Where days are not specifically designated as Business Days, they are calendar days.
- (j) This Agreement shall be binding on each Party's successors and permitted assigns.
- (k) No provision of this Agreement is intended to contradict or supersede any applicable agreement covering transmission, distribution, metering, scheduling or interconnection. In the event of an apparent contradiction between this Agreement and any such agreement, the applicable agreement shall control.
- (l) Whenever this Agreement specifically refers to any law, tariff, government department or agency, regional reliability council, Transmission Provider, or credit rating agency, the Parties hereby agree that the reference shall also refer to any successor to such law, tariff or organization.
- (m) SCE's obligation to take and pay for electric energy produced by the Generating Facility together with Environmental Attributes and Capacity

Attributes associated therewith shall not be affected by any change to or elimination of this RPS Legislation.

(n) The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a "forward contract" (within the meaning of the United States Bankruptcy Code) and that SCE and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.

# 10.10 Confidentiality.

(a) Terms and Conditions of this Agreement.

Neither Party shall disclose the non-public terms or conditions of this Agreement to a third party, other than:

- (i) To such Party's employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential;
- (ii) To SCE's Procurement Review Group, as defined in CPUC Decision 02-08-071, subject to any confidentiality agreements or laws, regulations or regulatory decisions concerning confidentiality which are applicable to SCE's Procurement Review Group;
- (iii) To the CPUC under seal for purposes of review, subject to the disclosing Party ("Disclosing Party") making reasonable efforts to obtain confidentiality protection from the CPUC under Section 583 of the California Public Utilities Code or other applicable statute, order or rule;
- (iv) To the ISO in order to participate in any auction, market or other process pertaining to the allocation of priorities or rights related to the transmission of electrical energy sold or to be sold to SCE hereunder;
- (v) In order to comply with any Applicable Law or any exchange, control area or ISO rule, or order issued by a court or entity with competent jurisdiction over the Disclosing Party, other than to those entities set forth in Section 10.10(a)(vi); or
- (vi) In order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or FERC, any court, administrative agency, legislative body or other tribunal, or any discovery or data request of a party to any proceeding pending before any of the foregoing;

- (vii) To representatives of a Party's credit ratings agencies:
  - (1) Who have a need to review the terms and conditions of this Agreement for the purpose of assisting the Party in evaluating this Agreement for credit rating purposes; or
  - (2) With respect to the potential impact of this Agreement on the Party's financial reporting obligations.

In connection with discovery requests or orders pertaining to the non-public terms of this Agreement as referenced in this Section 10.10(a) ("Disclosure Order"), each Party shall, to the extent practicable, use reasonable efforts to (x) notify the other Party prior to disclosing the confidential information and (y) prevent or limit such disclosure.

After using such reasonable efforts, the Disclosing Party shall not be: (A) prohibited from complying with a Disclosure Order or (B) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information.

Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

- (b) Non-Disclosure Agreement.
  - (i) The Non-Disclosure Agreement between the Parties attached hereto as Exhibit J is incorporated herein (the "NDA"), and the termination date of that agreement is modified such that it will terminate on the later of:
    - (1) Three (3) years following the Effective Date; or
    - (2) One (1) year after the date of termination of this Agreement.

Information provided by the Parties pursuant to this Agreement shall be subject to the NDA, or to such other agreement that the Parties shall negotiate to provide reasonable protection for their confidential business information or trade secrets.

(ii) The term "Confidential Information" as used in the NDA shall be deemed to include (in addition to the information described in the NDA) this Agreement and all oral or written communications exchanged between the Parties pursuant to this Agreement, except for communications and information described in Section 4 of the NDA.

- (iii) Confidential Information may only be used for the purposes set forth under the NDA and for the purpose of implementing and enforcing this Agreement.
- (c) RPS Confidentiality.

Notwithstanding Section 10.10(a), at any time on or after the date on which the SCE makes its advice filing letter seeking CPUC Approval of the Agreement, either Party shall be permitted to disclose the following terms with respect to this Agreement:

- (i) Party names;
- (ii) ERR type;
- (iii) Term;
- (iv) Generating Facility location;
- (v) Contract Capacity;
- (vi) Expected deliveries;
- (vii) Delivery Point;
- (viii) Online date; and
- (ix) Geothermal resource name.

#### 10.11 Insurance.

(a) Throughout the Term, Seller shall obtain and maintain in force as hereinafter provided commercial general liability insurance, including contractual liability coverage, with a combined single limit of not less than two million dollars (\$2,000,000) for each occurrence.

The insurance carrier or carriers and form of policy shall be subject to review and approval by SCE which approval shall not be unreasonably withheld.

(b) Before commencement of the Term, as provided in Section 2.03(a), Seller shall:

- (i) Furnish a certificate of insurance to SCE, which certificate shall provide that such insurance shall not be terminated nor expire except on thirty (30) calendar days' prior written notice to SCE;
- (ii) Furnish to SCE an additional insured endorsement with respect to such insurance in substantially the following form:

"In consideration of the premium charged, SCE is named as additional insured with respect to all liabilities arising out of Seller's use and ownership of Seller's Generating Facility.

The inclusion of more than one insured under this policy shall not operate to impair the rights of one insured against another insured and the coverages afforded by this policy will apply as though separate policies had been issued to each insured.

The inclusion of more than one insured will not, however, operate to increase the limit of the carrier's liability.

SCE will not, by reason of its inclusion under this policy, incur liability to the insurance carrier for payment of premium for this policy.

Any other insurance carried by SCE which may be applicable shall be deemed excess insurance and Seller's insurance primary for all purposes despite any conflicting provisions in Seller's policy to the contrary."

#### 10.12 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 the Agreement, and such service shall cease upon termination of the Agreement.

#### 10.13 Mobile Sierra.

Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party in seeking, to prospectively or retroactively revise the rates, terms and/or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties.

Further, absent the prior agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-party or the 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 US 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 US 348 (1956).

# 10.14 Interest.

Except as specifically provided in this Agreement, any outstanding and past due amounts owing and unpaid by either Party under the terms of this Agreement shall bear simple interest at the Interest Rate.

### 10.15 Payments.

Payments to be made under this Agreement shall be made by wire transfer.

### 10.16 Injunctive Relief.

Notwithstanding anything in this Agreement to the contrary, SCE, Seller and each Owner acknowledge and agree that irreparable damage would occur in the event any of the provisions of Section 2.06(b) (Right of First Offer), Section 3.01 (Conveyance Of Entire Output, Environmental Attributes and Capacity Attributes), Section 3.02 (Resource Adequacy Benefits), Section 3.03 (Additional Geothermal Well Products), Section 3.08 (Site Control) or Section 10.10 (Confidentiality) of this Agreement were not performed in accordance with the terms thereof, that money damages may not be a sufficient remedy for any such breach and that the Parties shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach. Such remedy shall not be deemed to be the exclusive remedy for such breach of this Agreement but shall be in addition to all other remedies available at law or equity to the Parties.

\*\*\* End of ARTICLE TEN \*\*\*

#### ARTICLE ELEVEN. CHANGE IN ELECTRIC MARKET DESIGN

11.01 Changes Rendering the Agreement Incapable of Performance.

If a Change in ISO Tariff renders this Agreement or any terms herein incapable of being performed or administered, or results or could reasonably be forecasted to result in an ISO Change Cost Payment as defined herein for any Term Year, then either Party, on Notice, may request the other Party to enter into good faith negotiations to make the minimum changes to the Agreement necessary to make this Agreement capable of being performed and administered or to minimize the ISO Change Cost Payments, while attempting to preserve to the maximum extent possible the benefits, burdens and obligations set forth in the Agreement as of the Effective Date.

Upon receipt of a Notice requesting negotiations, the Parties shall negotiate in good faith.

If the Parties are unable, within sixty (60) days of the sending of the Notice requesting negotiations, either to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement,

then either Party may submit issues pertaining to changes to this Agreement to mediation or arbitration as provided in Article Twelve.

A change in cost shall not in itself be deemed to render the Agreement or any terms therein incapable of being performed or administered, or constitute or form the basis of a Force Majeure event.

- 11.02 Changes Resulting in Costs or Benefits to Seller.
  - (a) ISO Change Cost.

As of the Effective Date, it is uncertain how a Change in ISO Tariff may affect ISO charges to Seller or Seller's Actual Revenue.

The total net incremental changes in ISO charges to Seller and Seller's Actual Revenue for any Term Year as a result of a Change in ISO Tariff in the following specific circumstances shall be collectively referred to in the aggregate as the "ISO Change Cost" for such Term Year:

(i) Changes in the method for the allocation of available transmission capacity among generators including Seller, which upon the occurrence of congestion on the transmission system, impacts Seller's Scheduled Amounts or congestion charges to Seller resulting thereof;

- (ii) Changes in the method of calculating, assessing and charging Seller for transmission losses for the delivery of electric energy from the Generating Facility to the Delivery Point including electrical losses occurring over the ISO Grid, and any changes in Seller's Scheduled Amounts resulting from the assessment of transmission losses thereto; and
- (iii) Changes in, or elimination of, the Participating Intermittent Resource Program, including changes in rates assessed by the ISO in respect of the ISO PIRP Charges that have a material impact on Seller.

The procedure for determining an ISO Change Cost is described in Exhibit P.

In the event of an inconsistency between this Section 11.02 and Exhibit P concerning the determination of an ISO Change Cost, Exhibit P shall govern.

(b) ISO Change Cost Payment.

For each applicable Term Year, the Parties shall reimburse each other as follows in accordance with this Section 11.02. SCE shall pay Seller the amount of the ISO Change Cost above the ISO Change Cost Threshold Amount if the ISO Change Cost has been a cost to Seller, and Seller shall pay SCE the difference between the amount of the ISO Change Cost Threshold Amount and the ISO Change Cost if the ISO Change Cost has been a savings to Seller (each, an "ISO Change Cost Payment"), in accordance with Exhibit P.

The procedure for calculating the total net incremental change in ISO charges to Seller or Seller's Actual Revenue during any Term Year associated with an ISO Change Cost and for calculating any payment owed to a Party in respect of an ISO Change Cost is described in Exhibit P.

The procedure for addressing disputes related to an ISO Change Cost Payment is set forth in Section 11.03 below.

In the event of an inconsistency between this Section 11.02 and Exhibit P concerning the determination of an ISO Change Cost Payment, Exhibit P shall govern.

- 11.03 Procedure for Claiming an ISO Change Cost Payment.
  - (a) Notice of Claim for an ISO Change Cost Payment.

If either Party believes that it is owed an ISO Change Cost Payment for any Term Year, it shall, on or before the sixtieth (60<sup>th</sup>) day after the end of the

Term Year, provide Notice to the other Party of its claim for the ISO Change Cost Payment.

Such a Notice must include the Party's explanation and support for its claim that a Change in ISO Tariff has occurred and an ISO Change Cost was incurred therefrom, the Party's calculation of its ISO Change Cost and ISO Change Cost Payment in accordance with Exhibit P supporting its ISO Change Cost Payment claim, and annotated workpapers and source data supporting the Party's calculations.

# (b) Payment of Claim.

Subject to Section 11.03(c) regarding dispute of a claim, a Party receiving a claim for an ISO Change Cost Payment shall pay the claim (or any undisputed portion of the claim) within forty-five (45) days from the date Notice of an ISO Change Cost Payment is provided pursuant to this Section 11.03.

# (c) Disputed Claims.

If either Party disputes in good faith a claim for an ISO Change Cost Payment, such Party may elect to utilize EDR by providing Notice of such election to the other Party within ten (10) days after receipt of the disputed ISO Change Cost Payment request, in accordance with the provisions of Section 12.03(a)(ii).

If a disputing Party does not elect to utilize EDR, the Parties shall negotiate in good faith to resolve the dispute. If they are unable to resolve the dispute within forty-five (45) days after the sending of the Notice of a claim for an ISO Change Cost Payment pursuant to this Section 11.03, either Party may submit the dispute to mediation and ADR as provided in Article Twelve.

The Parties promptly shall provide information or data relevant to the dispute as they each may possess which is requested by the other Party. Any information provided in connection with dispute resolution may be provided pursuant either to the Non-Disclosure Agreement attached as Exhibit J or to such other agreement that the Parties shall negotiate to provide reasonable protection for their confidential business information or trade secrets.

11.04 ISO Change Cost Threshold Amount.

The "ISO Change Cost Threshold Amount" shall be the value calculated in accordance with the following formula:

# ISO CHANGE COST THRESHOLD AMOUNT = $A \times B \times C$

Where A = Expected Net Energy Production divided by 2, in kWh.

B = Energy Price in \$/kWh (i.e., \$/MWh/1000).

C = Two percent (2%).

\*\*\* End of ARTICLE ELEVEN \*\*\*

#### ARTICLE TWELVE. MEDIATION AND ARBITRATION

#### 12.01 Dispute Resolution.

The Parties agree that 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 ("Dispute"), which Dispute the Parties have been unable to resolve by informal methods after undertaking a good faith effort to do so, shall be resolved according to the dispute resolution procedures of this Article Twelve.

Any Dispute that is not an EDR Eligible Dispute shall 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(b) below.

The Parties waive any right to a jury and agree that there shall be no interlocutory appellate relief (such as writs) available.

#### 12.02 Mediation.

Either Party may initiate mediation by providing Notice to the other Party in accordance with Section 10.08 of a written request for mediation, setting forth a description of the Dispute and the relief requested.

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

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

Unless otherwise agreed to by the Parties, the mediation shall 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 shall 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, shall not be subject to discovery and shall 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 that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

### 12.03 Binding Arbitration.

- (a) Expedited Dispute Resolution.
  - (i) Eligible Disputes for Expedited Dispute Resolution.

In order to expedite the resolution of certain disputed payment amounts and certain disputed defaults under this Agreement, either Party may elect to commence a proceeding for binding expedited dispute resolution ("EDR") for such disputes in accordance with the provisions of this Section 12.03(a). Those disputes for which EDR shall be available (the "EDR Eligible Disputes") shall be disputes over Non-Financial Defaults and the payment amounts in Payment Requests only. Disputes regarding Financial Defaults shall not be eligible for EDR.

(ii) Notice; EDR Collateral Amount.

In the event that one Party receives an invoice for payment or a Notice of default for any EDR Eligible Dispute, and the receiving Party believes that it has a bona fide, good faith dispute regarding the payment amount or alleged default, such Party (the "Disputing Party") may initiate expedited binding arbitration with respect to such dispute by providing Notice in accordance with Section 10.08 of a demand for EDR before the Arbitrator (as defined below), provided that such Notice must be given by the Disputing Party within ten (10) days after receipt of such payment invoice or Notice of default, as applicable; provided, that in no event shall such notice be given later than the expiration of the cure period applicable to such default. No mediation shall be required in order to commence EDR for an EDR Eligible Dispute.

The Disputing Party's Notice shall set forth in detail the reason for its dispute, and shall include the Disputing Party's calculation of any disputed amounts, calculated in accordance with the appropriate provisions of this Agreement, as well as annotated work papers and source data *supporting* the Disputing Party's calculations and claims.

In addition, if SCE has elected the Low Price Point, Seller may only utilize EDR as a Disputing Party if, within two (2) Business Days after sending its Notice requesting EDR, Seller posts the EDR Collateral Amount.

### (iii) EDR Procedures.

During the first thirty (30) days after receipt of a Notice of request for EDR, the Parties shall: (y) engage in good faith negotiations to resolve their disputes with respect to any payment amount or alleged default; and (z) cooperate with one another in selecting an Arbitrator capable of complying with the conditions of this EDR procedure.

If the Parties are able to resolve their dispute by good faith negotiation within the aforementioned thirty (30) day period, the Parties may agree in writing to cancel the EDR, each Party shall pay its own attorneys' fees and costs associated with the arbitration, if any, and the Parties shall bear equally all other costs of the arbitration, if any.

If the EDR proceeds, the Arbitrator shall be instructed that a final decision must be rendered within one hundred eighty (180) days after receipt of the Notice for EDR (the "EDR Decision Deadline"), and the Parties shall cooperate with each other and the Arbitrator in a good faith effort to meet the EDR Decision Deadline. EDR shall proceed in accordance with the provisions of Section 12.04.

#### (iv) Effect of EDR.

In the event that a Disputing Party invokes EDR for an EDR Eligible Dispute in accordance with the procedures set forth above:

- (a) Notwithstanding the expiration of any applicable cure period hereunder, from the date of receipt of the Notice requesting EDR until the earlier of: (i) three (3) Business Days after a decision of the Arbitrator in the EDR proceeding, or (ii) the EDR Decision Deadline (the "Tolling Period"):
  - I. An Event of Default shall not be deemed to have occurred; and
  - II. The Party providing the invoice for payment or Notice of default (the "Non-Disputing Party") may not exercise its right to terminate this Agreement based upon any Non-Financial Defaults or Payment Requests,

provided that if Seller exercises an option to mitigate damages pursuant to Section 6.02(c), it shall refrain from exercising a termination right for the time periods and as provided in that section

Nothing set forth in Sections (I) and (II) above shall act to toll or extend any cure periods under Section 6.01; and

(b) During the Tolling Period, the Parties may not exercise any netting rights under Section 4.03 based upon a Payment Request or Non-Financial Default which is the subject of an EDR proceeding;

provided that, in the event SCE is the Non-Disputing Party, its obligations under clauses (a)-(b) above shall be terminated immediately in the event Seller makes any equity distributions to its Affiliates, other than ordinary course distributions (including distributions to parent entities) for the payment of debt, at any time during the Tolling Period.

In the event that the Arbitrator does not render a final decision on or before the EDR Decision Deadline, the Parties may, by mutual agreement in writing, either terminate the EDR proceeding or allow the EDR proceeding to continue, notwithstanding that the Non-Disputing Party is free at such time to exercise its termination right its netting rights.

(v) EDR Collateral Amount.

The EDR Collateral Amount shall be posted to SCE in the form of cash or Letter of Credit, as set forth for any applicable Performance Assurance generally pursuant to Section 8.02(c), and shall be posted and maintained by Seller continuously, commencing with the time specified in Section 12.03(a)(ii) above, to and including the later of: (i) the date, as set forth in a Notice to be provided to Seller by SCE, that the applicable dispute has been fully resolved, as determined by SCE in its reasonable discretion, and all amounts owing to SCE in respect of the dispute have been paid, (ii) the last date set forth in Section 8.02(a) through which Seller would be required to post and maintain any Performance Assurance, to the extent Performance Assurance would be applicable, under this Agreement, or (iii) the date an arbitration award has been issued in the EDR proceeding holding that Seller owes no amounts to SCE in respect of the dispute.

Any obligation by SCE to suspend its termination rights or offset rights during the Tolling Period as set forth in Section 12.03(a)(iv) shall be terminated immediately in the event Seller fails to post or maintain the EDR Collateral Amount as required in this Section 12.03(a)(v).

# (b) Alternative Dispute Resolution.

Either Party may initiate binding arbitration with respect to the matters first submitted to mediation by providing Notice in accordance with Section 10.08 of a demand for binding arbitration ("ADR") before an Arbitrator at any time following the unsuccessful conclusion of the mediation provided for in Section 12.02 above.

The Parties will cooperate with one another in selecting the Arbitrator within sixty (60) days after Notice of the demand for ADR and shall further cooperate in scheduling the Arbitration to commence no later than one hundred eighty (180) days from the date of Notice of the demand. ADR shall proceed in accordance with the provisions of Section 12.04.

This ADR procedure may be used to resolve EDR Eligible Disputes (in lieu of EDR) and Financial Defaults, provided that in neither case shall the netting rights or the termination rights of the Party requesting payment or claiming the default be suspended.

#### 12.04 General Provisions for Arbitration.

- (a) All EDR and ADR (collectively, "Arbitration") shall be before a single, neutral arbitrator ("Arbitrator"). 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.
- (b) With respect to ADR, unless otherwise agreed to by the Parties, the individual acting as the Mediator shall be disqualified from serving as the Arbitrator in the ADR 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.
- (c) If, notwithstanding their good faith efforts, the Parties are unable to agree upon a mutually-acceptable Arbitrator, the Arbitrator shall be appointed as provided for in California Code of Civil Procedure Section 1281.6.
- (d) Upon Notice of a Party's demand for Arbitration, such Dispute submitted to Arbitration, including the determination of the scope or applicability of this

- agreement to arbitrate, shall 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.
- (e) Except as provided for herein, the Arbitration shall 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 shall 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).
- (f) 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 shall be in Los Angeles County, California.
- (g) 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:
  - (i) 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).
  - (ii) The initial disclosure shall occur within thirty (30) days after the initial conference with the Arbitrator or at such time as the Arbitrator may order.
  - (iii) Discovery may commence at any time after the Parties' initial disclosure.
  - (iv) The Parties will not be permitted to propound any interrogatories or requests for admissions.
  - (v) Discovery shall 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).

- (h) Each Party is allowed a maximum of three (3) expert witnesses, excluding rebuttal experts.
- (i) Within forty-five (45) 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.
- (j) Within fifteen (15) days after the initial expert disclosure, the Parties may designate a maximum of two (2) rebuttal experts.
- (k) Unless the Parties agree otherwise, all direct testimony shall be in form of affidavits or declarations under penalty of perjury.
- (l) Each Party shall make available for cross examination at the Arbitration hearing its witnesses whose direct testimony has been so submitted.

#### 12.05 Arbitration Awards.

Judgment on the award may be entered in any court having jurisdiction. In any award, the Arbitrator shall 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 shall be borne by such Party), including the fees of the Arbitrator and any expert witnesses (collectively, the "Arbitration Costs"), against the Party who did not prevail.

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

In the case of EDR, the Arbitrator also shall allocate against the Party who did not prevail the prevailing Party's reasonable attorneys' fees and expenses related to the prevailing Party's participation in the Arbitration. Further, if the Arbitrator determines that the non-prevailing Party's position related to the dispute (i.e., either initiating or opposing the Payment Request or Notice of default) was asserted in bad faith, the Arbitrator may award to the prevailing Party an additional penalty in an amount as determined by the Arbitrator in his or her discretion.

#### 12.06 Waivers.

SELLER AGREES THAT SELLER WILL NOT AT ANY TIME INSIST UPON, PLEAD, CLAIM OR TAKE THE BENEFIT OR ADVANTAGE OF ANY LAW NOW OR HEREAFTER IN FORCE REQUIRING FORECLOSURE OF ANY RIGHTS GRANTED TO SCE BY SELLER UNDER ANY DEED OF TRUST BEFORE TAKING ANY ACTION DESCRIBED IN SECTIONS 12.01 AND 12.02 HEREOF.

\*\*\* End of ARTICLE TWELVE \*\*\*

In WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date first written:

### COSO CLEAN POWER, LLC,

a Delaware limited liability company.

By:

Leslie J. Gelber

President

Chief Operating Officer

Date: 11-15-06

SOUTHERN CALIFORNIA EDISON COMPANY,

a California corporation.

\_\_(<u>~</u>

By:

Pedro J. Pizarro Senior Vice President,

Power Procurement

Date: Nov. 15, 2006



The undersigned are parties to this Agreement for the limited purposes of Section 1.08 (Assignment by Owners to Seller), Section 2.06(b) (Right of First Refusal), Section 3.01 (Conveyance of Entire Output, Environmental Attributes and Capacity Attributes), Section 3.02 (Resource Adequacy Benefits), Section 3.03 (Exclusive Rights to Additional Well Products), Section 3.05(d) (Agreement Not To Sell Unincluded Capacity to Third Parties Subject to Right of First Refusal), Section 3.08 (Site Control), Article Eight (Credit and Collateral Requirements), Article Nine (Governmental Charges), Section 10.02(d) (Representations, Warranties, and Covenants of Owners), Section 10.01(h) (No Reliance Upon Promises Or Information Not Included In The Agreement), Section 10.07 (Governing Law), 10.08 (Notice), 10.09 (General), 10.10 (Confidentiality), 10.13 (Mobile Sierra), Section 10.16 (Injunctive Relief) and Article Twelve (Mediation and Arbitration) (for disputes related to obligations undertaken by the Owners herein):

#### COSO POWER DEVELOPERS

a California general partnership

By: New CTC Company, LLC, its Managing General Partner

Leslie J. Felber

President, Chief Operating Officer

Date: 11-15-06

#### COSO FINANCE PARTNERS

a California general partnership

By: New CLOC Company, LLC, its Managing General Partner

Leslie J. Gelber

President, Chief Operating Officer

Date: 11- 15-06

#### COSO ENERGY DEVELOPERS

a California general partnership

By: New CHIP Company, LLC, its Managing General Partner

Leslie J. Gelber

President, Chief Operating Officer

Date: 11-15-06

# **EXHIBIT A**

Definitions

# EXHIBIT A

Definitions

The following terms shall have the following meaning for purposes of this Agreement.

- 1. "Additional Geothermal Wells" means any and all existing or future geothermal wells on the real property held by Seller or Owners pursuant to the Leases but not otherwise a part of the Generating Facility as of the Effective Date.
- 2. "Additional Geothermal Well Products" means electric energy, Environmental Attributes, Capacity Attributes and Resource Adequacy Benefits associated with or attributable to any Additional Geothermal Wells.
- 3. "ADR" has the meaning set forth in Section 12.03(b).
- 4. "Affiliate" means, with respect to a Party, any entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such Party.
  - For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power; provided however, that each of the Owners shall be considered an Affiliate of Seller even if such Owners do not reach the threshold of 50% ownership otherwise applicable in this definition.
- 5. "Agreement" has the meaning set forth in the Preamble.
- 6. "Agreement Deposit" has the meaning set forth in Section 3.05(a).
- 7. "Applicable Laws" means all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority that apply to either or both of the Parties, the Generating Facility or the terms of this Agreement.
- 8. "Arbitrator" has the meaning set forth in Article Twelve.
- 9. "Assignment Agreement" has the meaning set forth in Section 1.08.
- 10. "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.
- 11. "Business Day" means any day except a Saturday, Sunday, a Federal Reserve Bank holiday and the Friday after the U.S. Thanksgiving holiday. A Business Day shall begin 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.
- 12. "Calculation Period" has the meaning set forth in Section 1.01(g).
- 13. "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 resource adequacy requirements, attributed to or associated with the Generating Facility, any unit of generating capacity of the Generating Facility or any Additional Geothermal Wells during the Term.
- 14. "CEC" means the California Energy Commission.
- 15. "CEC Certification and Verification" means that the CEC has certified (or, with respect to periods before the Generating Facility has been constructed, that the CEC has pre-certified) that the Generating Facility is an ERR for purposes of the RPS Legislation and that all electric energy produced by the Generating Facility qualifies as generation from an ERR for purposes of the RPS Legislation.
- 16. "CED" has the meaning set forth in bullet (iii) of the Recitals to this Agreement.
- 17. "CFP" has the meaning set forth in bullet (ii) of the Recitals to this Agreement.
- 18. "Change of Control" means any assignment or other transfer of fifty percent (50%) or more of the voting control of Seller (as of the Effective Date).
- 19. "Change in ISO Tariff' means that the ISO Tariff has been changed and such change has a material adverse impact on either Party, or the ISO has been dissolved or replaced and any successor to the ISO operates under rules, protocols, procedures or

- standards that differ in a material respect from the ISO Tariff, after the Effective Date.
- 20. "Claiming Party" has the meaning set forth in Section 5.02.
- 21. "Claims" means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.
- 22. "Collateral Assignment Agreement" has the meaning set forth in Section 10.05.
- 23. "Control Area" means the electric power system (or combination of electric power systems) under the operational control of the ISO or any other electric power system under the operational control of another organization vested with authority comparable to that of the ISO.
- 24. "Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions, legal expenses and other similar third party transaction costs and expenses reasonably incurred by such Party in entering into any new arrangement which replaces this Agreement.
- 25. "Cross Default Amount" means the dollar amount set forth in Section 1.07(c).
- 26. "CPD" means has the meaning set forth in bullet (i) of the Recitals to this Agreement.
- 27. "CPUC" means the California Public Utilities Commission.
- 28. "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 SCE, subject to CPUC review of SCE's administration of the Agreement;
  - b) Finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining SCE's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the RPS Legislation, CPUC Decision 03-06-071, or other Applicable Law; and
  - c) Finds that any procurement pursuant to this Agreement constitutes incremental procurement or procurement for baseline replenishment by SCE

from an eligible renewable energy resource for purposes of determining SCE's compliance with any obligation to increase its total procurement of eligible renewable energy resources that it may have pursuant to the RPS Legislation, CPUC 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.

- 29. "Credit Rating" means with respect to any entity, on the relevant date of determination, the respective ratings then assigned to such entity's unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P or Moody's. If no rating is assigned to such entity's unsecured, senior long-term debt or deposit obligation by either S&P or Moody's,
  - then "Credit Rating" shall mean the general corporate credit rating or long-term issuer rating assigned by S&P or Moody's, as the case may be.
- 30. "Daily Delay Liquidated Damages" has the meaning set forth in Section 3.05(b).
- 31. "Defaulting Party" means the Party causing or affected by any occurrence or event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default by such Party under this Agreement.
- 32. "Delivered Amounts" means the Metered Amounts less Delivery Losses.
- 33. "Delivery Losses" means all electrical losses occurring between the ISO Approved Meter and the Delivery Point and electrical losses occurring over the ISO Grid as such losses are assigned by the ISO to the Generating Facility including if applicable, but not limited to:
  - a) If the ISO Approved Meter is not installed on the high voltage side of the Generating Facility's substation bus bar, transformer and other electrical losses occurring between the ISO Approved Meter and the high voltage side of the Generating Facility's substation bus bar;
  - b) Any applicable DLF or TLF, or if no DLF is applicable, *then* electrical losses between the high voltage side of the Generating Facility's substation bus bar and the ISO Grid; and
  - c) Electrical losses determined by utilizing the GMM, or TMM if applicable, assigned to the Generating Facility.
- 34. "Delivery Point" means ISO Zone SP-15.

Notwithstanding anything to the contrary in Article Eleven, after a Change in ISO Tariff that impacts the trading points or trading rules thereof in ISO Zone SP-15, the "Delivery Point" shall be a valid Scheduling point in SP-15 that is either:

- a) The SCE load aggregation point, if defined by the ISO; or
- b) If an SCE load aggregation point is not defined by the ISO, the ISO-defined trading hub designated by SCE as most closely representing SCE's bundled customer load.
- 35. "Demonstrated Initial Net Contract Capacity," "Demonstrated Intermediate Net Contract Capacity," and "Demonstrated Final Net Contract Capacity" have the meanings set forth in Section 3.05(d).
- 36. "Demonstration Hour" means the date and hour selected by Seller, on or before the Initial, Intermediate or Final Selected Date, as appropriate, during which Seller claims it has demonstrated the Initial, Intermediate or Final Net Contract Capacity.
- 37. "Disclosing Party" has the meaning set forth in Section 10.10.
- 38. "Disclosure Order" has the meaning set forth in Section 10.10.
- 39. "Dispute" has the meaning set forth in Article Twelve.
- 40. "Disputing Party" has the meaning set forth in Section 12.03(a)(ii).
- 41. "DLF" means a measure of all net electrical losses as determined by the CPUC associated with the transmission of electric energy through the electric system from the high voltage side of the Generating Facility's substation bus bar to the interface with the ISO Grid, also known as the distribution loss factor.
- 42. "Early Termination Date" has the meaning set forth in Section 6.02.
- 43. "EDR" has the meaning set forth in Section 12.03(a).
- 44. "EDR Collateral Amount" is the amount set forth in Section 1.06 to be posted by Seller pursuant to Section 12.03(a)(ii) and Section 12.03(a)(v).
- 45. "EDR Decision Deadline" has the meaning set forth in Section 12.03(a)(iii).
- 46. "EDR Eligible Dispute" has the meaning set forth in Section 12.03(a).
- 47. "Effective Date" has the meaning set forth in the Preamble.
- 48. "Election Date" has the meaning set forth in Section 6.02(c).

- 49. "Emergency" means:
  - a) An actual or imminent condition or situation which jeopardizes SCE Electric System Integrity or the integrity of other systems to which SCE is connected, as determined by SCE in its reasonable discretion, or any condition so defined and declared by the ISO; or
  - An emergency condition as defined under the interconnection agreement and any abnormal interconnection or system condition that requires automatic or immediate manual action to prevent or limit loss of SCE's load or generation supply, that could adversely affect the reliability of the SCE system or generation supply, that could adversely affect the reliability of any interconnected system, or that could otherwise pose a threat to public safety.
- 50. "Energy Deviations" means the absolute value of the difference, in kWh, in any Settlement Interval between:
  - a) The Final Hour-Ahead Schedule for the hour of the Settlement Interval divided by the number of Settlement Intervals in the hour; and
  - b) Delivered Amounts for the Settlement Interval.
- 51. "Energy Forecast(s)" means the data containing Seller's expected Metered Amounts and submitted in accordance with Exhibit D.
- 52. "Energy Payment" has the meaning set forth in Section 4.02
- 53. "Energy Payment Allocation Factor" has the meaning set forth in Exhibit K.
- 54. "Energy Price" means the energy price set forth in Section 1.04.
- 55. "Energy Replacement Damage Amount" has the meaning set forth in Section 3.06(d).
- 56. "Environmental Attributes" mean any and all current or future credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributed to the generation from the Generating Facility and its displacement of conventional energy generation or any Additional Geothermal Wells. Environmental Attributes include but are not limited to:
  - a) Any avoided emissions of pollutants to the air, soil or water such as sulfur oxides  $(SO_x)$ , nitrogen oxides  $(NO_x)$ , carbon monoxide (CO) and other pollutants;
  - b) Any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>) and other greenhouse gases (GHGs) that have been determined by any applicable

governmental body or association of governmental representatives, such as, but not limited to, the United Nations Intergovernmental Panel on Climate Change, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and

c) 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 kWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of energy.

#### Environmental Attributes do not include:

- d) Any energy, capacity, reliability or other power attributes from the Generating Facility or Additional Geothermal Wells;
- e) Production Tax Credits associated with the construction or Operation of the Generating Facility, or associated with any Additional Geothermal Wells, and other financial incentives in the form of credits, reductions, or allowances associated with the Generating Facility or any Additional Geothermal Wells that are applicable to a state or federal income taxation obligation;
- f) Fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by Seller for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits; or
- g) Emission reduction credits encumbered or used by the Generating Facility, or in association with any Additional Geothermal Wells, for compliance with local, state, or federal operating and/or air quality permits.
- 57. "Equitable Defense" means any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.
- 58. "ERR" means a generating facility that qualifies as an eligible renewable energy resource for purposes of the RPS Legislation.
- 59. "Estimated Restart Date" shall have the meaning set forth in Section 6.02(c).

- 60. "Event of Default" has the meaning set forth in Section 6.01.
- 61. "Event of Deficient Energy Deliveries" has the meaning set forth in Section 3.06(b).
- 62. "Event of Excess Deliveries" has the meaning set forth in Section 6.01(g)(v).
- 63. "Expected Net Energy Production" means the Generating Facility's expected Metered Amounts, calculated as set forth in Section 1.01(f).
- 64. "Extraordinary SCE Force Majeure" means a Force Majeure as to which SCE is the Claiming Party that results in SCE not accepting or Scheduling electric energy for more than ten (10) consecutive days during which Seller was prepared and able to deliver the Scheduled Amounts at the Delivery Point.
- 65. "Federal Funds Effective Rate" means the annual interest rate posted opposite the caption "Federal Funds (effective)" as set forth in the weekly statistical release as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.
- 66. "FERC" means the Federal Energy Regulatory Commission.
- 67. "Final Generating Facility Units" has the meaning set forth in Section 1.01(d).
- 68. "Final Hour-Ahead Schedule" has the meaning as set forth in the ISO Tariff.
- 69. "Final Net Contract Capacity" means the electrical generating capacity that Seller commits to dedicate under this Agreement as of the Final Term Period as set forth in Section 1.01(e) and demonstrated as set forth in Exhibit L.
- 70. "Final Selected Date" has the meaning set forth in Section 2.04(b).
- 71. "Final Start-Up Conditions" are the three conditions identified in Section 2.04(b)(i).
- 72. "Final Start-Up Deadline" means the date set forth in Section 1.02(c), as such date may be extended or otherwise revised pursuant to this Agreement.
- 73. "Final Term Period" means the period commencing at 12:00 a.m. on March 13, 2019 and ending at 11:59 p.m. on the last day of the Term, inclusive.
- 74. "Financial Defaults" means the following defaults that are not eligible for EDR: defaults under (i) Section 6.01(d) (Credit Default); (ii) Section 6.01(f) (Guarantor Default) (other than Section 6.01(f)(i)); (iii) Section 6.01(g)(iii) (Restricted Financing Default); and (iv) Section 6.01(m) (Security Document Default).

- 75. "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, or does not results from the negligence of, that Party; and
  - c) The Party has been unable to overcome by the exercise of due diligence, including, but not limited to, an act of God, flood, drought, earthquake, storm, fire, pestilence, lightning, volcanic activity, and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, terrorism, sabotage, strike or labor dispute, or actions or inactions of any Governmental Authority, or curtailment or reduction in deliveries at the direction of a Transmission Provider or the ISO except as set forth below.

## Force Majeure does not include:

- a) The lack of wind, sun or other fuel source of an inherently intermittent nature;
- b) The lack of economic resources of a Party; nor
- c) Curtailment or reduction in deliveries at the direction of a Transmission Provider or the ISO when the basis of the curtailment or reduction in deliveries ordered by a Transmission Provider or the ISO is congestion arising in the ordinary course of operations of the Transmission Provider's system or the ISO Grid, including congestion caused by outages or capacity reductions for maintenance, construction or repair.
- 76. "Forced Withdrawal" has the meaning set forth in Section 6.01(g)(ii).
- 77. "Forecast" or "Forecasting" means the action of Seller in preparing and submitting the Energy Forecast(s) to SCE in accordance with Exhibit D.
- 78. "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 shall be zero dollars (\$0).
  - The Forward Settlement Amount shall not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

- 79. "GAAP" means generally accepted accounting principles.
- 80. "Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, 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 the economic benefit 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, Market Price Referents set by the CPUC, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transaction at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Term of this Agreement, but shall include the value of Environmental Attributes, Capacity Attributes and Resource Adequacy Benefits.

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

- 81. "Generating Facility" means collectively and individually, the Initial, Intermediate, and Final Generating Facility Units, all modifications Seller or Owners may make after the Effective Date to any such units to facilitate the generation of electricity from geothermal steam, and all materials, equipment systems, structures, features and improvements necessary to produce electric energy at such facility, as further described in Exhibit B, and excluding the Site, land rights and interests in land.
- 82. "Geothermal Reservoir Report" means a report obtained by Seller or Owners from an expert independent consulting firm qualified in geothermal reservoir assessment which assesses the geothermal potential at the Site.
- 83. "GMM(s)" means the generation meter multipliers as determined by the ISO representing the calculation of all electrical losses assigned to the Generating Facility associated with the transmission of electric energy delivered by the Generating Facility over the ISO Grid, which values are, as of the Effective Date, posted by the ISO on its website.

The values used in the Agreement will be those appearing on the ISO website on the third (3rd) Business Day of the calendar month following the month for which such values are being applied.

- 84. "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.
- 85. "Governmental Charges" has the meaning as set forth in Section 9.02.
- 86. "Guarantor" has the meaning set forth in Section 1.07.
- 87. "Guaranty Agreement" means, if a Guarantor has been identified, the guaranty agreement from the Guarantor in the form attached hereto as Exhibit I.
- 88. "Ideal Specific Work" has the meaning set forth in Exhibit M.
- 89. "Initial Generating Facility Units" has the meaning set forth in Section 1.01(d).
- 90. "Initial Net Contract Capacity" means the electrical generating capacity that Seller commits to dedicate under this Agreement as of the Initial Term Period as set forth in Section 1.01(e) and demonstrated as set forth in Exhibit L.
- 91. "Initial Selected Date" has the meaning set forth in Section 2.03(a)(iii).
- 92. "Initial Start-Up Conditions" are the conditions identified in Section 2.03(a)(iii).
- 93. "Initial Start-Up Deadline" is the date set forth in Section 1.02(a), as such date may be extended or otherwise revised pursuant to this Agreement.
- 94. "Initial Synchronization" means the date upon which the Generating Facility is initially synchronized with Seller's Transmission Provider.
- 95. "Initial Term Period" means the period commencing on the first day of the Term and ending at 11:59 p.m. on August 18, 2011, inclusive.
- 96. "Interest Rate" means an annual rate equal to:
  - a) The rate published in The Wall Street Journal as the "Prime Rate" (or, if more than one rate is published, the arithmetic mean of such rates) as of the date payment is due; plus

- b) Two percentage points (2%);
- provided, however, that in no event shall the Interest Rate exceed the maximum interest rate permitted by Applicable Laws.
- 97. "Intermediate Generating Facility Units" has the meaning set forth in Section 1.01(d).
- 98. "Intermediate Net Contract Capacity" means the electrical generating capacity that Seller commits to dedicate under this Agreement as of the Intermediate Term Period as set forth in Section 1.01(e) and demonstrated as set forth in Exhibit L.
- 99. "Intermediate Selected Date" has the meaning set forth in Section 2.04(a).
- 100. "Intermediate Start-Up Conditions" are the conditions identified in Section 2.04(a).
- 101. "Intermediate Start-Up Deadline" is the date set forth in Section 1.02(b), as such date may be extended or otherwise revised pursuant to this Agreement.
- 102. "Intermediate Term Period" means the period commencing at 12:00 a.m. on August 19, 2011 and ending at 11:59 p.m. on March 12, 2019, inclusive.
- 103. "ISO" means the California Independent System Operator Corporation or successor entity that dispatches certain generating units and loads and controls the transmission facilities of entities that:
  - a) Own, operate and maintain transmission lines and associated facilities or have entitlements to use certain transmission lines and associated facilities; and
  - b) Have transferred to the ISO or its successor entity operational control of such facilities or entitlements.
- 104. "ISO-Approved Meter" has the meaning set forth in Section 3.07.
- 105. "ISO Change Cost" shall have the meaning set forth in Section 11.02(a).
- 106. "ISO Change Cost Payment" shall have the meaning set forth in Section 11.02(b).
- 107. "ISO Change Cost Threshold Amount" shall have the meaning set forth in Section 11.04.
- 108. "ISO Charges" means the debits, costs, penalties and interest that are directly assigned by the ISO to the ISO Global Resource ID for the Generating Facility for, or attributable to, scheduling or deliveries from the Generating Facility under this Agreement.

- 109. "ISO Declared Over-Generation Condition" means an ISO declared condition on the ISO Grid where the sum of the desired generation output of all of the Scheduling Coordinators in the Control Area, absent mitigation, would be greater than the system load.
- 110. "ISO Forecasted Over-Generation Condition" means an ISO forecasted condition on the ISO Grid where the sum of the desired generation output of all of the Scheduling Coordinators in the Control Area, absent mitigation, would be greater than the system load.
- 111. "ISO Global Resource ID" or "GRI" means the number or name assigned by the ISO to the ISO Approved Meter.
- 112. "ISO Grid" means the system of transmission lines and associated facilities and entitlements of the participating transmission owners that have been placed under the ISO's operational control.
- 113. "ISO Sanctions" means any sanction directly assigned by the ISO to the ISO Global Resource ID for the Generating Facility, for, or attributable to, scheduling or deliveries from the Generating Facility under this Agreement.
- 114. "ISO Tariff" means the California Independent System Operator Corporation Operating Agreement and Tariff, 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.
- 115. "JAMS" has the meaning set forth in Section 12.02.
- 116. "kW" means a kilowatt of electric energy generating capacity.
- 117. "kWh" means a kilowatt-hour of electric energy generating capacity.
- 118. "Leap Year" means a calendar year which has 366 days.
- 119. "Leases" means the following agreements, as may be amended, whereby Owners lease the Site described in Section 1.01(b) from a third party:
  - a) Geothermal resources lease bearing Serial No. CACA-11384 and approved on February 1, 1982, between the Bureau of Land Management of the United States Department of the Interior and CED as assignee to rights, title, and interest originally held by the Los Angeles Department of Water and Power, as amended and assigned;
  - b) Geothermal resources lease bearing Serial No. CACA-11385 and approved on February 1, 1982, between the Bureau of Land Management of the United

- States Department of the Interior and CED as assignee to rights, title, and interest originally held by the Los Angeles Department of Water and Power, as amended and assigned;
- c) Geothermal resources lease bearing Serial No. CACA-11402, dated April 29, 1985 and effective as of May 1, 1985, between the Bureau of Land Management of the United States Department of the Interior and CED as assignee to rights, title, and interest originally held by California Energy Company, Inc., as amended and assigned; and
- d) Geothermal resources lease bearing Contract No. N68711-05-C-0001 and dated November 1, 2004, by and between the United States of America acting through the Department of the Navy as landlord and CFP and CPD as tenants and assignees of China Lake Joint Venture, a California general partnership, as amended and assigned.
- 120. "Lender" means any financial institution(s) or successor(s) in interest or assignees that provide(s) development, bridge, construction, permanent debt (including debt financed on a Portfolio basis) or tax equity financing or refinancing for the Generating Facility to Seller (or any Affiliate of Seller).
- 121. "Letter of Credit" means an irrevocable, nontransferable standby letter of credit issued by a U.S. commercial bank or a U.S. branch of a foreign bank with such bank having a Credit Rating of at least "A-" from S&P and "A3" from Moody's, substantially in the form of Exhibit N and reasonably acceptable to SCE.
  - All Letter of Credit costs shall be borne by Seller.
- 122. "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-" by S&P and "A3" by Moody's;
  - 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 fails or ceases to be in full force and effect at any time;
  - e) Seller fails to provide an extended or replacement Letter of Credit within twenty (20) Business Days before such Letter of Credit expires or terminates;

f) The issuer of such Letter of Credit becomes Bankrupt;

provided that, 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.

- 123. "Local Business Day" means, a Business Day on which commercial banks are open for business (a) in relation to any payment, in the place where the relevant account is located and (b) in relation to any notice or other communication, in the city specified in the address for notice provided by the recipient, except for the Friday immediately following the U.S. Thanksgiving holiday or a Federal Reserve Bank holiday.
- 124. "Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Term of this Agreement, determined in a commercially reasonable manner.

Factors used in determining economic 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, Market Price Referents set by the CPUC, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transaction at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Term of this Agreement and shall include the value of Environmental Attributes, Capacity Attributes and Resource Adequacy Benefits.

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

- 125. "Lost Output" means the sum of the Metered Amounts over the relevant measurement period that the Generating Facility was available to produce and could reasonably have been expected to deliver, based upon historical performance and/or actual operating conditions, but was not delivered due to:
  - a) Force Majeure;
  - b) An Event of Default where SCE is the Defaulting Party; or

- c) A curtailment or reduction of deliveries ordered or caused by the ISO, or SCE acting as a Transmission Provider; *provided that*, the basis of such curtailment or reduction is not an event caused by Seller.
- 126. "Lost Output Report" means the report of Lost Output prepared in accordance with the procedures set forth in Section 3.19 and Exhibit M.
- 127. "Lost Output Workbook" has the meaning set forth in Exhibit M.
- 128. "Low Price Point" has the meaning set forth in Section 1.06.
- 129. "Market Price" means the ISO Real-Time Price for uninstructed deviations or any successor price for short term imbalance energy, as such price or successor price is defined in the ISO Tariff Appendix A, which would apply to the Generating Facility, which values are, as of the Effective Date, posted by the ISO on its website.
  - The values used in the Agreement will be those appearing on the ISO website on the third (3rd) Business Day of the calendar month following the month for which such prices are being applied.
- 130. "Market Price Referent" means the market price referent applicable to this Agreement, as determined by the CPUC in accordance with Public Utilities Code Section 399.15(c).
- 131. "Master File" has the meaning set forth in the ISO Tariff.
- 132. "Maximum Net Contract Capacity" has the meaning set forth in Section 1.01(e)(iv).
- 133. "Mediator" has the meaning set forth in Article Twelve.
- 134. "Metered Amounts" means the electric energy produced by the Generating Facility and expressed in kWh that qualifies as eligible renewable energy for purposes of the RPS Legislation pursuant to CEC Certification and Verification, subject to a change in the RPS Legislation, as measured by the ISO Approved Meter.
- 135. "Meter Service Agreement" has the meaning set forth in the ISO Tariff.
- 136. "Milestone Schedule" means Seller's schedule to develop the Generating Facility as set forth in Exhibit G, including any revisions thereto in accordance with this Agreement.
- 137. "Moody's" means Moody's Investor Services, Inc.
- 138. "MW" means a megawatt (or 1,000 kilowatts) of electric energy generating capacity.

- 139. "MWh" means a megawatt-hour (or 1,000 kilowatt-hours) of electric energy.
- 140. "Net Contract Capacity" means Initial, Intermediate or Final Net Contract Capacity, as applicable.
- 141. "Non-Defaulting Party" has the meaning set forth in Section 6.02.
- 142. "Non-Disputing Party" has the meaning set forth in Section 12.03(a)(iv).
- 143. "Non-Financial Defaults" means all defaults other than Financial Defaults.
- 144. "Notice" means notices, requests, statements or payments provided in accordance with Section 10.08 and Exhibit C.
- 145. "OMAR" means the Operational Metering Analysis and Reporting System operated and maintained by the ISO as the repository of settlement quality meter data or its successor.
- 146. "Operate," "Operating" or "Operation" means to provide (or cause to provide) the engineering, purchasing, repair, supervision, training, inspection, testing, protection, use, management, replacement, retirement, reconstruction, and maintenance of or for the Generating Facility in accordance with Prudent Electrical Practices.
- 147. "Operating Agreement" has the meaning set forth in Section 1.08.
- 148. "Owner" or "Owners" has the meaning set forth in the Recitals.
- 149. "Participating Generator Agreement" has the meaning set forth in the ISO Tariff.
- 150. "Party" or "Parties" has the meaning set forth in the Preamble.
- 151. "Payment Requests" means requests for payment amounts made pursuant to Section 3.06(d) (Energy Replacement Damage Amount), Section 4.03(d); (Energy Payments and Monthly Payment Statements), Section 6.02(c) (Default Amount and Cover Damages), Section 6.03 (Termination Payment), Section 11.03(c) (ISO Change Cost Payment) and Exhibit L (Agreement Deposit), which such disputes may, at the election of the disputing Party, be resolved by EDR in accordance with the terms of this Agreement.
- 152. "Performance Assurance" means collateral for Seller's performance during the Term in the form of either cash, Letter(s) of Credit, or other security acceptable to SCE.
- 153. "Performance Assurance Amount" has the meaning set forth in Section 1.05.
- 154. "Performance Tolerance Band" has the meaning set forth in Exhibit O.

- 155. "Permit" or "Permits" means all applications, approvals, authorizations, consents, filings, licenses, orders, permits or similar requirements imposed by any Governmental Authority, or the ISO, in order to develop, construct, Operate, maintain, improve, refurbish and retire the Generating Facility or to deliver the electric energy produced by the Generating Facility to SCE, including any permits from either the County of Inyo of the State of California or the United States Navy.
- 156. "Permitted Transferee" means any entity, or any entity with a parent, that has all of the following:
  - a) A tangible net worth of not less than \$200,000,000 or a Credit Rating of "BB" or better;
  - b) Experience in the ownership of power generation facilities; and
  - c) At least five years of experience in the operation of power generation facilities similar to the Generating Facility (or shall have retained a reputable third party with such experience to operate and maintain the Generating Facility).
- 157. "Portfolio" means the single portfolio of energy related projects and entities in which the Generating Facility is included and for which SCE is the sole buyer of energy and other energy related products.
- 158. "PPA No. 3008" means the power purchase agreement identified in the bullet (ii) of the Recitals to this Agreement.
- 159. "PPA No. 3029" means the power purchase agreement identified in bullet (i) in the Recitals to this Agreement.
- 160. "PPA No. 3030" means the power purchase agreement identified in the third and final bullet in the Recitals to this Agreement.
- 161. "Product" means:
  - a) All electric energy produced by the Generating Facility, net of Station Use and Delivery Losses; and
  - b) All associated Environmental Attributes, Capacity Attributes, and Resource Adequacy Benefits.
- 162. "Project" shall have the meaning set forth in Section 3.08
- 163. "Prudent Electrical Practices" means those practices, methods and acts that would be implemented and followed by a prudent operator of facilities similar to the Generating Facility 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 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, and the requirements of Governmental Authorities, WECC standards, the ISO and Applicable Laws.

Prudent Electrical Practices shall also include taking reasonable steps to ensure that:

- a) Equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Generating Facility's needs;
- b) Sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to operate the Generating Facility properly and efficiently, and are capable of responding to reasonably foreseeable Emergency conditions 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 Generating Facility, 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 Transmission 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/or control system limits; and
- f) Equipment and components meet or exceed the standard of durability that is generally used for electric generation operations in the region and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and Emergency conditions.

- 164. "QF" means a "qualifying small power production facility" under the Public Utility Regulatory Policies Act of 1978 (codified in part at 16 U.S.C. § 796) and regulations of the FERC implementing such statute.
- 165. "Quarterly Statement" has the meaning set forth in Section 3.06(b)(i).
- 166. "Resource Adequacy Benefits" means the rights and privileges attached to the Generating Facility or any Additional Geothermal Wells that qualify to satisfy any entity's resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings.
- 167. "Resource Adequacy Rulings" means CPUC Decisions 04-01-050, 04-10-035 and any subsequent CPUC ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, as such Decisions, rulings, laws, rules or regulations may be amended or modified from time to time during the Term.
- 168. "Restricted Financing" shall mean the incurrence of indebtedness by Seller, or any Affiliate of Seller (including any refinancing or increase of an earlier-incurred indebtedness), solely for the Portfolio which is secured, in whole or in part, by the equity interests in Seller or the assets of Seller or Owners, including the Generating Facility and any accounts receivable arising from the Operation of the Generating Facility.
- 169. "RPS Legislation" means the State of California Renewable Portfolio Standard Program, as codified at California Public Utilities Code Section 399.11, et seq.
- 170. "S&P" means the Standard & Poor's Rating Group.
- 171. "SCE Revenue" shall have the meaning given to the term in the Assignment Agreement.
- 172. "SC Schedules" means the amounts initially submitted to the ISO by SCE, as Scheduling Coordinator for Seller, of expected electric energy that Seller expects to deliver to SCE in each hour.
- 173. "SCE" has the meaning set forth in the Preamble.
- 174. "Schedule," "Scheduled" or "Scheduling" means the action of SCE in submitting the SC Schedules to the ISO and receiving the final schedules from the ISO.
- 175. "Scheduled Amounts" means the quantity, expressed in kWh, of the electric energy Seller is delivering from the Generating Facility to SCE at the Delivery Point, in the form of Final Hour-Ahead Schedules, on any given day, hour, or relevant Settlement Period at the Delivery Point.

- 176. "Scheduling Coordinator" or "SC" means an entity certified by the ISO for the purposes of undertaking the functions specified by ISO Tariff Section 2.2.6, as amended by FERC from time-to-time.
- 177. "Secured Interest" has the meaning set forth in Section 8.04(a).
- 178. "Security Interests" has the meaning set forth in Section 8.03.
- 179. "Security Documents" has the meaning set forth in Section 8.04(a).
- 180. "Seller" has the meaning set forth in the Preamble.
- 181. "Seller's Actual Revenue" has the meaning set forth in Exhibit P.
- 182. "Seller's Adjusted Revenue" has the meaning set forth in Exhibit P.
- 183. "Seller's Energy Delivery Obligation" has the meaning set forth in Section 3.06(a).
- 184. "Seller's Equity" means the aggregate net equity of Seller as set forth on its balance sheet prepared in accordance with generally accepted accounting principles.
- 185. "Seller's Transmission Consultant" means an independent consultant selected by Seller who will analyze the scope of congestion or curtailments that may be experienced by the Generating Facility during the Term, or transmission upgrades that may be required to mitigate congestion or curtailments.
- 186. "Settlement Interval" means any one of the six (6) ten (10) minute time interval beginning on any hour and ending on the next hour (e.g. 12:00 to 12:10, 12:10 to 12:20, etc.).
- 187. "Site" means the real property on which the Generating Facility is, or will be located, as further described in Section 1.01(b) and Exhibit B.
- 188. "Site Control" means that Owners satisfy the criteria of Section 3.08(a).
- 189. "Start-Up Deadlines" means one or more of the deadlines set forth in Section 1.02, subject to extension as provided in this Agreement, by which Seller must have completed certain obligations herein, including satisfaction of the Initial, Intermediate or Final Start-Up Conditions.
- 190. "Station Use" means electric energy produced by the Generating Facility that is either:
  - a) Used within the Generating Facility to power the lights, motors, control systems and other electrical loads that are necessary for Operation; or

- b) Consumed within the electric energy distribution system as losses.
- 191. "Supplemental Lost Output" has the meaning set forth in Section 3.19.
- 192. "Supplemental Lost Output Report" has the meaning set forth in Section 3.19.
- 193. "Term" has the meaning used in Section 1.03.
- 194. "Term Year" means, with respect to the initial Term Year, the period commencing on the first day of the Term and ending on the last day of the month twelve (12) months after the month in which the Term commences; and with respect to all subsequent Term Years, each successive twelve (12) month period after the Initial Term Period.
- 195. "Termination Payment" has the meaning set forth in Section 6.03.
- 196. "TLF" means a measure of all net electrical losses, as determined by the Transmission Provider, associated with the transmission of electric energy through the electric system from the high voltage side of the Generating Facility's substation bus bar to the interface with the ISO Grid, also known as the transmission loss factor.
- 197. "TMM(s)" means the tie meter multipliers as determined by the ISO representing the calculation of all electrical losses over the ISO Grid associated with the transmission of electric energy delivered at an ISO Control Area boundary, which values are, as of the Effective Date, posted by the ISO on its website. The values used in the Agreement will be those appearing on the ISO website on the third (3rd) Business Day of the calendar month following the month for which such values are being applied.
- 198. "TOD Period(s)" means the time of delivery period(s) set forth in Exhibit K.
- 199. "TOD Period Energy Payment" has the meaning set forth in Section 4.02
- 200. "Tolling Period" has the meaning set forth in Section 12.03(a)(iv).
- 201. "Transmission Provider" means any entity or entities responsible for the interconnection of the Generating Facility with a Control Area or transmitting the Metered Amounts on behalf of Seller from the Generating Facility to the Delivery Point.
- 202. "Unincluded Capacity" has the meaning set forth in Section 3.05(d).
- 203. "Uninstructed Imbalance Energy" has the meaning set forth in Appendix A of the ISO Tariff.

- 204. "WECC" means the Western Electricity Coordinating Council, the regional reliability council for the Western United States, Northwestern Mexico and Southwestern Canada.
- 205. "Web Client" shall have the meaning set forth in Section 3.13(a).
- 206. "Workbook" has the meaning set forth in Section 3.10(h).

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

# EXHIBIT B

Generating Facility and Site Description

# **EXHIBIT B**

Generating Facility and Site Description

# 1. Generating Facility Description.

Located in the Mojave Desert approximately 150 mile northeast of Los Angeles, the Coso Clean Power facility is comprised of three separate facilities consisting of nine turbine/generators. The Coso projects are in close proximity to each other with their steam gathering systems partially interlinked. All the facilities are located at the U.S. Naval Weapons Center in Inyo County, California. The Coso projects have been generating electricity since the late 1980s under separate contracts with Southern California Edison ("SCE").

The facilities are identified as Navy I, Navy II and BLM respectively. The three projects (Projects) use a total of nine turbine generator units and have, in the past, had the ability to produce approximately 270 MW (gross) from high temperature geothermal fluid derived from deep production wells drilled into the geothermal resource on which the Projects are situated, which is generally identified as the Coso KGRA.

The electrical power generated by the Projects is conveyed by separate 115 kV (for three generators) and 230 kV (for six generators) transmission lines, approximately 28.86 miles long, to the SCE substation at Inyokern, California. The power generated is purchased as of the Effective Date by SCE under separate Standard Offer-4 contracts for each Project. The contract entities are Coso Finance Partners (Navy I – QFID – 3008; contract end date of August 18, 2011), Coso Power Developers (Navy II – QFID – 3029; contract end date of January 11, 2010) and Coso Energy Developers (BLM – QFID – 3030; contract end date of March 12, 2019). All operations are performed via separate operating agreements with Coso Operating Company LLC. The intent following the expiration of the existing agreements is to combine the three agreements into one Power Purchase Agreement.

Normal operation of the power plants for all three Projects is managed from a centralized control room located at the Navy II power plant. A distributed control system allows all normal power plant operations to be monitored and controlled from this point. Local control equipment at each power plant can be used to maintain operation in the event of a failure of the central system.

# <u>Description of Existing Equipment and Operation</u>

Units 1, 2 and 3 (Intermediate Generating Facility Units)

Units 1, 2 and 3 are located on the U.S. Naval Weapons Center at China Lake. The steam resource is owned by the U.S. Navy and is part of the Coso Known Geothermal

Resource Area (KGRA). Navy I has rights to develop and use the energy secured by a recently negotiated 30-year contract with the Navy that expires in 2034.

The power block comprises three separate turbine generator sets, Coso Units 1, 2 and 3.

The geothermal production wells tap the geothermal resource, which is a fractured formation of rocks heated by the earth's interior. High-pressure water flowing through the rock formations becomes a mixture of high temperature brine and steam as it travels up the well bores. Pressure generated in the resource forces the mixture to flow through the production wells into the steam gathering systems. The geothermal resource is a renewable source of energy. Meteoric and extracted brine provide make-up to the reservoir.

A mixture of brine and steam, under pressure from the geothermal reservoir, is obtained at the wellhead. Piping systems transport the two-phase flow to separators where brine flashes into steam. Brine that does not flash into steam is collected and injected back into the resource through injection wells. Returning this water helps to maintain characteristics of the resource for continued power production. Supplemental injection is being considered. Two flows of steam leave the separators, one at high pressure and one at low pressure. The steam expands through the turbines, which drive generators to produce electrical power. The associated steam gathering and brine piping systems have cross-connections to the Navy II and BLM systems which allow steam and brine to be transferred between the Projects.

The Coso Unit 1 turbine generator was manufactured by Mitsubishi and the turbine is a single-cylinder, single flow with high and low pressure inlets. Coso Units 2 and 3 turbine generators, manufactured by Fuji Electric, are also single flow with dual inlets. These units are similar in type and configuration to Coso Units 4 through 9.

The exhaust steam from each turbine unit flows to a horizontal shell-and-tube type surface condenser. Condenser vacuum is maintained by circulation water cooled by individual four-cell mechanical draft cooling towers. Condensed steam from the surface condensers provides the make up water for the cooling towers, fire protection water and other plant uses. Excess condensate is mixed with the spent brine and reinjected into the geothermal resource.

Non-condensable gases are removed by steam-jet ejectors and electrically driven vacuum pumps. Vacuum pumps are common to all three units. There is an additional set of unitized steam-jet ejectors to back up the mechanical vacuum pumps. The non-condensable gases are comprised mostly of carbon dioxide but include small quantities of hydrogen sulfide which is carried out of the resource with the steam. Emissions from the units are permitted by Great Basin Unified Air Pollution Control District (GBUAPCD).

A common LO-CAT II abatement system is installed to remove hydrogen sulfide from the non-condensable gases. The elemental sulfur by-product is sold for industrial or agricultural use. Additional generation reliability is provided by a batch process Hondo abatement system. Both the LO-CAT and Hondo systems are permitted by GBUAPCD.

Units 4, 5 and 6 (Initial Generating Facility Units)

Units 4, 5 and 6 are located on the U.S. Naval Weapons Center at China Lake. The steam resource is also owned by the U.S. Navy. Navy II has rights to explore, develop and use the energy secured by a recently negotiated 30-year contract with the Navy that expires in 2034.

The power block comprises three separate turbine generator sets, Coso Units 4, 5 and 6.

Coso Units 4, 5 and 6 turbine generators are Fuji Electric units similar to Units 2 and 3 described above. The wellfield steam gathering system is also similar to that described above. The steam supply systems are cross-connected with all systems via metered transfer lines to allow reliable use of the available steam.

The auxiliary plant and systems for the Units 4, 5 and 6 power block are similar to those already described above. Hydrogen sulfide abatement is provided by a LO-CAT II unit. A second, smaller, LO-CAT II unit provides additional stand-by abatement for additional reliability. Emissions from the units are also permitted by GBUAPCD.

Units 7, 8 and 9 (Final Generating Facility Units)

Units 7, 8 and 9 are located on U.S. Naval Weapons Center at China Lake. The steam resource is owned by the U.S. Bureau of Land Management (BLM) and is part of the Coso KGRA. BLM has the exclusive rights to explore, develop and use the energy secured by a 40-year lease with BLM which can be extended for an additional 40 year term if the facility is still in production.

The power generating facilities comprise three separate turbine generator sets, Coso Units 7, 8 and 9. Units 7 and 8 are located on one power block designated BLM East, while Unit 9 is located on a separate power block designated BLM West, located approximately 1.3 miles west of BLM East.

Coso Units 7, 8 and 9 turbine generators are Fuji Electric units similar to the Fuji machines described above. The wellfield steam supply system and brine systems are also similar to those described for Units 2 through 6, and are interconnected with Navy facilities via metered lines.

The auxiliary plant and systems for the Units 7, 8 and 9 power blocks are similar to those already described above. Dow Sulferox units provide hydrogen sulfide abatement at both plants. These units perform the same function as the LO-CAT II equipment, converting the hydrogen sulfide gas to elemental sulfur. A back-up Hondo abatement system is installed at BLM East for additional reliability. Emissions from the units are also permitted by GBUAPCD.

## Description of the Steam Gathering Systems

Steam from the production geothermal wells associated with each project can be transported by piping systems to the power plants, where it is used to power the steam turbine generators which produce electricity. The extensive piping systems and associated equipment are known as the steam gathering system.

The mixture of brine and steam obtained at each wellhead, under pressure from the geothermal reservoir, is controlled by flow control valves. The two-phase flow of brine and steam is transported via a piping system to a separator vessel located, in most cases, close to the wellpad. In the separator vessel, some of the hot brine flashes to steam. The remaining brine is pumped back into the resource through injection wells.

Steam is flashed at two pressures, approximately 100+ psia and 20 psia. The two pressures allow for more usable energy recovery than a single pressure flash. Steam is transported from the separators to the power plant turbines through insulated and metal-jacketed carbon steel pipes.

The steam gathering systems allow flexibility for optimum use of steam between the three separate projects.

#### 2. Site Description.

## Description of the Navy I Land

THAT CERTAIN REAL PROPERTY LOCATED IN AN UNINCORPORATED AREA OF THE COUNTY OF INYO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 4; THE SOUTH HALF OF THE SOUTH HALF OF SECTION 5; THE SOUTH HALF OF THE SOUTHEAST QUARTER AND THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 6; THE EAST HALF OF SECTION 7; ALL OF SECTION 8; AND ALL OF SECTION 9; ALL LOCATED IN TOWNSHIP 22

SOUTH, RANGE 39 EAST, MOUNT DIABLO BASE AND MERIDIAN; IN THE COUNTY OF INYO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

## Description of the Navy II Land

THAT CERTAIN REAL PROPERTY LOCATED IN AN UNINCORPORATED STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

ALL OF SECTIONS 16 AND 17, AND THE EAST HALF OF SECTION 18, ALL 2 SOUTH, RANGE 39 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF INYO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

## Description of the BLM Land

THAT CERTAIN REAL PROPERTY LOCATED IN AN UNINCORPORATED AREA OF THE COUNTY OF INYO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

H 4 INCLUSIVE OF SECTION 19; THE EAST HALF OF SECTION 19; AND THE EAST HALF OF THE WEST HALF OF SECTION 19; ALL OF SECTIONS 20 AND 29; LOTS 1 THROUGH 4 INCLUSIVE OF SECTION 30; THE EAST HALF OF SECTION 30; AND THE EAST HALF OF THE WEST HALF OF SECTION 30, ALL IN TOWNSHIP 22 SOUTH, RANGE 39 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF INYO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM THE OIL, HYDROCARBON GAS AND HELIUM IN SAID LAND AND THE RIGHT OF THE UNITED STATES OF AMERICA TO EXTRACT SAID OIL, HYDROCARBON GAS AND HELIUM FROM GEOTHERMAL STEAM AND ASSOCIATED GEOTHERMAL RESOURCES PRODUCED FROM SAID LAND, (30 U.S.C.A. 1025).

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

# **EXHIBIT C**

Notice List

# EXHIBIT C Notice List

COSO CLEAN POWER LLC ("Seller") AND COSO POWER DEVELOPERS, COSO FINANCE PARTNERS AND COSO ENERGY DEVELOPERS (collectively "OWNERS").	SOUTHERN CALIFORNIA EDISON COMPANY ("SCE")
All Notices are deemed provided in accordance with Section 10.08 if made to the address and/or facsimile numbers provided below:	All Notices are deemed provided in accordance with Section 10.08 if made to the address and/or facsimile numbers provided below:
Contract Sponsor: Attn: Street: City: Phone: Facsimile	Contract Sponsor: Attn:  Street: City: Phone: Facsimile:
Reference Numbers: Duns: N/A Federal Tax ID Number:	Reference Numbers: Duns: Federal Tax ID Number:
Contract Administration: Attn: Phone: Facsimile:	Contract Administration: Attn: Phone: Facsimile:
Scheduling: Attn: Phone: Facsimile:	Generation Operations Center: Phone: Phone:

COSO CLEAN POWER LLC ("Seller") AND COSO POWER DEVELOPERS, COSO FINANCE PARTNERS AND COSO ENERGY DEVELOPERS (collectively "OWNERS").	SOUTHERN CALIFORNIA EDISON COMPANY ("SCE")
Phone: Facsimile:	Day Ahead Scheduling:  Manager. Attn: Phone: Facsimile: Email:  Scheduling Desk. Phone: Backup: Fax: Email:
Real Time Scheduling: Phone:	Real Time Scheduling:  Manager. Attn: Phone: Facsimile:  Operations Desk. Phone: Backup: Fax: Email:
Outage Scheduling: Coso Site Manager Phone: (760) 764-1300	
Payment Statements: Attn: Phone: Facsimile:	Payment Statements: Attn: Phone: Facsimile: Email:

COSO CLEAN POWER LLC ("Seller") AND COSO POWER DEVELOPERS, COSO FINANCE PARTNERS AND COSO ENERGY DEVELOPERS (collectively "OWNERS").	SOUTHERN CALIFORNIA EDISON COMPANY ("SCE")
ISO Charges and ISO Sanctions: Attn: Phone: Facsimile Email:	ISO Charges and ISO Sanctions: Attn: Phone: Facsimile: Email:
Payments: Attn: Phone: Facsimile Email:	Payments: Attn: Phone: Facsimile: Email:
Wire Transfer: BNK: ABA: ACCT:	Wire Transfer: BNK: ABA: ACCT:
Credit and Collections: Attn: Phone: Facsimile Email:	Manager of Credit and Collateral: Attn: Phone: Facsimile:
With additional Notices of an Event of Default or Potential Event of Default to:	With additional Notices of an Event of Default or Potential Event of Default to:
Attn: Phone: Facsimile Email:	Attn: Phone: Facsimile:
Guarantor: Attn: Phone: Facsimile: Email:	

COSO CLEAN POWER LLC ("Seller") AND COSO POWER DEVELOPERS, COSO FINANCE PARTNERS AND COSO ENERGY DEVELOPERS (collectively "OWNERS").	SOUTHERN CALIFORNIA EDISON COMPANY ("SCE")
Lender:	
	QF Efficiency Data: Attn:
	Phone: Facsimile: Email:

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

# EXHIBIT D

Forecasting and Scheduling Requirements and Procedures

# **EXHIBIT D**

Forecasting and Scheduling Requirements And Procedures

#### 1. Introduction.

The Parties shall abide by the Forecasting and Scheduling requirements and procedures described below and shall agree upon reasonable changes to these requirements and procedures from time-to-time, as necessary to:

- (a) Comply with ISO Tariff changes;
- (b) Accommodate changes to their respective generation technology and organizational structure; and
- (c) Address changes in the operating and Scheduling procedures of both SCE and the ISO, including automated forecast and outage submissions.

# 2. Seller's Forecasting Requirements.

Seller must meet all of the following requirements for Forecasting as specified below.

(a) No later than thirty (30) days prior to Initial Synchronization, Seller shall provide SCE with an hourlyforecast of its expected Metered Amounts ("Energy Forecast"), in MWh, for the thirty day (30) period commencing on Initial Synchronization using the Web Client.

If, after submitting the Energy Forecast pursuant to this Section 2(a), Seller learns that Initial Synchronization will occur on an earlier date and time than reflected on the Energy Forecast, Seller will provide an updated Energy Forecast reflecting the new Initial Synchronization date at the earliest practicable time but no later than 5:00 p.m. Pacific Prevailing Time ("PPT") on the Wednesday prior to the new Initial Synchronization date, if Seller has learned of the new Initial Synchronization Date by that time, but in no event not later than three (3) Business Days prior to the new Initial Synchronization date.

In the event the Web Client becomes unavailable, Seller shall provide SCE with the Energy Forecast by telephoning SCE's Generation Operations Center, at the telephone number(s) listed in Exhibit C.

- (b) The Energy Forecast, and any updated Energy Forecasts provided pursuant to this Section 2, shall:
  - (i) Not include any anticipated or expected electric energy losses between the ISO Approved Meter and the Delivery Point; and

- (ii) Limit hour-to-hour forecast changes to no less than two hundred fifty (250) kWh.
- (c) Commencing on or before 5:00 p.m. PPT of the Wednesday prior to the first week covered by the Energy Forecast provided pursuant to Section 2(a) above and on or before 5:00 p.m. PPT every Wednesday thereafter until the end of the Term, Seller shall update the Energy Forecast for the thirty (30) day period commencing on the Sunday following the weekly Wednesday Energy Forecast update submission. Seller shall use the Web Client, if available, to supply this weekly update or, if the Web Client is not available Seller shall provide SCE with the weekly Energy Forecast update by telephoning SCE's Generation Operations Center, at the telephone number(s) listed in Exhibit C.
- (d) If Seller learns of any change in the total generation capacity of the Generating Facility, other than transitory changes, for a period covered by the most recent Energy Forecast update resulting from any cause, including an unplanned outage, prior to the time that the next weekly update of the Energy Forecast is due which results in variance in expected energy in any hour of plus (+) or minus (-) three percent (3%) from the energy reported in the most recent Energy Forecast update, Seller shall provide an updated Energy Forecast to SCE. This updated Energy Forecast must be submitted to SCE by no later than:
  - (i) 5:30 am PPT on the day prior to any day impacted by the change, if the change is known to Seller at that time;
  - (ii) Thirty (30) minutes before the commencement of any hour impacted by the change, if the change is known to Seller at that time; or
  - (iii) If the change is not known to Seller by the timeframes indicated in (i) or (ii) above, no later than twenty (20) minutes after the commencement of the event which caused the available capacity change.

Seller's updated Energy Forecast must contain the following information:

- (iv) The beginning date and time of the event resulting in the availability change;
- (v) The expected ending date and time of the event:
- (vi) The expected generation, in MWh; and

- (vii) Any other information required by the ISO as communicated to Seller by SCE.
- 3. SCE's Scheduling Responsibilities.

Pursuant to the ISO Tariff, SCE shall be responsible for the following:

- (a) Adjust the Energy Forecasts, including any Energy Forecast updates submitted to SCE pursuant to Item 2, for forecasted electric energy line losses to reflect Seller's self-provision of those losses and the amount of electric energy Seller expects to deliver to the Delivery Point in any given hour;
- (b) Submit the adjusted Energy Forecasts to the ISO as SC Schedules.
- (c) Receive notification of the Final Hour-Ahead Schedules from the ISO.
- 4. Outage Scheduling Procedures.

Seller shall be responsible for all expenses and costs associated with all requirements and timelines for generation outage scheduling contained in the ISO's Scheduled and Forced Outage Procedure T-113 as posted on the ISO's website.

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

# **EXHIBIT E**

[This exhibit intentionally deleted.]

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

# **EXHIBIT F**

Energy Replacement Damage Amount

# **EXHIBIT F**

Energy Replacement Damage Amount

In accordance with the provisions of Section 3.06, if in any Calculation Period Seller fails to meet Seller's Energy Delivery Obligation;

Then Seller shall be subject to an Energy Replacement Damage Amount penalty calculated as follows:

#### ENERGY REPLACEMENT DAMAGE AMOUNT =

$$[(A-B-C) \times (D-E)]$$

#### Where:

A = Seller's Energy Delivery Obligation in kWh.

B = Sum of Metered Amounts over the Calculation Period in kWh.

C = Sum of Lost Output over the Calculation Period in kWh.

D = Simple average of the Market Price for all Settlement Intervals in the Calculation Period in \$/kWh.

E = Energy Price in \$/kWh (i.e., \$/MWh/1000).

#### Notes:

- 1. In the above calculation, the result of "(D E)" shall not be greater than five cents (\$0.05) per kWh or less than two cents (\$0.02) per kWh.
- 2. If the result of the calculation above is zero or less, Seller shall not be obligated to pay an Energy Replacement Damage Amount. In no event shall SCE pay an Energy Replacement Damage Amount.
- 3. Provided however, the Energy Replacement Damage Amount will have a cap whereby the results (Energy Replacement Damage Amount) from the above formula may never be more than [20%] of Revenue for the Calculation Period. For the purpose of this Note 3, "Revenue" with respect to a Calculation Period shall mean the sum of the Energy Payments for such Calculation Period, determined pursuant to Section 4.02.

\*\*\* End of EXHIBIT F \*\*\*

# **EXHIBIT G**

Seller's Milestone Schedule

### **EXHIBIT G**

Seller's Milestone Schedule

### Initial Term Period Milestones:

No.	Date	Milestones
1.	90 days prior to Jan 12, 2010	Obtains all necessary Permits and approvals, including interconnection agreements
2.	90 days prior to Jan 12, 2010	Executes any necessary transmission provider and ISO agreements
3.	90 days prior to Jan 12, 2010	Satisfies each of the Initial Selected Date Conditions

### Intermediate Term Period Milestones:

No.	Date	Milestones
4.	90 days prior to August 19, 2011	Obtains all necessary Permits and approvals, including interconnection agreements
5.	90 days prior to August 19, 2011	Executes any necessary transmission provider and ISO agreements
6.	90 days prior to August 19, 2011	Satisfies each of the Initial Selected Date Conditions

### Final Term Period Milestones:

No.	Date	Milestones
7.	90 days prior to March 13, 2019	Obtains all necessary Permits and approvals, including interconnection agreements
8.	90 days prior to March 13, 2019	Executes any necessary transmission provider and ISO agreements
9.	90 days prior to March 13, 2019	Satisfies each of the Initial Selected Date Conditions

\*\*\* End of EXHIBIT G \*\*\*

### **EXHIBIT H**

Milestone Progress Reporting Form

#### **EXHIBIT H**

Milestone Progress Reporting Form

Seller shall prepare a written report each month on its progress relative to the Milestone Schedule. The report shall be sent via email in the form of a single Adobe Acrobat file or facsimile to SCE's Contract Administrator, as noted in Exhibit C, on the fifth (5<sup>th</sup>) Business Day of each month.

Seller's Milestone Progress Reporting requirement shall begin on the first day of the second full calendar month after the Effective Date of this Agreement and shall end upon Seller's receipt of the final third, or forfeiture of its Agreement Deposit.

Each Milestone Progress Report shall include the following items:

- 1. Cover page.
- 2. Brief Generating Facility description.
- 3. Site plan of the Generation Facility.
- 4. Bar chart schedule showing progress on achieving the Milestone Schedule.
- 5. Summary of activities during the previous month.
- 6. Forecast of activities scheduled for the current month.
- 7. Written description about the progress relative to Seller's Milestone Schedule.
- 8. List of issues that could potentially impact Seller's Milestone Schedule.
- 9. Enumeration and schedule of any support or actions requested of SCE.
- 10. Progress and schedule of all agreements, contracts, permits, approvals, showing the start dates, completion dates, and completion percentages.
- 11. A status report of start-up activities including a forecast of activities ongoing and after each of the Initial, Intermediate and Final Start-Up Deadline, and a report on Generating Facility performance including performance projections for the next twelve (12) months.

\*\*\* End of EXHIBIT H \*\*\*

### **EXHIBIT I**

Form of Guaranty Agreement

#### **EXHIBIT I**

#### Form of Guaranty Agreement

#### 1. Guaranty.

For valuable consideration, <u>[Guarantor's legal name]</u> , <u>[legal status]</u>
("Guarantor") unconditionally and irrevocably guarantees payment to Southern
California Edison Company, a California corporation ("Beneficiary"), its successors
and assigns, of all amounts owed to Beneficiary by [Seller's legal name],
[legal status] ("Principal") under that certain Renewable Power Purchase
and Sale Agreement between Beneficiary and Principal dated [date]_, as
amended from time to time ("Agreement") (said amounts are hereinafter referred to
as the "Obligations").

Initially capitalized words that are used but not otherwise defined herein shall have the meanings given them in the Agreement.

Upon the failure or refusal by Principal to pay all or any portion of the Obligations, the Beneficiary may make a demand upon the Guarantor.

Such demand shall be in writing and shall state the amount Principal has failed to pay and an explanation of why such payment is due, with a specific statement that Beneficiary is calling upon Guarantor to pay under this Guaranty.

Guarantor shall promptly, but in no event less than ten Business Days following demand by Beneficiary, pay such Obligations in immediately available funds.

A payment demand satisfying the foregoing requirements shall be deemed sufficient notice to Guarantor that it must pay the Obligations.

Other than such demand for payment, the Guarantor hereby expressly waives all notices between the Beneficiary and the Principal including without limitation all notices with respect to the Agreement and this Guaranty, and any notice of credits extended and sales made by the Beneficiary to the Principal, and all other notices whatsoever.

The liability of Guarantor hereunder is a continuing guaranty of payment when any amount is owing without regard to whether recovery may be or has become barred by any statute of limitations or otherwise may be unenforceable.

2. Guaranty Limit.

Subject to Paragraph 12, the liability of Guarantor hereunder shall not exceed \$\_\_\_\_\_\_ in the aggregate, which amount shall include all interest that has accrued on any amount owed hereunder.

#### 3. Guaranty Absolute.

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

- (a) The liability of Guarantor under this Guaranty is a guaranty of payment and not of collectibility, and is not conditional or contingent upon the genuineness, validity, regularity or enforceability of the Agreement or the pursuit by Beneficiary of any remedies which it now has or may hereafter have under the Agreement;
- (b) Beneficiary may enforce this Guaranty upon the occurrence of a default by Principal under the Agreement notwithstanding the existence of a dispute between Beneficiary and Principal with respect to the existence of the default;
- (c) The obligations of Guarantor under this Guaranty are independent of the obligations of Principal under the Agreement and a separate action or actions may be brought and prosecuted against Guarantor whether or not any action is brought against Principal or any other guarantors and whether or not Principal is joined in any such action or actions;
- (d) Guarantor's payment of a portion, but not all, of the Obligations shall in no way limit, affect, modify or abridge Guarantor's liability for that portion of the Obligations which is not paid. Without in any way limiting the generality of the foregoing, if Beneficiary is awarded a judgment in any suit brought to enforce a portion of the Obligations, such judgment shall not be deemed to release Guarantor from its covenant to pay that portion of the Obligations which is not the subject of such suit;
- (e) Beneficiary may, at its election, foreclose on any security held by Beneficiary, whether or not the means of foreclosure is commercially reasonable, or exercise any other right or remedy available to Beneficiary without affecting or impairing in any way the liability of Guarantor under this Guaranty, except to the extent the amount(s) owed to Beneficiary by Principal have been paid; and

- (f) Guarantor shall continue to be liable under this Guaranty and the provisions hereof shall remain in full force and effect notwithstanding:
  - (i) Any modification, amendment, supplement, extension, agreement or stipulation between Principal and Beneficiary or their respective successors and assigns, with respect to the Agreement or the obligations encompassed thereby;
  - (ii) Beneficiary's waiver of or failure to enforce any of the terms, covenants or conditions contained in the Agreement;
  - (iii) Any release of Principal or any other guarantor from any liability with respect to the Obligations or any portion thereof;
  - (iv) Any release, compromise or subordination of any real or personal property then held by Beneficiary as security for the performance of the Obligations or any portion thereof, or any substitution with respect thereto;
  - (v) Beneficiary's acceptance and/or enforcement of, or failure to enforce, any other guaranties;
  - (vi) Beneficiary's exercise of any other rights available to it under the Agreement;
  - (vii) Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of the Principal and to any corresponding restructuring of the Obligations;
  - (viii) Any failure to perfect or continue perfection of a security interest in any collateral that secures the Obligations;
  - (ix) Any defenses, setoffs or counterclaims that Principal may allege or assert against Beneficiary with respect to the Obligations, including, without limitation, failure of consideration, breach of warranty, statute of frauds, statute of limitations and accord and satisfaction; and
  - (x) Any other act or thing or omission, or delay to do any other act or thing that might in any manner or to any extent vary the risk of Guarantor as an obligor with respect to the Obligations.
- 4. Termination; Reinstatement.

(a) The term of this Guaranty is continuous until the earlier of: (i) the date on which the Obligations have been performed or paid in full or (ii) with regard to future transactions, the date on which Guarantor provides Beneficiary with written notice of such termination, and any such termination shall become effective no earlier than sixty (60) calendar days from the date Beneficiary receives such written notice from Guarantor.

Unless otherwise agreed in writing by Beneficiary, no such notice or termination shall release Guarantor from any liability as to any amount or performance that is at the time owing under the Agreement.

(b) Notwithstanding the provisions of Paragraph 4(a) hereof, this Guaranty shall be reinstated if at any time following the termination of this Guaranty under Paragraph 4(a) hereof, any payment by Guarantor under this Guaranty or pursuant hereto is rescinded or must otherwise be returned by the Beneficiary or other person upon the insolvency, bankruptcy, reorganization, dissolution or liquidation of Principal, Guarantor or otherwise, and is so rescinded or returned to the party or parties making such payment, all as though such payment had not been made.

Such period of reinstatement shall continue until satisfaction of the conditions contained in, and shall continue to be subject to, the provisions of Paragraphs 4(a) hereof.

If all or any portion of the Obligations are paid by Principal, the obligations of Guarantor hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from Beneficiary as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Obligations for all purposes under this Guaranty.

- 5. Bankruptcy; Post-Petition Interest.
  - (a) So long as any Obligations remain outstanding, Guarantor shall not, without the prior written consent of Beneficiary, commence or join with any other person in commencing any bankruptcy, reorganization or insolvency proceedings of or against Principal.

The obligations of Guarantor under this Guaranty shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any

proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Principal or by any defense which Principal may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) Guarantor acknowledges and agrees that any interest on any portion of the Obligations which accrues after the commencement of any proceeding referred to in clause (a) above (or, if interest on any portion of the Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Obligations if said proceedings had not been commenced) shall be included in the Obligations because it is the intention of Guarantor and Beneficiary that the Obligations which are guarantied by Guarantor pursuant to this Guaranty should be determined without regard to any rule of law or order which may relieve Principal of any portion of such Obligations.

Guarantor will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person to pay Beneficiary, or allow the claim of Beneficiary in respect of, any such interest accruing after the date on which such proceeding is commenced.

(c) In any bankruptcy, reorganization, insolvency or other proceeding in which the filing of claims is required by law, Guarantor shall file all claims which Guarantor may have against Principal relating to any indebtedness of Principal to Guarantor and shall assign to Beneficiary all rights of Guarantor thereunder.

If Guarantor does not file any such claim, Beneficiary, as attorney-in-fact for Guarantor, is hereby authorized to do so in the name of Guarantor or, in Beneficiary's discretion, to assign the claim to a nominee and to cause proof of claim to be filed in the name of Beneficiary's nominee.

The foregoing power of attorney is coupled with an interest and cannot be revoked.

Beneficiary or its nominee shall have the right, in its reasonable discretion, to accept or reject any plan proposed in such proceeding and to take any other action which a party filing a claim is entitled to do.

In all such cases, whether in administration, bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to Beneficiary the amount payable on such claim and, to the full extent necessary for that purpose.

Guarantor hereby assigns to Beneficiary all of Guarantor's rights to any such payments or distributions; provided, however, Guarantor's obligations hereunder shall not be satisfied except to the extent that Beneficiary receives cash by reason of any such payment or distribution.

If Beneficiary receives anything hereunder other than cash, the same shall be held as collateral for amounts due under this Guaranty.

#### 6. Subrogation.

In accordance with Paragraph 8(d) hereof, the Guarantor shall be subrogated to all rights of the Beneficiary against Principal in respect of any amounts paid by the Guarantor pursuant to the Guaranty, provided that the Guarantor postpones any rights that it may acquire by way of subrogation under this Guaranty, by any payment made hereunder or otherwise, reimbursement, exoneration, contribution, indemnification or any right to participate in any claim or remedy of the Beneficiary against Principal or any collateral that the Beneficiary now has or hereafter acquires, until all of the Obligations shall have been irrevocably paid to the Beneficiary in full.

If any amount shall be paid to Guarantor on account of such subrogation, reimbursement, contribution or indemnity rights at any time when all the Obligations guaranteed hereunder shall not have been indefeasibly paid in full, Guarantor shall hold such amount in trust for the benefit of Beneficiary and shall promptly pay such amount to Beneficiary.

Guarantor further agrees that to the extent the waiver of its rights of subrogation as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation Guarantor may have against Principal or against such collateral or security shall be junior and subordinate to any rights Beneficiary may have against Principal and to all right, title and interest Beneficiary may have in such collateral or security.

Beneficiary may use, sell or dispose of any item of collateral or security as it sees fit without regard to any subrogation rights that Guarantor may have, and upon any disposition or sale, any rights of subrogation Guarantor may have shall terminate.

Guarantor understands that it may record a Request for Notice of Default pursuant to California Civil Code Section 2924b and thereby receive notice of any proposed foreclosure of any real property collateral then securing Principal's obligations under the Agreement.

With respect to the foreclosure of any security interest in any personal property collateral then securing the Obligations, Beneficiary agrees to give Guarantor five (5) days' prior written notice, in the manner set forth in Paragraph 17 hereof, of any sale or disposition of any such personal property collateral, other than collateral which is perishable, threatens to decline speedily in value, is of a type customarily sold on a recognized market, or is cash, cash equivalents, certificates of deposit or the like.

Guarantor's sole right with respect to any such foreclosure of real or personal property collateral shall be to bid at such sale in accordance with applicable law.

Guarantor acknowledges and agrees that Beneficiary may also bid at any such sale and if such collateral is sold to Beneficiary in whole or partial satisfaction of Principal's obligations under the Agreement, including the Obligations (or any portion thereof), Guarantor shall not have any further right or interest with respect thereto.

The rights of Beneficiary under this Paragraph 6 are in addition to other rights and remedies which Beneficiary may have.

#### 7. <u>Subordination</u>.

Any indebtedness of Principal now or hereafter held by Guarantor is hereby subordinated in right of payment to the Obligations.

Guarantor assigns all such indebtedness to Beneficiary as security for this Guaranty and the Agreement.

Guarantor agrees to make no claim for such indebtedness until all obligations of Principal under the Agreement have been fully discharged.

Guarantor further agrees not to assign all or any part of such indebtedness unless Beneficiary is given prior notice and such assignment is expressly made subject to the terms of this Guaranty.

If Beneficiary so requests:

(a) All instruments evidencing such indebtedness shall be duly endorsed and delivered to Beneficiary,

- (b) All security for such indebtedness shall be duly assigned and delivered to Beneficiary;
- (c) such indebtedness shall be enforced, collected and held by Guarantor as trustee for Beneficiary and shall be paid over to Beneficiary on account of the Obligations but without reducing or affecting in any manner the liability of Guarantor under the other provisions of this Guaranty; and
- (d) Guarantor shall execute, file and record such documents and instruments and take such other actions as Beneficiary deems necessary or appropriate to perfect, preserve and enforce Beneficiary's rights in and to such indebtedness and any security therefore.

If Guarantor fails to take any such action, Beneficiary, as attorney-in-fact for Guarantor, is hereby authorized to do so in the name of Guarantor.

The foregoing power of attorney is coupled with an interest and cannot be revoked.

- 8. Waivers of Guarantor.
  - (a) Guarantor waives, to the fullest extent permitted by law, the benefit of any statute of limitations affecting its liability under this agreement or the enforcement of this agreement.
  - (b) Guarantor waives any right to require Beneficiary to:
    - (i) Proceed against Principal;
    - (ii) Proceed against or exhaust any security held from Principal or any other party acting under a separate agreement; or
    - (iii) Pursue any other remedy available to Beneficiary.
  - (c) Guarantor waives all of the rights and defenses described in subdivision (a) of Section 2856 of the California Civil Code.

As used below in this Subparagraph (c), "debtor" and "principal" each refers to Principal, "creditor" refers to Beneficiary, "guarantor" refers to "Guarantor" and "debt" refers to the Obligations.

Without limiting the generality of the waiver in the first sentence of this Subparagraph (c), Guarantor desires and intends to, and hereby does, waives

each and all of the rights and defenses described below in this Subparagraph (c).

- (i) The guarantor waives the guarantor's rights of subrogation, reimbursement, indemnification, and contribution and any other rights and defenses that are or may become available to the guarantor by reason of Sections 2787 to 2855, inclusive, of the California Civil Code;
- (ii) The guarantor waives all rights and defenses that the guarantor may have because the debtor's debt is secured by real property.

This means, among other things:

- a. The creditor may collect from the guarantor without first foreclosing on any real or personal property collateral pledged by the debtor.
- b. If the creditor forecloses on any real property collateral pledged by the debtor:
  - (1) The amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.
  - (2) The creditor may collect from the guarantor even if the creditor, by foreclosing on the real property collateral, has destroyed any right the guarantor may have to collect from the debtor.

This is an unconditional and irrevocable waiver of any rights and defenses the guarantor may have because the debtor's debt is secured by real property.

These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

(iii) The guarantor waives all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed the guarantor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the Code of Civil Procedure or otherwise.

- (e) Guarantor assumes all responsibility for keeping itself informed of Principal's financial condition and all other factors affecting the risks and liability assumed by Guarantor hereunder, and Beneficiary shall have no duty to advise Guarantor of information known to it regarding such risks.
- (f) Guarantor waives any defense arising by reason of the incapacity, lack of authority or any disability or other defense of the Principal, including, without limitation, any defense based on or arising out of the lack of validity or enforceability of the Obligations or by reason of the cessation of liability of the Principal under the Agreement for any reason;
- (g) Guarantor waives any defense based upon any statute or rule of law that provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal;
- (h) Guarantor waives any defense based upon Beneficiary's errors or omissions in the administration of the Obligations;
- (i) Guarantor waives its right to raise any principles of law, statutory or otherwise, that are or might be in conflict with the terms of this Guaranty and any legal or equitable discharge of Guarantor's obligations hereunder;
- (j) Guarantor waives any rights to setoffs, recoupments or counterclaims against Beneficiary;
- (k) Guarantor waives its right to raise any defenses based upon promptness, diligence, and any requirement that Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto;
- (l) Guarantor waives any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms of this Guaranty;
- (m) Guarantor waives any rights or defenses that Guarantor may have under Sections 2899 and 3433 of the California Civil Code;
- (n) Guarantor waives any defense based upon Beneficiary's election, in any proceeding instituted under the United States Bankruptcy Code, as amended, of the application of Section 1111(b)(2) of the United States Bankruptcy Code, as amended, or any successor statute; and

- (o) Guarantor waives any defense based upon any borrowing or any grant of a security interest under Section 364 of the United States Bankruptcy Code, as amended.
- 9. No Waiver of Rights by Beneficiary.

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

10. Assignment, Successors and Assigns.

This Guaranty shall be binding upon Guarantor, its successors and assigns, and shall inure to the benefit of, and be enforceable by, the Beneficiary, its successors, assigns and creditors, and can be modified only by a written instrument signed by the Beneficiary and the Guarantor.

The Beneficiary shall have the right to assign this Guaranty to any person or entity without the prior consent of the Guarantor; *provided*, *however*, that no such assignment shall be binding upon the Guarantor until it receives written notice of such assignment from the Beneficiary.

The Guarantor shall have no right to assign this Guaranty or its obligations hereunder without the prior written consent of the Beneficiary, which shall not be unreasonably withheld.

Any reasonable uncertainty on the part of the Beneficiary concerning the ability on the part of any potential assignee of the Guarantor to carry out the Guarantor's obligations hereunder shall be considered a reasonable basis for withholding consent, unless and until the potential assignee can satisfy the Beneficiary, in its sole discretion, that the assignee is capable of performing the obligations of the Guarantor hereunder.

11. Representations of Guarantor.

Guarantor hereby represents and warrants that:

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

#### 12. Attorneys' Fees.

In addition to the amounts for which payment is guaranteed hereunder, Guarantor agrees to pay reasonable attorneys' fees and all other costs and expenses incurred by Beneficiary in enforcing this Guaranty or in any action or proceeding arising out of or relating to this Guaranty.

Any costs for which Guarantor becomes liable pursuant to this Paragraph 12 shall not be subject to, and shall not count toward, the guaranty limit set forth in Paragraph 2 above.

#### 13. Governing Law.

This agreement is made under and shall be governed in all respects by the laws of the State of California, without regard to conflict of law principles, and its provisions may not be waived, altered, modified or amended except in writing executed by an officer of each of Guarantor and Beneficiary.

If any provision of this Guaranty is held invalid under the laws of California, this agreement shall be construed as though the invalid provision has been deleted, and the rights and obligations of the parties shall be construed accordingly.

#### 14. Construction.

All parties to this agreement are represented by legal counsel.

The terms of this agreement and the language used in this agreement shall be deemed to be the terms and language chosen by the parties hereto to express their mutual intent.

This agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under this agreement.

No rule of strict construction will be applied against any person.

#### 15. Amendment; Severability.

Neither this Guaranty nor any of the terms hereof may be terminated, amended, supplemented or modified, except by an instrument in writing executed by an authorized representative of each of Guarantor and Beneficiary.

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

#### 16. Third Party Rights.

This Guaranty shall not be construed to create any rights in any person other than Guarantor and Beneficiary and their respective successors and permitted assigns.

#### 17. Notices.

Any notice given hereunder by either Guarantor or Beneficiary shall be made by facsimile to the person and at the address for notices specified below (with notices to Guarantor sent to facsimile and address specific below for Beneficiary).

#### Beneficiary.

Southern California Edison Company 2244 Walnut Grove Avenue, Quad 4-D Rosemead, CA 91770

Attn:
Phone:
Facsimile:

#### with a copy to:

Southern California Edison Company 2244 Walnut Grove Avenue, Quad 4-D Rosemead, CA 91770

Attn:
Phone:
Facsimile:

#### Guarantor.

[Guarantor]
[Street]
[City, State Zip]

Attn:
Phone:
Facsimile:

Principal.

[Principal] [Street] [City, State Zip]

Attn:
Phone:
Facsimile:

Such notice shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next Business Day after receipt if receipt is outside of the recipient's normal business hours. Either party may periodically change any address to which notice is to be given it by providing notice of such change as provided herein.

Guarar	ntor.	
		[legal name]
	By:	<del></del>
	Title:	<del></del>
	Date:	
	•	
<u>Benefi</u>	ciary.	· •
		d to by Beneficiary for purposes of establishing the creditworthiness of pal, as partial security for the Agreement.
	SOUT	HERN CALIFORNIA EDISON COMPANY
	Ву:	
	Title:	
	Date:	
		*** F. J. CYVIIDIT I ***
		*** End of EXHIBIT I ***

### **EXHIBIT J**

Non-Disclosure Agreement

#### EXHIBIT J

Non-Disclosure Agreement

#### Southern California Edison

#### NON-DISCLOSURE AGREEMENT

Between

#### SOUTHERN CALIFORNIA EDISON COMPANY

anđ

#### COSO CLEAN POWER, LLC

SOUTHERN CALIFORNIA EDISON COMPANY ("SCE"), a California corporation, and COSO CLEAN POWER, LLC. ("CCP"), a Delaware limited liability company, hereby enter into this Non-Disclosure Agreement ("Agreement").

SCE and CCP shall sometimes be referred to in this Agreement individually as a "Party" and jointly as the "Parties."

#### RECITALS

- A. SCE initiated a request for proposals ("RFP") to supply energy and associated firm capacity from eligible renewable resources ("ERRs") on September 2, 2005, with a goal of negotiating and executing power purchase agreements with ERRs whose proposals are selected pursuant to the RFP.
- B. CCP desires to submit a proposal in response to the RFP.
- C. The Parties desire to keep confidential any confidential or proprietary information disclosed by CCP to SCE as part of CCP submission of a proposal in response to the RFP (the "Proposal"), or any confidential or proprietary information that may be disclosed by SCE to CCP as part of discussions or negotiations with CCP concerning CCP Proposal.

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Non-Discl**os**ure Agreement

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#### Southern California Edison

#### AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

- For purposes of this Agreement, all oral or written communications exchanged between the Parties on or after the Effective Date, as set forth in Section 10 of this Agreement, as part of the Proposal shall be referred to as "Confidential Information." Any such communications must comply with the provisions of Section 6 herein to be considered Confidential Information.
- The Parties agree to treat Confidential Information as confidential with respect to third parties and shall not disclose Confidential Information except as specifically authorized herein or as specifically agreed to by both Parties in writing.

Accordingly, Parties may disclose Confidential Information only to their employees, directors, financial advisors, attorneys, or accountants who have a strict need to know solely for the purpose of assisting the Party in evaluating the Proposal, or in subsequent discussions or negotiations regarding the Proposal and who read and agree to abide by this Agreement ("Permitted Disclosee").

The Parties may also disclose Confidential Information to representatives of their rating agencies who have a strict need to know solely for the purpose of assisting the Party in evaluating the Proposal, so long as the disclosing Party advises the rating agency of the confidential nature of the Confidential Information and uses reasonable efforts to prevent or limit the disclosure of Confidential Information by any such rating agency.

 SCE may also disclose Confidential Information to the following entities and their staff and divisions thereof in furtherance of the RFP: (i) the California Public Utilities Commission ("CPUC"), (ii) the Procurement Review Group established pursuant to D.02-08-071 and D.03-06-071 ("PRG"), and (iii) the California Energy Commission ("CEC").

Although SCE will seek confidential treatment of any Confidential Information submitted by it to the CPUC, by means of a motion for protective order under Public Utilities Code section 583 and General Order 66-C, or by appropriate application to or agreement with, the PRG and CEC, SCE may disclose Confidential Information under this Paragraph even if no protective order is issued and no confidentiality or non-disclosure agreements are entered into.

4. Notwithstanding anything to the contrary set forth herein, the obligations set forth in this Agreement shall not apply to and the term "Confidential Information" shall not include:

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#### Southern California Edison

- a. Information which is in the public domain as of the Effective Date of this Agreement or which later comes into the public domain form a source other than from the other Party or its Permitted Discloses;
- b. Information which SCE or CCP can demonstrate in writing was already known to SCE or CCP prior to the effective date of this Agreement;
- Information which comes to SCE or CCP from a bona fide third party source not under an obligation of confidentiality;
- Information which is independently developed by SCE or CCP without use of or reference to Confidential Information or information containing Confidential Information; or
- e. The fact that CCP submitted a Proposal in response to the RFP.
- 5. The Parties agree that irreparable damage would occur if this Agreement were not performed in accordance with its terms or were otherwise breached. Accordingly, a Party may be entitled to seek an injunction or injunctions to prevent breach of this Agreement and to enforce specifically its provisions in any court of competent jurisdiction, in addition to any other remedy to which the party may be entitled by law or equity.
- Confidential Information submitted to a Party in hard copy or electronic form shall bear on each page the following legend:

# "CONFIDENTIAL INFORMATION. THE CONTENTS OF THIS DOCUMENT ARE SUBJECT TO A NON-DISCLOSURE AGREEMENT"

- 7. The Parties agree not to introduce (in whole or in part) into evidence or otherwise voluntarily disclose in any administrative or judicial proceeding, any Confidential Information, except as required by law or as SCE or CCP may be required to disclose to duly authorized governmental or regulatory agencies, including the CPUC or any division thereof, in order to demonstrate the reasonableness of its actions.
- Nothing in this Agreement is intended to waive any attorney-client, work-product or other privilege applicable to any statement, document, communication, or other material of a Party or the Parties.
- Any notice or communication given pursuant to this Agreement shall be in writing and
  - Delivered personally, in which case delivery is given upon written acknowledgment of receipt;

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Non-Disclosure Agreement

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#### Southern California Edison

- (ii) Mailed by registered or certified mail; postage prepaid, in which case delivery is given on the earlier of the actual date of delivery, as set forth in the return receipt, or three (3) days from the date posted, or
- (iii) Delivery by telecopy, in which case delivery is given upon actual receipt of the entire document.

In any of these cases, the writing shall be sent or delivered as follows (subject to change by either Party by notifying the other Party pursuant to this paragraph).

If to SCE:



If to CCP:



- 10. This Agreement shall be effective as of the date of the last signature to this Agreement and shall terminate five years from such date or earlier upon the mutual written consent of the Parties (the "Effective Date").
- 11. This Agreement shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against any of the Parties hereto.

This Agreement shall be construed as if each party was its author and each Party hereby adopts the language of this Agreement as if it were its own.

12. Any waiver of the requirements and provisions of this Agreement shall be in writing.

The failure of either Party to enforce at any time any of the provisions of the Agreement or to require at any time performance by the other Party of any of such provisions, shall in no way be construed as a waiver of such provision or a relinquishment of the right thereafter to enforce such provision.

13. This Agreement may not be modified except by a written agreement executed by both

2005 Request for Proposals from Eligible Renewable Energy Resource Suppliers for Electric Energy

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#### Southern California Edison

- 14. This Agreement shall be interpreted, governed and construed under the laws of the State of California (without giving effect to its conflict of laws provisions that could apply to the law of another jurisdiction) as if executed in and to be wholly performed within the State of California.
- 15. This Agreement fully expresses the Parties' agreement concerning the subject matter hereof and supersedes any prior agreements or understandings regarding the same subject matter.
- 16. The signatories hereto represent that they have been duly authorized to enter into this Agreement on behalf of the Party for whom they sign.
- 17. If any provision hereof is unenforceable or invalid, it shall be given effect to the extent it may be enforceable or valid, and such enforceability or invalidity shall not affect the enforceability or invalidity of any other provision of this Agreement.

2005 Request for Proposals from Eligible Renewable Energy Resource Suppliers for Electric Energy

Non-Disclosure Agreement

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This Agreement may be signed in counterparts, each of which shall be deemed an

COSO CLEAN POWER, LLC,

a Delaware limited liability company

By:

Joseph Greco

Vice-President Western Region

SOUTHERN CALIFORNIA EDISON COMPANY,

a California corporation

By:

Kovin Payne Director, QF Resources

2005 Request for Proposals from Eligible Renewable Energy Resource Suppliers for Electric Energy

\*\*\* End of EXHIBIT J \*\*\*

## **EXHIBIT K**

Time of Delivery Periods and Energy Payment Allocation Factors

Energy Payment Allocation Factors

Time of Delivery Periods ("TOD Periods")				
TOD Period	Summer Jun 1 <sup>st</sup> – Sep 30 <sup>th</sup>	Winter Oct 1 <sup>st</sup> – May 31st	Applicable Days	
On-Peak	Noon – 6:00 p.m.	Not Applicable.	Weekdays except Holidays.	
Mid-Peak	8:00 a.m. – Noon	8:00 a.m 9:00 p.m.	Weekdays except Holidays.	
MIU-reak	6:00 p.m. – 11:00 p.m.	8.00 a.m 9.00 p.m.	Weekdays except Holidays.	
<del></del>	11:00 p.m. – 8:00 a.m.	6:00 a.m. – 8:00 a.m.	Weekdays except Holidays.	
Off-Peak	11.00 p.m. – 8.00 a.m.	9:00 p.m. – Midnight	Weekdays except Holidays.	
	Midnight – Midnight	6:00 a.m. – Midnight	Weekends and Holidays	
Super-Off-Peak	Not Applicable.	Midnight – 6:00 a.m.	Weekdays, Weekends and Holiday	

Energy Payment Allocation Factors			
Season	TOD Period	Calculation Method	Energy Payment Allocation Factor
	On-Peak	Fixed Value.	1.4251
Summer	Mid-Peak	(Total # hours in month – (1.4251 x # Summer On-Peak hours in month)- (0.8526 x # Summer Off-Peak hours in month)) / #Summer Mid-Peak hours in month	Calculated Value
	Off-Peak	Fixed Value.	0.8526
	Mid-Peak	Fixed Value.	1.2185
Winter	Off-Peak	(Total # hours in month – (1.2185 x # Winter Mid-Peak hours in month)- (0.7760 x # Winter Super-Off-Peak hours in month)) / #Winter Off-Peak hours in month	Calculated Value
	Super-Off-Peak	Fixed Value.	0.7760

<sup>&</sup>quot;Holiday" is defined as 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.

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

### EXHIBIT L

Procedure for Partial or Full Return of Agreement Deposit

#### EXHIBIT L

Procedure For Partial Or Full Return Of Agreement Deposit

1. Seller's Request for Agreement Deposit Refund.

Seller shall provide Notice to SCE of its request for a refund of the Agreement Deposit based upon either of the following:

- (a) Termination pursuant to Section 2.05(a), Section 2.05(b)(i) (in which case Seller shall be refunded the entire Agreement Deposit); or
- (b) The date and hour selected by Seller, during which Seller claims it has demonstrated the applicable Initial, Intermediate or Final Net Contract Capacity ("Demonstration Hour"). Seller is entitled to seek a refund of up to 1/3 of the Project Fee for the demonstration of each of Initial, Intermediate and Final Net Contract Capacity.
- 2. Full Return of Agreement Deposit for Termination of Agreement.

Provided that SCE does not dispute Seller's Notice of request for a refund of the Agreement Deposit pursuant to Item 1(a) above, SCE shall return the Agreement Deposit to Seller, or Letter of Credit to the issuing bank, within ten (10) Business Days of such Notice, unless SCE provides timely Notice to Seller that additional days are required to substantiate data.

3. Return of Agreement Deposit for Demonstrating Initial, Intermediate and Final Net Contract Capacity.

For each of the demonstrations of Initial, Intermediate and Final Net Contract Capacity, unless SCE provides timely Notice to Seller that additional days are required to substantiate data, SCE shall within thirty (30) days of Seller's Notice of request for a refund of the Agreement Deposit refund pursuant to Item 1(b):

- (a) Retrieve interval data downloaded from the ISO Approved Meter for the twelve (12) hour periods before and after the Demonstration Hour for the applicable Start-Up Deadline;
- (b) Complete a site visit to verify the Generating Facility is operating in accordance with the Generating Facility description set forth in Exhibit B and to determine the Demonstrated Initial, Intermediate or Final Net Contract Capacity, as applicable, based on the Generating Facility Capacity.

- (c) If the Demonstrated Initial, Intermediate or Final Net Contract Capacity as determined in Item 3(a) above is greater than or equal to the Initial, Intermediate or Final Net Contract Capacity,
  - then Seller shall qualify to receive a return of one third of the Agreement Deposit.
- (d) If the Demonstrated Initial, Intermediate or Final Net Contract Capacity as determined in Item 3(a) above is less than the Initial, Intermediate or Final Net Contract Capacity,
  - then Seller shall qualify to receive a return of only a portion of the third of the Agreement Deposit applicable to the Initial, Intermediate or Final Net Contract Capacity being demonstrated, based upon the level of the Demonstrated Initial, Intermediate or Final Net Contract Capacity.
- (e) Based upon the information in Item 3(a), calculate the amount of the applicable portion of the Agreement Deposit refund due Seller pursuant to Sections 3.05(c) and 3.05(d).
- (f) Provide Notice to Seller of the amount of the applicable portion of the Agreement Deposit being returned pursuant to Item 3(d), the amount of Agreement Deposit forfeited and the reason(s) for the forfeiture, as applicable.
- (g) Return any Agreement Deposit due Seller if such Agreement Deposit was posted in the form of cash.
- (h) Return the Letter of Credit to the issuing bank if the total amount of the posted Agreement Deposit is due Seller (i.e., if the Demonstrated Final Net Contract Capacity is greater than or equal to Final Net Contract Capacity). If Seller is only entitled to a partial return of the applicable portion of the Agreement Deposit, SCE shall submit a drawing certificate on the Letter of Credit for the amount of Agreement Deposit forfeited by Seller, after which SCE shall release the remaining balance of the Letter of Credit.

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

### **EXHIBIT M**

Seller's Estimate of Lost Output

## **EXHIBIT M**

Seller's Estimate Of Lost Output

Lost Output, as used in Section 3.19 shall be estimated by Seller in accordance with the procedures described in this Exhibit M.

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.

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. <u>Log of Lost Output Events</u>.

The Log shall be kept on a single Worksheet in the Lost Output Workbook. It shall identify the date, time, duration, cause and percentage by which the Generating Facility's output was curtailed for an event or circumstance enumerated in the definition of Lost Output (a "Lost Output Event").

## 2. <u>Data Collection</u>.

Seller shall record all hourly Metered Amounts, during the Term, in the Lost Output Workbook on a single worksheet labeled "Metered Amounts".

The worksheet shall be arranged with:

- (a) One (1) column for the date;
- (b) One (1) column for the time;
- (c) One (1) column for the weekday;
- (d) One (1) column for the recorded Metered Amounts for each Term Year; and
- (e) One (1) row for each one (1) hour period during the Term Year.

Seller shall also identify, on a worksheet labeled "Curtailments" and organized in a manner similar to the Metered Amounts worksheet described above, all hours when the Generating Facility's Scheduled Amounts were curtailed due to a Lost Output Event.

#### 3. Generating Facility Monthly Profiles.

Seller shall create a profile of the estimated Generating Facility's Metered Amounts during an average week of each month during the Term (the "Monthly Profile").

Monthly Profiles shall include the seven (7) day period beginning at midnight on Sunday and ending at midnight on the following Saturday. They shall have a total of 168 average hourly Metered Amount periods (i.e. 7 days times 24 hours per day equals 168 hourly periods).

Each Monthly Profile shall be created by averaging the Metered Amounts during the same one (1) hour interval of each day of the week within the month of the current Term Year and up to the three preceding Term Years, if available.

For all hours during which the Generating Facility has had Lost Output Events, if a Monthly Profile is incomplete because of missing hourly averages or if more than one half (1/2) of the one (1) hour averages are calculated using less than three (3) hourly Metered Amounts, the Monthly Profile for that month shall be based upon a comparable winter season or summer season month, as appropriate, agreed upon by the Parties for the Term Year in which the Lost Output amount is being calculated.

All Term Year Monthly Profiles, for the same calendar month, shall be calculated on a worksheet dedicated to that month.

Worksheets shall be labeled "Jan Profile," "Feb Profile," etc. Each of the twelve (12) profile worksheets shall have one (1) column for the weekday, one (1) column for the time, one (1) column for each Term Year Monthly Profile and one (1) row for each of the one hundred sixty eight (168) hourly periods.

Seller shall also create twelve (12) line charts, one for each calendar month, on dedicated worksheets formatted with the charts sized to fit on the worksheet. Each chart shall include one data series for each Term Year. Chart sheets shall be labeled "Jan Chart," "Feb Chart," etc.

## 4. Seller's Estimate of Lost Output.

Lost Output shall be estimated by Seller for all Term Years on one worksheet labeled "LO Years".

The worksheet shall include:

- (a) One (1) column for the date;
- (b) One (1) column for the time;
- (c) One (1) column for the weekday;

- (d) One (1) column for Seller's Lost Output estimate for each Term Year; and
- (e) One (1) row for each one (1) hour period during the Term Year.

Seller's estimate of Lost Output, for any hour during which the Generating Facility was not offline due to Lost Output Event shall be equal to the Metered Amount average included in the Monthly Profile for the same hour, of the same weekday, of the month in the same Term Year in which the Lost Output event occurred less any Metered Amounts during the hour.

Seller shall summarize its Lost Output calculation results on a one (1) worksheet that has one (1) column for the month, one (1) column for each Term Year and one (1) row for each calendar month. Seller's claim for Lost Output, at the end of any Term Year, shall be equal to the sum of the monthly Lost Output amounts, for the appropriate Term Year column, on this summary worksheet. This worksheet shall be labeled "LO Summary."

SCE reserves the right to recalculate any Lost Output estimated by Seller.

\*\*\* End of EXHIBIT M \*\*\*

# EXHIBIT N

Form of Letter of Credit

## **EXHIBIT N**

Form Of Letter Of Credit

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT Reference Number: Transaction Date: BENEFICIARY: Southern California Edison Company 2244 Walnut Grove Avenue Risk Control GO#1, Quad 2A Rosemead, CA 91770 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 QFID \_\_\_ (the "Applicant"), for the amount of XXX AND XX/100 Dollars (\$\_\_\_\_\_\_) "Available Amount"), effective immediately and expiring at 5:00 p.m., California time, on the Expiration Date (as hereinafter defined). This Letter of Credit shall be of no further force or effect upon the close of business on or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day. For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in Los Angeles, California. Subject to the terms and conditions herein, funds under this Letter of Credit are available to Beneficiary by presentation in compliance on or prior to 5:00 p.m. California time, on or prior to the Expiration Date of the following:

- 1. The original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings); and
- 2. The Drawing Certificate issued in the form of Attachment A attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the signature of an authorized representative of the Beneficiary.

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

The facsimile transmittal shall be deemed delivered when received. It is understood that drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance;

provided that, the Available Amount shall be reduced by the amount of each such drawing.

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

Banking charges shall be the sole responsibility of the Applicant.

This Letter of Credit sets forth in full our obligations and such obligations shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the attachment referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such attachment.

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

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

AUTHORIZED SIGNATURE for Issuer		
(Name)		
Title:		

## ATTACHMENT A

## DRAWING CERTIFICATE

## TO [ISSUING BANK NAME]

## IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT

	No
DRAWING (	CERTIFICATE
Bank	
Bank Address	3
Subject:	Irrevocable Non-transferable Standby Letter of Credit
	Reference Number:
"Bank"), and Nontransferal	, an authorized representative of Southern ison Company (the "Beneficiary"), hereby certifies to [Issuing Bank Name] (the Land Land Land Land Land Land Land Land
	Beneficiary is entitled to draw under the Letter of Credit an amount equal to, for the following reason(s) [check applicable provision]:
[ ]A	. An Event of Default, as defined in the Renewable Power Purchase and Sale Agreement (the "Agreement"), with respect to the Applicant has occurred and is continuing.
[ ]B.	An Early Termination Date (as defined in the Agreement) has occurred or been designated as a result of an Event of Default (as defined in the Agreement) with respect to the Applicant for which there exist any unsatisfied payment obligations.

- [ ]C. The Letter of Credit will expire in fewer than 20 Local Business Days (as defined in the Agreement) from the date hereof, and Applicant has not provided Beneficiary alternative Performance Assurance (as defined in the Agreement) acceptable to Beneficiary.
- [ ]D. The Bank has heretofore provided written notice to the Beneficiary of the Bank's intent not to renew the Letter of Credit following the present Expiration Date thereof ("Notice of Non-renewal"), and Applicant has failed to provide the Beneficiary with a replacement letter of credit satisfactory to Beneficiary in its sole discretion within thirty (30) days following the date of the Notice of Non-renewal.
- [ ]E. The Beneficiary has not been paid any or all of the Applicant's payment obligations now due and payable under the Agreement.
- [ ]F. The Beneficiary is entitled to retain the entire Agreement Deposit as a result of Applicant's failure to satisfy the Initial Start-Up Conditions (as defined in the Agreement) with respect to the *full* Initial Net Contract Capacity (as defined in the Agreement) by the Initial Start-Up Deadline (as defined in the Agreement) or any extended Initial Start-Up Deadline as provided in the Agreement, or the Agreement has terminated due to an Event of Default by Applicant prior to the Initial Start-up Deadline.
- [ ]G. The Beneficiary is entitled to retain a portion of the Agreement Deposit equal to the product of \$20 per kilowatt times the Unincluded Capacity (as defined in the Agreement) in kilowatts as a result of Applicant demonstrating only a portion of the [Initial/Intermediate/Final] Net Contract Capacity.
- 2. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS AND \_\_\_\_\_/100ths (U.S.\$\_\_\_\_\_\_\_), which amount does not exceed (i) the amount set forth in paragraph 1 above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.

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

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

	-	Certificate has been duly executed and delivered on behalf of l representative as of this day of,
	Beneficiary:	SOUTHERN CALIFORNIA EDISON COMPANY
		Ву:
		Name:
		Title:
<del></del>		*** End of EXHIBIT N ***

# **EXHIBIT O**

ISO Charges and ISO Sanctions

## **EXHIBIT O**

## ISO Charges and ISO Sanctions

This Exhibit O sets forth the obligations of Seller for ISO Charges and ISO Sanctions passed on to Seller during the Term of this Agreement, pursuant to Section 3.20.

## 1. <u>Determining Applicability of ISO Charges.</u>

Seller shall be responsible for all ISO Charges for all Settlement Intervals where Energy Deviations exceed the Performance Tolerance Band.

The Performance Tolerance Band shall equal the quantity in any Settlement Interval, in kWh, that is product of:

- (a) Three percent (3%) times
- (b) Contract Capacity divided by
- (c) The number of Settlement Intervals in the hour.

## 2. <u>ISO Sanctions</u>.

Seller shall be liable to reimburse SCE for all ISO Sanctions incurred by SCE as a result of Seller's failure to adhere to its obligations under the ISO Tariff or any ISO directive, as such directive may be communicated to Seller by SCE.

- 3. <u>Billing and Documentation of ISO Charges and ISO Sanctions.</u>
  - (a) The ISO Charges and ISO Sanctions will be available for billing approximately one hundred twenty (120) days following the last day of a calendar month (for electrical deliveries during that month) or thirty (30) days after the ISO final settlement data is available to SCE for such deliveries, whichever is sooner.
  - (b) SCE shall provide to Seller the applicable back-up data used for validating ISO Charges and ISO Sanctions.

\*\*\* End of EXHIBIT O\*\*\*

## EXHIBIT P

ISO CHANGE COST PAYMENT CALCULATION

#### EXHIBIT P

#### ISO CHANGE COST PAYMENT CALCULATION

## 1. <u>Introduction</u>.

ISO Change Cost for any Term Year shall be calculated in accordance with the following formula:

$$\begin{array}{c} \text{ISO Change Cost} = \sum_{\textit{Term Year, Detail Mour}}^{\textit{Term Year, Later Mour}} & \left\{ A_{\text{before}} + B_{\text{before}} + C_{\text{before}} \right\} - \\ \\ \sum_{\textit{Term Year, Rivel Mour}}^{\textit{Term Year, Rivel Mour}} & \left\{ A_{\text{after}} + B_{\text{other}} + C_{\text{other}} \right\} \\ \end{array}$$

#### Where:

- (a) As used herein, "Seller's Actual Revenue" means the total of payments and tax benefits received by Seller in any Term Year consisting of payments received by Seller during the Term Year pursuant to Article Four; and
- (b) As used herein, "Seller's Adjusted Revenue" means the calculated amount of Seller's revenue in any Term Year based on adjustments to Seller's Actual Revenue, in order to measure the hypothetical amount of revenue that would have been realized by Seller during the Term Year using the ISO's methodology and procedures that would have applied either as of the Effective Date or before any Change in ISO Tariff as compared to the ISO's methodology and procedures that apply during the Term Year, as specified for each factor below.

## 2. Formula Factors.

The formula factors A<sub>before</sub>, A<sub>after</sub>, B<sub>before</sub>, B<sub>after</sub>, C<sub>before</sub> and C<sub>after</sub> are described as follows:

- (a) Changes in ISO Allocation of Transmission Congestion and ISO Transmission Loss Methodologies Impacting Scheduled Amounts.
  - A<sub>before</sub> = Seller's Adjusted Revenue based on calculating the adjustments to Seller's Actual Revenue, either up or down, under the following circumstances:
    - (i) Changes In Methodology For Allocating
      Transmission Congestion Which Impact Scheduled
      Amounts.

Upon the occurrence of congestion on the transmission system, changes to Seller's actual Scheduled Amounts during the Term Year that would result from applying the ISO's methodology and procedures in effect *immediately prior* to the first Change in ISO Tariff; and

(ii) Changes In Loss Methodology Which Impact Scheduled Amounts.

Changes in Seller's actual Scheduled Amounts during the Term Year that would result from Seller self-providing all ISO-assessed transmission losses in Seller's Scheduled Amounts by applying the GMM using the ISO GMM procedures in effect as of the Effective Date and the average values of GMM for the twelve (12) calendar months immediately prior to the first Change in ISO Tariff.

A<sub>after</sub> = Seller's Actual Revenue during the Term Year.

(b) Changes in ISO Tariff Impacting ISO Charges for Transmission Congestion.

 $B_{before} = This value shall be zero (0).$ 

B<sub>after</sub> = Actual amount of ISO charges paid by Seller during the Term Year relating to congestion for delivery of Product from the Generating Facility to the Delivery Point.

(c) Changes in ISO Tariff Impacting ISO Charges for Transmission Losses.

 $C_{before} = This value shall be zero (0).$ 

C<sub>after</sub> = Actual amount of ISO charges paid by Seller during the Term Year relating to transmission losses for delivery of Product from the Generating Facility to the Delivery Point.

## 3. <u>Change Cost Payments.</u>

## (a) Change Cost Payment to Seller.

If the ISO Change Cost is a *positive* number that is greater than the ISO Change Cost Threshold Amount, then SCE shall pay to Seller an ISO Change Cost Payment calculated as follows:

ISO CHANGE COST PAYMENT TO SELLER = E-F

Where:

E = ISO Change Cost as calculated above.

F = ISO Change Cost Threshold Amount as set forth in Section 11.04.

## (b) <u>Change Cost Payment to SCE.</u>

If the ISO Change Cost is a *negative* number the magnitude of which is greater than the ISO Change Cost Threshold Amount, then Seller shall pay to SCE an ISO Change Cost Payment calculated as follows:

ISO CHANGE COST PAYMENT TO SCE =  $(-1 \times E) - F$ 

Where:

E = ISO Change Cost as calculated above.

F = ISO Change Cost Threshold Amount as set forth in Section 11.04.

\*\*\* End of EXHIBIT P\*\*

February 27, 2008

TO:

Compliance File – RAP ID 3103

FROM:

Anthony Blakemore Cybr Contract Mgr, RAP

CC:

David Cox

SUBJECT:

Amendment No. 1 – Renewable Power Purchase & Sale Agreement. between Coso Clean Power, LLC, RAP ID 3103, and southern

California Edison Company

The attached Amendment copy was received "as is" by RAP Contract Administration on February 25, 2008. The original executed amendment and corresponding documentation could not be located as of February 27, 2008.

#### AMENDMENT NO. 1 TO

#### RENEWABLE POWER PURCHASE AND SALE AGREEMENT

between

## COSO CLEAN POWER, LLC

QFID No. 3103

and

#### SOUTHERN CALIFORNIA EDISON COMPANY

This Amendment No. 1 to Renewable Power Purchase and Sales Agreement with respect to QFID No. 3103 (this "Amendment") dated as of July 5, 2007 (the "Effective Date") is made and entered into by and between Coso Clean Power, LLC ("SELLER"), a Delaware limited liability company, and Southern California Edison Company ("EDISON"), a California corporation. EDISON and SELLER are hereinafter sometimes referred to individually as a "Party" and jointly as the "Parties."

### RECITALS

This Amendment is entered into between the Parties with reference to the following facts:

- A. On November 15, 2006, the Parties entered into the Renewable Power Purchase and Sales Agreement with respect to QFID No. 3103 (the "Agreement") in order to establish the terms and conditions under which SELLER would provide electricity to EDISON in connection with the Seller's generating facility.
- B. The Parties wish to amend the Agreement with respect to optional Energy Prices and Performance Assurance Amounts under such agreement.

#### **AMENDMENT**

In consideration of promises, mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, as set forth herein, the Parties agree to amend the Agreement as follows:

- 1. Amendment of Section 1.06.
  - Section 1.06 of the Agreement is hereby deleted in its entirety and replaced with the following revised Section 1.06:
  - 1.06 SCE's Option to Adjust Energy Price and Performance Assurance Amount; EDR Collateral Amount.
    - SCE, in its sole discretion, shall have the option to adjust the Energy Price and the applicable Performance Assurance Amount to any one of the following combinations:

Energy Price	Applicable Performance Assurance Amount
\$89.97 per MWh	\$81,435,000
\$86.56 per MWh	\$63,615,000
\$81.76 per MWh	\$32,500,000
\$76.75 per MWh	Zero

Provided, however, in the event that SCE selects the Energy Price equal to \$76.75 per MWh with the corresponding Performance Assurance Amount equal to Zero dollars (\$0) above (the "Low Price Point"), Seller shall be obligated to post an additional collateral amount (the "EDR Collateral Amount") pursuant to Seller's obligations in Section 12.03(a) with respect to EDR proceedings.

The EDR Collateral Amount shall be calculated in accordance with the following formula:

#### EDR COLLATERAL AMOUNT = A x B x C x D

Where A= Initial, Intermediate or Final Net Contract Capacity, in MW

B= \$76.75 per MWh C= 90% Capacity Factor

D= 720 hours (i.e., 30-day month)

To exercise its option to adjust the Energy Price and the applicable Performance Assurance Amount in accordance with this Section, SCE shall, on or before the date that is twenty-three (23) months prior to the first day of the Term, send Seller Notice of the Energy Price and applicable Performance Assurance Amount that SCE has elected. Notwithstanding the foregoing sentence or any other provision of this Agreement, if anytime after the later of CPUC Approval or March 31, 2007, Seller provides SCE with Notice of Seller's good-faith intention to obtain financing for the Generating Facility or the Portfolio, SCE shall within thirty (30) days of the date of such Notice exercise its option to adjust the Energy Price and the applicable Performance Assurance Amount.

Upon Seller's receipt of any Notice from SCE which exercises the option granted SCE in this Section, this Agreement shall be deemed to have been automatically amended to reflect such elected Energy Price and applicable Performance Assurance Amount, and both Parties will execute all

documents and instruments necessary to document such amendment to this Agreement.

### 2. Other Terms and Conditions.

#### 2.1 Effective Date.

This Amendment shall be effective as of the Effective Date.

## 2.2 Effect of Amendment; Reservation of Rights.

Except as expressly provided herein, all provisions of the Agreement shall remain in full force and effect and shall not be affected by the terms and conditions of this Amendment. SCE expressly reserves all of its rights and remedies under the Agreement and under applicable law.

## 2.3 No Waiver.

None of the provisions of this Amendment, including this paragraph, shall be considered waived by either Party unless such waiver is given in writing. The failure of either Party to insist in any one or more instances upon strict performance of any of the provisions of this Amendment or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect.

#### 2.4 Further Agreements.

This Amendment shall not be amended, changed, modified, abrogated or superseded by a subsequent agreement unless such subsequent agreement is in the form of a written instrument signed by the Parties.

## 2.5 Entire Agreement.

This Amendment constitutes the entire agreement of the Parties as to the matters set forth herein and supersedes any and all prior negotiations, correspondence, undertakings, and agreements between the Parties concerning the subject matter of this Amendment.

### 2.6 Successors and Assigns.

This Amendment shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

## 2.7 Construction.

This Amendment is the result of negotiation and each Party has participated in the preparation of this Amendment. Accordingly, any rules of construction to the effect that an ambiguity is to be resolved against the drafting Party shall not be employed in the interpretation of this Amendment. Furthermore, the underlined headings used in this Amendment are for reference purposes only and do not themselves constitute any of the terms of this Amendment.

## 2.8 Governing Law.

This Amendment shall be interpreted, governed, and construed under the laws of the State of California as if executed and to be performed wholly within the State of California.

2.9 <u>Capitalized Terms or Words</u>.

Terms or words that are capitalized, but not defined in this Amendment, shall have the same meaning as in the Agreement.

2.10 Authorized Signatures.

Each Party represents and warrants that the person who signs below on behalf of that Party has received all requisite authorizations required to execute this Amendment on behalf of such Party and to bind such Party to this Amendment.

2.11 Counterparts.

This Amendment may be executed in counterparts, each of which shall be deemed an original and which together shall constitute a single instrument.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be duly executed as of the Effective Date first written above:

Date:	7/5	07
-------	-----	----

SOUTHERN CALIFORNIA EDISON

COMPANY,

a California Corporation

Name: Pedro J. Pizarro

Title: Senior Vice President, Power

Procurement

Date: 7/05/07

COSO CLEAN POWER, LLC, a Delaware limited liability company

Name: Foo Groo L. T. Colber

Title: Wire President, Western Region





Mr. Joseph Greco

Vice President Western Region Coso Clean Power, LLC 9590 Prototype Court, Suite 200

Reno. NV 89521

Re: Renewable Power Purchase and Sale Agreement for RAP ID # 3103 between Coso Clean Power, LLC and Southern California Edison Company, as amended ("Agreement")

Dear Mr. Greco:

Subject: Optional Energy Price of \$76.75 per MWh and corresponding Performance Assurance Amount of Zero Dollars (\$0)

This letter is to confirm Southern California Edison Company's understanding that pursuant to a recent discussion regarding Energy Price and Performance Assurance Amount under the Agreement, and the recent Amendment No. 1 to the Agreement providing for an additional optional Energy Price equal to \$81.76 per MWh and a corresponding Performance Assurance Amount of \$32,500,000, Southern California Edison Company ("SCE") and Coso Clean Power, LLC have agreed that the optional Energy Price equal to \$76.75 per MWh and the corresponding Performance Assurance Amount equal to Zero Dollars (\$0) shall not be selected at any time by SCE as the Energy Price and Performance Assurance Amount for the Agreement, notwithstanding anything set forth in Section 1.06 thereof.

However, SCE maintains its right to adjust the Energy Price and the applicable Performance Assurance Amount to any other remaining Energy Price and corresponding Performance Assurance Amount option set forth in Section 1.06 of the Agreement, in accordance with terms thereof.

Sincerely.

SOUTHERN CALIFORNIA EDISON COMPANY

Pedro J. Pizarro Senior Vice President

Senior. Vice President

Power Procurement Business Unit

Acknowledged and agreed this

COSO CLEAN PO By:

8631 Rush St. Rosemead, CA 91770 626-302-1497

Title:

Fax 626-569-2563 pedro.pizarro@sce.com

**Execution Copy** 

#### AMENDMENT NO. 2 TO

#### RENEWABLE POWER PURCHASE AND SALE AGREEMENT

#### between

#### SOUTHERN CALIFORNIA EDISON

and

### COSO CLEAN POWER, LLC

(RAP ID #3103)

This Amendment No. 2 to Renewable Power Purchase and Sales Agreement (this "Amendment"), is made and entered into by and between Coso Clean Power, LLC ("Seller"), a Delaware limited liability company, and Southern California Edison Company ("SCE"), a California corporation. SCE and Seller are hereinafter sometimes referred to individually as a "Party" and jointly as the "Parties." Capitalized terms used but not defined herein shall have the meaning set forth in the Agreement (as defined below).

#### RECITALS

This Amendment is entered into between the Parties with reference to the following facts:

- A. SCE and Seller have entered into that certain Renewable Power Purchase and Sales Agreement, dated as of May 30, 2007, as amended by that certain Amendment No. 1 to Renewable Power Purchase and Sales Agreement, dated as of July 5, 2007 (the "Agreement").
- B. The Parties established certain terms and conditions in the Agreement with respect to (i) the delivery point for electrical energy generated by Seller's geothermal generating facilities and (ii) payment made by SCE to Seller based on amounts of energy that are scheduled to be delivered to the delivery point of Seller's geothermal generating facilities.
- C. Since the time of execution of the Agreement, the California Independent System Operator has implemented certain tariff reforms called the "Market Redesign and Technology Upgrade" ("MRTU") that affect the manner in which the items in Recital B are determined.

- D. Since the time of execution of the Agreement, the North American Electric Reliability Corporation ("NERC") has implemented electrical grid reliability standards (the "NERC Standards") with which SCE desires that Seller comply under the terms and conditions of the Agreement.
- E. The Parties now wish to amend the Agreement in order to incorporate (i) changes to the Agreement necessitated by the implementation of the MRTU and the adoption of the NERC Standards and (ii) certain other changes mutually desired by the Parties.

#### **AMENDMENT**

NOW, THEREFORE, in consideration of the foregoing, the mutual promises contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

1. Amendment to Section 3.07 Metering, Communication, and Telemetry.

Section 3.07 is hereby amended by adding the following Sections 3.07(e) and 3.07(f):

"(e) Check Meter.

SCE may furnish and install one Check Meter (and any associated components) at any location, in its sole discretion and at its expense, on the high or low voltage side of each step-up transformer at the Generating Facility; provided, that SCE shall coordinate the installation of the Check Meter with Seller and to the extent that SCE's installation of the Check Meter requires a reduction or curtailment of the Metered Amounts generated by the Generating Facility, SCE shall be required to make an Energy Payment to Seller in accordance with Section 4.03 equal to the amount of the Lost Output caused by SCE's installation of the Check Meter. Each Check Meter must be interconnected with SCE's communication network to permit:

- (i) Periodic, remote collection of revenue quality meter data; and
- (ii) Back-up real time transmission of operating-quality meter data through the equipment referenced in Section 3.07(a).

SCE shall provide a Notice to Seller providing Seller with access to all Check Meters for all meter data through a secure internet website.

SCE shall, at its expense, test and recalibrate the Check Meter at least once every Term Year. The Check Meter will be locked or sealed, and the lock or seal will be broken, only by a SCE representative. Seller has the right to be present

whenever such lock or seal is broken. SCE shall replace the Check Meter battery at least once every 36 months.

- (f) Use of Check Meter for Back-Up Purposes.
  - (i) SCE shall routinely compare the Check Meter data to the ISO-Approved Meter data.
  - (ii) If the deviation between the ISO-Approved Meter data and the Check Meter data for any comparison is greater than 0.3%, SCE shall provide Notice to Seller of such deviation and the Parties will mutually arrange for a meter check or recertification of the Check Meter or ISO-Approved Meter, as applicable.
  - (iii) Each Party will bear its own costs for any meter check or recertification.
  - (iv) Testing procedures and standards for the Check Meter will be the same as for a comparable SCE-owned meter. Seller has the right to have representatives present during all such tests."
- 2. <u>Section 3.10: Operation and Record Keeping.</u>
  - (a) Section 3.10(c)(iii) is hereby amended by deleting the word "and" at the end of the section.
  - (b) Section 3.10(c)(iv) of the Agreement shall be renumbered as Section 3.10(c)(v) and a new Section 3.10(c)(iv) is hereby added as follows:
    - "(iv) Seller shall have registered with NERC as the Generating Facility's Generator Owner and Generator Operator if Seller is required to be a registered entity pursuant to the NERC Reliability Standards; and"
- 3. Section 3.22: NERC Electric System Reliability Standards.

A new Section 3.22 is hereby added to the end of Article Three as follows:

- "3.22 NERC Electric System Reliability Standards.
  - (a) During the Term, for purposes of complying with any NERC Reliability Standards applicable to the Generating Facility, Seller (or an agent of Seller as consented to by SCE, which consent shall not be unreasonably withheld) must be registered with NERC as the Generator Operator and the Generator Owner for the Generating Facility and must perform all

Generator Operator Obligations and Generator Owner Obligations except those Generator Operator Obligations that SCE, in its capacity as Scheduling Coordinator, is required to perform under this Agreement, if Seller is required to be a registered entity pursuant to the NERC Reliability Standards. SCE hereby acknowledges and agrees that Coso Operating Company, LLC is currently the Generator Operator for the Generating Facility.

(b) Notwithstanding anything to the contrary set forth in this Section 3.22, each Party acknowledges that such Party's performance of the Generator Operator Obligations or Generator Owner Obligations may not satisfy the requirements for self-certification or compliance with the NERC Reliability Standards, and that it shall be the sole responsibility of each Party to implement the processes and procedures required by NERC, WECC, or the ISO in order to comply with the NERC Reliability Standards."

## 4. Section 4.01: Obligation to Pay.

- (a) The second paragraph of Section 4.01 is hereby amended by deleting the word "Scheduled" and replacing it with the word "delivered."
- (b) Sections 4.01(c) and 4.01(d) of the Agreement are hereby deleted in their entirety and replaced with the following:
  - "(c) A reduction or curtailment of deliveries ordered by the ISO; or
  - (d) A reduction or curtailment of deliveries pursuant to the terms of an agreement with a Transmission Provider."

## 5. Section 10.03: Indemnity.

A new Section 10.03(j) is hereby added as follows:

"Seller is solely responsible for any NERC Standards Non-Compliance Penalties arising from or relating to Seller's failure to perform (or the failure of the entity that has registered with NERC as the Generator Operator for the Generating Facility) the Generator Operator Obligations or the Generator Owner Obligations, in accordance with Section 3.22, and will indemnify, defend and hold SCE harmless from and against all liabilities, damages, claims, losses, costs, attorney's fees (which shall include the cost of in-house counsel) or expenses incurred by SCE arising from or relating to NERC Standards Non-Compliance Penalties or an attempt by any Governmental Authority, person or entity to assess such NERC Standards Non-Compliance Penalties against SCE, to the extent such NERC

Standards Non-Compliance Penalties are due to Seller's acts and omissions in performing the Generator Operator Obligations or the Generator Owner Obligations. If Seller fully complies with the Generator Operator Obligations and Generator Owner Obligations, SCE will indemnify, defend and hold Seller harmless from and against all liabilities, damages, claims, losses, costs, attorney's fees or expenses incurred by Seller for any NERC Standards Non-Compliance Penalties which are due to SCE's acts or omissions in performing its role as Seller's Scheduling Coordinator during the Term."

6. Section 10.17: Seller Ownership and Control of Generating Facility.

A new Section 10.17 is hereby added to the end of Article Ten, as follows:

"10.17 Seller Ownership and Control of Generating Facility.

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 to SCE as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that the contractual arrangement set forth in this Agreement conveys ownership or control of generation capacity from Seller to SCE."

- 7. Sections 2.06(a)(ix), 4.02, 4.03(a)(i)(1), 9.02, 11.02(a)(i) and 11.02(a) (ii) are hereby amended by deleting the word "Scheduled" and replacing with the word "Metered":
- 8. Exhibit A: Definitions.
  - (a) The definition of "Delivered Amount" is hereby be deleted, and any references to "Delivered Amount" set forth in the Agreement shall be replaced with "Metered Amount."
  - (b) The definition of "Delivery Point" is hereby deleted in its entirety and replaced with the following:
    - ""Delivery Point" is the point of interconnection in which deliveries of energy interconnect with the CAISO Controlled Grid (the "Delivery Point"). Such electric energy is to be measured by the ISO-Approved Meter."
  - (c) The definition of "Environmental Attributes" is hereby be deleted, and any references to "Environmental Attributes" set forth in the Agreement shall be replaced with "Green Attributes."

(d) The definition of "Energy Deviation" is amended by adding the words "as adjusted for updated Energy Forecasts permitted under Exhibit D" after the words "Final Hour-Ahead Schedule" in sub-paragraph a).

The following definitions are hereby added in alphabetical order to Exhibit A:

""Amendment No. 2" means the second amendment to this Agreement."

"Check Meter" means the SCE revenue-quality meter section or meter, which SCE may require at its discretion, as set forth in Section 3.07(e).

"Generator Operator" means the Person that operates the Generating Facility and has registered with NERC as the Person responsible for complying with those NERC reliability standards applicable to operator of the Generating Facility.

"Generator Operator Obligations" means the obligations of a Generator Operator as set forth in all applicable NERC Reliability Standards available at <a href="http://www.nerc.com/~filez/standards/Reliability\_Standards\_Regulatory\_Approved.html">http://www.nerc.com/~filez/standards/Reliability\_Standards\_Regulatory\_Approved.html</a>, or any successor thereto.

"Generator Owner" means an entity that owns generating units and has registered with NERC as the entity responsible for complying with those NERC reliability standards applicable to owner of generating units as described in the Statement of Compliance Registry Criteria at http://www.wecc.biz.

"Generator Owner Obligations" means the obligations of a Generator Owner as set forth in the applicable NERC Reliability Standards available at http://www.wecc.biz.

- (e) "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 without limitation 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.

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 Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

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.

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

"NERC Reliability Standards" means the NERC Statement of Compliance Registry Criteria (Revision 4.0), which is, as of the Effective Date, available at http://www.wecc.biz/documents/library/compliance/manuals/Statement\_of\_Comp liance\_Registry\_Criteria\_V4-0.pdf.

"NERC Standards Non-Compliance Penalties" means any and all monetary fines, penalties, damages, interest or assessments by the NERC, the ISO, WECC, a Governmental Authority or any entity acting at the direction of a Governmental Authority arising from or relating to a failure to perform the obligations of Generator Operator or Generator Owner as set forth in the NERC Reliability Standards.

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

"Uninstructed Deviation Penalty" means the penalty set forth in the ISO Tariff."

## 9. Exhibit D: Forecasting and Scheduling Requirements and Procedures.

Exhibit D is hereby deleted in its entirety and replace with a new Exhibit D attached to Amendment No. 2 as Attachment No. 1.

## 10. Exhibit O: ISO Charges and ISO Sanctions.

Section 1(a) of Exhibit O shall be amended by deleting the words "Contract Capacity divided by" and replacing with the words "Net Contract Capacity divided by".

### 11. <u>Miscellaneous</u>.

- (a) <u>Reservation of Rights</u>. Each of the Parties expressly reserves all of its respective rights and remedies under the Agreement.
- (b) <u>Legal Effect</u>. Except as expressly modified as set forth herein, the Agreement remains unchanged and, as so modified, the Agreement shall remain in full force and effect.
- (c) <u>Governing Law</u>. THIS AMENDMENT NO. 2 SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE

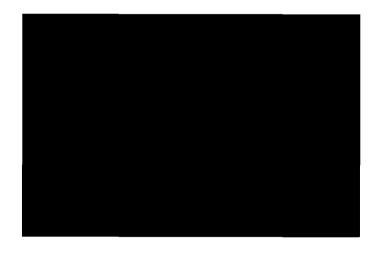
OF CALIFORNIA WITHOUT REGARD TO ANY CONFLICT OF LAWS PROVISIONS THEREOF.

- (d) <u>Successors and Assigns</u>. This Amendment No. 2 shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.
- (e) <u>Authorized Signatures</u>; Notices. Each Party represents and warrants that the person who signs below on behalf of that Party has authority to execute this Amendment No. 2 on behalf of such Party and to bind such Party to this Amendment No. 2. Any written notice required to be given under the terms of this Amendment No. 2 shall be given in accordance with the terms of the Agreement.
- (f) <u>Effective Date</u>. This Amendment No. 2 shall be deemed effective as of the date upon which the last Party executes this Amendment No. 2.
- (g) <u>Further Agreements</u>. This Amendment No. 2 shall not be amended, changed, modified, abrogated or superseded by a subsequent agreement unless such subsequent agreement is in the form of a written instrument signed by the Parties.
- (h) <u>Counterparts</u>; <u>Electronic Signatures</u>. This Amendment No. 2 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 Amendment No. 2 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 Amendment No. 2 as to the Parties and may be used in lieu of the original Amendment No. 2 for all purposes.

[Remainder of Page Intentionally Left Blank]

In WITNESS WHEREOF, the Parties have caused this Amendment No. 2 to be duly executed by their duly authorized representatives on the dates indicated below their respective signatures.

coso clean power, LLC, a Delaware limited liability company.	SOUTHERN CALIFORNIA EDISON COMPANY, a California corporation.
By:  Name: Joseph Greco  Title: Service President	By:  Mame: MARC. L. ULRICH  Title: V.P. Renewable and Alternative Paver
Date: 9-8-09	Date: 09-29-2009



## **ATTACHMENT NO. 1**

## Exhibit D

Forecasting and Scheduling Requirements and Procedures

#### EXHIBIT D

Forecasting and Scheduling Requirements and Procedures

#### 1. Introduction.

The Parties shall abide by the Forecasting and Scheduling requirements and procedures described below and shall agree upon reasonable changes to these requirements and procedures from time-to-time, as necessary to:

- (a) Comply with ISO Tariff changes;
- (b) Accommodate changes to their respective generation technology and organizational structure; and
- (c) Address changes in the operating and Scheduling procedures of both SCE and the ISO, including but not limited to, automated forecast and outage submissions.
- 2. Seller's Forecasting Requirements.

Seller must meet all of the following requirements for Forecasting as specified below.

(a) No later than thirty (30) days prior to Initial Start-Up Deadline, Seller shall provide SCE with a 30-day, hourly forecast of its expected Metered Amounts ("Energy Forecast"), in MWh, for the thirty day (30) period commencing on Initial Start-Up Deadline using the Web Client.

If, after submitting the Energy Forecast pursuant to this Section 2(a), Seller learns that Initial Start-Up Deadline will occur on a date and time other than reflected on the Energy Forecast, Seller will provide an updated Energy Forecast reflecting the new Initial Start-Up Deadline date at the earliest practicable time but no later than 5:00 p.m. Pacific Prevailing Time ("PPT") on the Wednesday prior to the new Initial Synchronization date, if Seller has learned of the new Initial Start-Up Deadline date by that time, but in no event later than three (3) Business Days prior to the new Initial Start-Up Deadline date.

The Energy Forecast for any given hour becomes binding at 5:30 am PPT on the day before the day in which such hour occurs, unless the Energy Forecast is updated pursuant to Items 2(c) or 2(d) below.

If the Web Client becomes unavailable, Seller shall provide SCE with the Energy Forecast by telephoning SCE's Generation Operations Center, at the telephone number(s) listed in Exhibit C.

- (b) The Energy Forecast, and any updated Energy Forecasts provided pursuant to this Section 2, shall:
  - (i) Not include any anticipated or expected electric energy losses between the ISO Approved Meter or Check Meter and the Delivery Point; and

- (ii) Limit hour-to-hour forecast changes to no less than two hundred fifty (250) kWh during any period when the Web Client is unavailable. Seller shall have no restriction on hour-to-hour forecast changes when the Web Client is available.
- (c) Commencing on or before 5:00 p.m. PPT of the Wednesday prior to the first week covered by the Energy Forecast provided pursuant to Section 2(a) above and on or before 5:00 p.m. PPT every Wednesday thereafter until the end of the Term, Seller shall update the Energy Forecast for the thirty (30) day period commencing on the Sunday following the weekly Wednesday Energy Forecast update submission. Seller shall use the Web Client, if available, to supply this weekly update or, if the Web Client is not available Seller shall provide SCE with the weekly Energy Forecast update by telephoning SCE's Generation Operations Center, at the telephone number(s) listed in Exhibit C.
- (d) If Seller learns of any change in the total generation capacity of the Generating Facility for a period covered by the most recent Energy Forecast update resulting from any cause, including an unplanned outage, prior to the time that the next weekly update of the Energy Forecast is due which results in variance in expected energy in any hour of plus (+) or minus (-) three percent (3%) from the energy reported in the most recent Energy Forecast update, Seller shall provide an updated Energy Forecast to SCE. This updated Energy Forecast must be submitted to SCE by no later than:
  - (i) 5:30 am PPT on the day prior to any day impacted by the change, if the change is known to Seller at that time;
  - (ii) Thirty (30) minutes before the commencement of any hour impacted by the change, if the change is known to Seller at that time; or
  - (iii) If the change is not known to Seller by the timeframes indicated in (i) or (ii) above, no later than twenty (20) minutes after the commencement of the event which caused the available capacity change.

Seller's updated Energy Forecast must contain the following information:

- (iv) The beginning date and time of the event resulting in the availability change;
- (v) The expected ending date and time of the event:
- (vi) The expected generation, in MW; and
- (vii) Any other information required by the ISO as communicated to Seller by SCE.
- 3. SCE's Scheduling Responsibilities.

Pursuant to the ISO Tariff, SCE shall be responsible for the following:

- (a) Adjustment of the Energy Forecasts, or the last Energy Forecast update submitted to SCE pursuant to Item 2, for forecasted electric energy line losses to reflect Seller's self-provision of those losses and the amount of electric energy Seller expects to deliver to the Delivery Point in any given hour;
- (b) Submission of the adjusted Energy Forecasts to the ISO as SC Schedules; and
- (c) Receipt of notification of the Final Schedules from the ISO.
- 4. Outage Scheduling Procedures.

Seller shall be responsible for all expenses and costs associated with all requirements and timelines for generation outage scheduling contained in the ISO's Scheduled and Forced Outage Procedure T-113 as posted on the ISO's website.

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

**Execution Copy** 

#### **AMENDMENT NO. 3 TO**

#### RENEWABLE POWER PURCHASE AND SALE AGREEMENT

between

#### SOUTHERN CALIFORNIA EDISON

and

#### COSO CLEAN POWER, LLC

(RAP ID #3103)

This Amendment No. 3 to Renewable Power Purchase and Sales Agreement (this "Amendment No. 3"), is made and entered into as of November 18, 2009 (the "Amendment No. 3 Effective Date"), by and between Coso Clean Power, LLC ("Seller"), a Delaware limited liability company, and Southern California Edison Company ("SCE"), a California corporation. SCE and Seller are hereinafter sometimes referred to individually as a "Party" and jointly as the "Parties." Capitalized terms used but not defined herein shall have the meaning set forth in the Agreement (as defined below).

#### RECITALS

This Amendment No. 3 is entered into between the Parties with reference to the following facts:

- A. SCE and Seller have entered into that certain Renewable Power Purchase and Sales Agreement, dated as of November 15, 2006, as amended by that certain Amendment No. 1 to Renewable Power Purchase and Sales Agreement, dated as of July 5, 2007, as further amended by that certain Amendment No. 2 to Renewable Power Purchase and Sales Agreement, dated September 29, 2009 (the "Agreement").
- B. Seller and certain Affiliates are in the process of making certain capital improvements to the Generating Facility, as outlined in general terms in Exhibit B-1 attached hereto as Attachment No. 1, which will have the potential to increase the aggregate Net Contract Capacity of the Initial, Intermediate and Final Generating Facility Units (the "Generating Units") by up to an aggregate amount of 52.4 MWs in excess of the Maximum Net Contract Capacity currently permitted by the Agreement, for a total potential Net



- Contract Capacity of 287 MW. The completion of such capital improvements is dependent upon Seller's ability to secure a higher Energy Price for the Product delivered pursuant to the Agreement.
- C. Seller represents that it currently holds cumulative transmission rights of 242 MW for the Generating Facility. Seller represents that it is actively seeking to increase its transmission rights by 45 MW to bring the cumulative total to 287 MW which is intended to match the proposed increase in Net Contract Capacity.
- D. In order to implement such capital improvements, the Parties now wish to amend the Agreement to provide for an increase in the Energy Price under certain circumstances and to make certain other changes mutually acceptable to the Parties.

## **AMENDMENT**

NOW, THEREFORE, in consideration of the foregoing, the mutual promises contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

- 1. Amendments to Section 1.01: Net Contract Capacity & Expected Net Energy Production.
  - a. A new Section 1.01(d)(iv) is hereby added as follows:
    - "(iv) The renewable power purchased under this Agreement will be produced by the Generating Facility Units with the following generating nameplate capacities, and RAP ID numbers.

Generating Facility Units	Nameplate Capacity	RAPID
Initial Generating Facility Units	99.9 MW	3103
Intermediate Generating Facility Units	102.4 MW	3115
Final Generating Facility Units	99.9 MW	3116

- b. Section 1.01(e)(ii) is hereby deleted in its entirety and replaced with the following:
  - "(ii) No earlier than six (6) months prior to the commencement of each of the Initial Term Period, the Intermediate Term Period and the Final Term Period, Seller shall provide a Notice to SCE of the estimated Initial Net Contract

Capacity, Intermediate Net Contract Capacity or Final Net Contract Capacity, respectively. Seller shall by Notice designate a Demonstration Hour, to occur within thirty (30) days following the commencement of each of the Initial Term Period, the Intermediate Term Period and the Final Term Period, to establish the Initial Net Contract Capacity, Intermediate Net Contract Capacity or Final Net Contract Capacity, respectively, in accordance with the procedures set forth in Exhibit L."

- c. Section 1.01(e)(iii) is hereby deleted in its entirety and replaced with the following:
  - "(iii) The Initial Net Contract Capacity, Intermediate Net Contract Capacity and Final Net Contract Capacity may be further adjusted as follows:

After receiving CPUC Approval of Amendment No. 3, and no more than once every six (6) months (or once every twenty-four (24) months in the case of the Final Net Contract Capacity), Seller may adjust the Initial Net Contract Capacity, Intermediate Net Contract Capacity or Final Net Contract Capacity. Seller shall provide to SCE at least thirty (30) days prior Notice of Seller's anticipated increase or decrease to the Initial Net Contract Capacity, Intermediate Net Contract Capacity or Final Net Contract Capacity or Final Net Contract Capacity pursuant to this Section 1.01(e)(iii) shall be demonstrated pursuant to Exhibit L.

Any decrease to the Initial Net Contract Capacity or Intermediate Net Contract Capacity shall never be greater than the lesser of (X) seven percent (7%) of the quantity of the Initial Net Contract Capacity or Intermediate Net Contract Capacity (as applicable) immediately prior to the adjustment, or (Y) ten percent (10%) of the quantity of the Initial Net Contract Capacity or Intermediate Net Contract Capacity (as applicable) as of the end of the calendar year immediately prior to the adjustment, unless otherwise agreed to in writing by SCE in its sole discretion. Any decrease to the Final Net Contract Capacity shall never be greater than ten percent (10%) of the quantity of the Final Net Contract Capacity in the twenty-four (24) month period immediately prior to the adjustment, unless otherwise agreed to in writing by SCE in its sole discretion. In the case that Seller provides Notice of its intent to decrease the Initial Net Contract Capacity, Intermediate Net Contract Capacity or Final Net Contract Capacity, such Notice shall also include an explanation, and supporting documentation, of the reason(s) for such reduction."

d. Section 1.01(e)(iv) is hereby deleted in its entirety and replaced with the following:

- "(iv) In no event shall the Initial Net Contract Capacity, Intermediate Net Contract Capacity or Final Net Contract Capacity (as may be adjusted in accordance with this Agreement) exceed 287 MW (the "Maximum Net Contract Capacity")."
- e. Section 1.01(g) is hereby amended by adding the following immediately after the list of dates of the Calculation Periods therein:

"provided, in the event that the Initial Net Contract Capacity, Intermediate Net Contract Capacity or Final Net Contract Capacity are adjusted in accordance with this Agreement, the Expected Net Energy Production shall be recalculated pursuant to Section 1.01(f) for the then applicable Calculation Period."

## 2. <u>Amendment to Section 1.04: Energy Price</u>.

Section 1.04 is hereby deleted and replaced in its entirety as follows:

"1.04 Energy Price.

The Energy Price for the Product generated by the Initial, Intermediate, and Final Generating Facility Units shall be as follows:

Energy Price	Initial Term Period  Metered Amounts <sup>1</sup>	Intermediate Term Period Metered Amounts <sup>2</sup>	Final Term Period  Metered Amounts <sup>3</sup>
\$81.76/MWh (Tier 1)	≤ 71.4 MWh <b>x</b> <i>n</i> <sub>j</sub>	$\leq 142.8 \text{ MWh} \times n_j$	$\leq$ 214.2 MWh $\times$ $n_j$
\$99.00/MWh (Tier 2)	> 71.4 MWh x $n_j$ but $\leq$ 78.2 MWh x $n_j$	> 142.8 MWh $\times n_j$ but $\leq$ 156.4 MWh $\times n_j$	$> 214.2 \text{ MWh} \times n_j$ but $\leq 234.6 \text{ MWh} \times n_j$
\$111.00/MWh (Tier 3)	> 78.2 MWh x n <sub>j</sub>	> 156.4 MWh x n <sub>j</sub>	> 234.6 MWh x n <sub>j</sub>

<sup>&</sup>lt;sup>1</sup> In any given TOD Period during a calendar month, with respect only to the Initial Generating Facility Units (i.e., Navy II Units 4, 5 & 6)



<sup>&</sup>lt;sup>2</sup> In any given TOD Period during a calendar month, with respect only to the aggregate of the Initial and Intermediate Generating Facility Units (i.e., Navy II Units 4, 5 & 6 and Navy I Units 1, 2 & 3)

<sup>&</sup>lt;sup>3</sup> In any given TOD Period during a calendar month, with respect only to the aggregate of the Initial,

Intermediate, and Final Generating Facility Units (i.e., Navy II Units 4, 5 & 6; Navy I Units 1, 2 & 3; and BLM Units 7, 8 & 9)

 $n_j$  = For TOD Period j, the number of hours during which no Transmission Provider curtailments occurred

The Energy Price for all Metered Amounts in hours during which there is a Transmission Provider curtailment shall be \$81.76/MWh.

3. Amendment to Section 1.05: Performance Assurance Amount.

Section 1.05 is hereby deleted in its entirety and replaced with the following:

"1.05 Performance Assurance Amount.

Forty-two million three hundred sixty thousand dollars (\$42,360,000) to be posted as set forth in Section 8.02(a)."

- 4. <u>Amendments to Section 3.05: Agreement Deposit.</u>
  - a. The first two paragraphs of Section 3.05(a) are hereby deleted in their entirety and replaced with the following:
    - "Within thirty (30) days following the Amendment No. 3 Effective Date, Seller shall post and thereafter maintain in the aggregate an Agreement Deposit in the amount of \$4,692,000, as reduced pursuant to Sections 3.05(c) or 3.05(d)."
  - b. Section 3.05(c)(iv) is hereby deleted in its entirety and replaced with the following:
    - "(iv) Subject to Section 3.05(d), the final one third (1/3) of the Agreement Deposit shall be returned upon satisfaction of each of the Final Start-Up Conditions by the Final Start-Up Deadline or any extended Final Start-Up Deadline as provided in Section 3.05(b) and demonstration by such date of the Maximum Net Contract Capacity in accordance with the procedures set forth in Exhibit L."
  - c. The fifth and sixth paragraphs (ending prior to the words "In addition,") of Section 3.05(d) are hereby deleted in their entirety and replaced with the following:

"then Seller shall forfeit, and SCE shall be entitled to retain, a portion of the Agreement Deposit equal to the product of twenty dollars (\$20) per



kilowatt times (i) 68 MW minus the kilowatts of Demonstrated Initial Net Contract Capacity, (ii) 136 MW minus Demonstrated Intermediate Net Contract Capacity, or (iii) 287 MW minus Demonstrated Final Net Contract Capacity, as applicable; *provided*, in no event shall Seller forfeit, and SCE retain, more than the one-third (1/3) of the Agreement Deposit applicable to the respective Initial, Intermediate or Final Net Contract Capacity being demonstrated

and, SCE shall return to Seller (without interest) any portion of the applicable one-third (1/3) of the Agreement Deposit not forfeited by Seller and retained by SCE pursuant to this Section 3.05(d)."

## 5. <u>Amendments With Respect to EDR Provisions.</u>

- a. Section 1.06 is hereby deleted in its entirety and replaced with the following:
  - "1.06 [Intentionally Deleted]"
- b. Section 2.06(a)(xii) is hereby amended by deleting the words "and the EDR Collateral Amount pursuant to Section 12.03(a)(v), if applicable" from such section.
- c. Section 12.03(a)(ii) is hereby amended by deleting the last paragraph thereof in its entirety.
- d. Section 12.03(a)(v) is hereby deleted in its entirety.

# 6. <u>Amendment to Section 4.01: Obligation to Pay.</u>

A new paragraph is hereby added at the end of Section 4.01 as follows:

"SCE will not be obligated to pay Seller for any Product that Seller delivers after the effective time of, and in violation of, a curtailment order delivered to Seller by the Transmission Provider in accordance with Seller's interconnection agreement or delivered by SCE (as Scheduling Coordinator) as permitted under Section 3.10(f)."

## 7. <u>Amendments to Section 4.02: Energy Payment Calculations.</u>

Paragraph 3 through the end of Section 4.02 is hereby deleted in its entirety and replaced with the following:

"Monthly Energy Payments shall equal the sum of the monthly TOD Period Energy Payments for all TOD Periods in the month. Each monthly TOD Period Energy Payment shall be calculated pursuant to the following:



For the Initial Term Period, Intermediate Term Period, and Final Term Period, the monthly Energy Payment shall be:

$$\left[\sum_{j=1}^{3}\sum_{i=1}^{3}\left(TOD_{j}\times Y_{ij}\times P_{i}\right)\right]+\left[\sum_{j=1}^{3}\left(TOD_{j}\times Z_{j}\times P_{h}\right)\right]$$

where:

j = the TOD Period as set forth in Table 4-1 below

 $TOD_j$  = the Energy Payment Allocation Factor as described below for the period j

i = the applicable tier as set forth in Table 4-2 below

 $Y_{ij}$  = Metered Amounts in each TOD Period j associated with each of Tiers 1,2 or 3, as applicable, for all hours in which there are no Transmission Provider curtailments

 $P_i$  = Energy Price associated with the respective tiers as set forth in Table 4-2 below

 $Z_j$  = Metered Amounts in each TOD Period j for all hours in which there are Transmission Provider curtailments

 $P_h = $81.76/MWh$ 

Table 4-1

j	Summer	Winter
1	On-Peak	Mid-Peak
2	Mid-Peak	Off-Peak
3	Off-Peak	Super-Off-Peak
As defined in	Exhibit K	

Table 4-2

i	
1	Tier 1
2	Tier 2
3	Tier 3
As defined in Section 1.04 Energy Price	

For each TOD Period in each calendar month during the **Initial** Term Period:

$$Y_{1j}$$
 = the minimum of  $\left[\sum_{h=1}^{n_j} Q_{hj}, n_j \times 71.4 \ MWh\right]$ 

$$Y_{2j}$$
 = the min of [the max of  $[0, \sum_{h=1}^{n_j} Q_{hj} - (n_j \times 71.4 \ MWh)], n_j \times (78.2 \ MWh - 71.4 \ MWh)]$ 

$$Y_{3j}$$
 = the maximum of  $\left[0, \sum_{h=1}^{n_j} Q_{hj} - \left(n_j \times 78.2 \ MWh\right)\right]$ 

Where:

 $Q_{hj}$  = For TOD Period j, Metered Amounts in MWh in hour h during which no Transmission Provider curtailments occurred

h = Hour

 $n_j$  = For TOD Period j, the number of hours during which no Transmission Provider curtailments occurred



For each TOD Period in each calendar month during the **Intermediate** Term Period:

$$Y_{1j}$$
 = the minimum of  $\left[\sum_{h=1}^{n_j} Q_{hj}, n_j \times 142.8 \ MWh\right]$ 

$$Y_{2j}$$
 = the min of the max of  $\left[0, \sum_{h=1}^{n_j} Q_{hj} - \left(n_j \times 142.8 \ MWh\right)\right],$ 

$$n_j \times \left(156.4 \ MWh - 142.8 \ MWh\right)$$

$$Y_{3j}$$
 = the maximum of  $\left[0, \sum_{h=1}^{n_j} Q_{hj} - \left(n_j \times 156.4 \ MWh\right)\right]$ 

Where:

 $Q_{hj}$  = For TOD Period j, Metered Amounts in MWh in hour h during which no Transmission Provider curtailments occurred

h = Hour

 $n_j$  = For TOD Period j, the number of hours during which no Transmission Provider curtailments occurred

For each TOD Period in each calendar month during the Final Term Period:

$$Y_{ij}$$
 = the minimum of  $\left[\sum_{h=1}^{n_j} Q_{hj}, n_j \times 214.2 \ MWh\right]$ 

$$Y_{2j}$$
 = the min of [the max of  $[0, \sum_{h=1}^{n_j} Q_{hj} - (n_j \times 214.2 \text{ MWh})], n_j \times (234.6 \text{ MWh} - 214.2 \text{ MWh})]$ 

$$Y_{3j}$$
 = the maximum of  $\left[0, \sum_{h=1}^{n_j} Q_{hj} - \left(n_j \times 234.6 \text{ MWh}\right)\right]$ 

Where:

 $Q_{hj}$  = For TOD Period j, Metered Amounts in MWh in hour h during which no Transmission Provider curtailments occurred

h = Hour

 $n_j$  = For TOD Period j, the number of hours during which no Transmission Provider curtailments occurred"



8. Amendment to Section 8.02(a): Posting of Performance Assurance.

Section 8.02(a) is hereby amended by deleting the first and second paragraphs and replacing them with the following:

"On or before the commencement of each of the Initial Term Period, the Intermediate Term Period, and the Final Term Period, Seller shall post the Performance Assurance Amount as follows: (i) \$14,120,000 for the Initial Term Period, (ii) \$28,240,000 (in the aggregate) for the Intermediate Term Period, and (iii) \$42,360,000 (in the aggregate) for the Final Term Period."

9. Amendment to Exhibit A: Defined Terms.

Exhibit A is hereby amended as follows:

- (a) The following defined terms are added thereto:
  - "6.2 "Amendment No. 3" means the third amendment to this Agreement."
  - "6.3 "Amendment No. 3 Effective Date" has the meaning set forth in Amendment No. 3."
  - "66.1 "Final Capacity Test" means the final demonstration of Net Contract Capacity, in accordance with the procedures listed in Exhibit L."
- (b) The term "Delivery Point" is hereby deleted in its entirety and replaced as follows:
  - "34.1 "Delivery Point" means the point at which the Generating Facility first interconnects to the ISO Grid."
- (c) The term "EDR Collateral Amount" is hereby deleted in its entirety.
- (d) The term "Market Price" is hereby deleted in its entirety and replaced as follows:
  - "129 "Market Price" means the CAISO price for EZ Gen Hub SP-15 or any successor price that represents the Integrated Forward Market weighted-average price paid to generating facilities in that existing zone, as that price or successor price is defined in Appendix A of the CAISO Tariff that would apply to the Generating Facility, which values are, as of the Amendment No. 3 Effective Date, posted by the CAISO on its website.

The values used in this Agreement will be those appearing on the CAISO website on the third (3rd) Business Day of the calendar month following the month for



which the prices are being applied."

- (e) The definition of "Delivered Amounts" is hereby be deleted, and any references to "Delivered Amounts" set forth in the Agreement shall be replaced with "Metered Amounts."
- 10. Amendment to Exhibit B: Generating Facility and Site Description.

Exhibit B is hereby amended by adding Exhibit B-1, attached to this Amendment No. 3 as Attachment No. 1, and Exhibit B-2, attached to this Amendment No. 3 as Attachment No. 2.

11. Amendment to Exhibit L: Procedure for Partial or Full Return of Agreement Deposit.

Exhibit L is hereby deleted in its entirety and replaced with a new Exhibit L attached to this Amendment No. 3 as Attachment No. 3.

## 12. <u>Miscellaneous.</u>

- (a) <u>Reservation of Rights</u>. Each of the Parties expressly reserves all of its respective rights and remedies under the Agreement.
- (b) <u>Legal Effect</u>. Except as expressly modified as set forth herein, the Agreement remains unchanged and, as so modified, the Agreement shall remain in full force and effect.
- (c) Governing Law. THIS AMENDMENT NO. 3 SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA WITHOUT REGARD TO ANY CONFLICT OF LAWS PROVISIONS THEREOF. EACH PARTY WAIVES ITS REPSPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.
- (d) <u>Successors and Assigns</u>. This Amendment No. 3 shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.
- (e) <u>Authorized Signatures; Notices</u>. Each Party represents and warrants that the person who signs below on behalf of that Party has authority to execute this Amendment No. 3 on behalf of such Party and to bind such Party to this Amendment No. 3. Any written notice required to be given under the terms of this Amendment No. 3 shall be given in accordance with the terms of the Agreement.
- (f) <u>Effective Date and Termination of Amendment No. 3</u>. This Amendment No. 3 shall be effective as of the Amendment No. 3 Effective Date. Seller shall



promptly submit this Amendment No. 3 to its Lenders for review and approval and use its commercially reasonably efforts to obtain such approval ("Lender Consent for Amendment No. 3"), if required, within ninety (90) days after the Amendment No. 3 Effective Date. Seller shall provide SCE Notice that Seller has received Lender Consent for Amendment No. 3 within five (5) Business Days after Seller's receipt of the same if deemed to be required. If Seller has not obtained the Lender Consent for Amendment No. 3, on terms and conditions reasonably satisfactory to Seller, or otherwise informed SCE that Lender Consent for Amendment No. 3 is not required, within ninety (90) days after the Amendment No. 3 Effective Date or if CPUC Approval is not obtained for this Amendment No. 3, this Amendment No. 3 shall be null and void and of no further force or effect and SCE shall promptly return to Seller any additional amount of the Agreement Deposit and Performance Assurance Amount posted by Seller pursuant to this Amendment No. 3.

- (g) <u>Further Agreements</u>. This Amendment No. 3 shall not be amended, changed, modified, abrogated or superseded by a subsequent agreement unless such subsequent agreement is in the form of a written instrument signed by the Parties.
- (h) <u>Counterparts; Electronic Signatures</u>. This Amendment No. 3 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 Amendment No. 3 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 Amendment No. 3 as to the Parties and may be used in lieu of the original Amendment No. 3 for all purposes.

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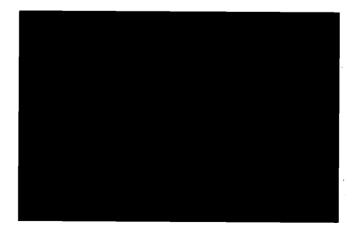


In WITNESS WHEREOF, the Parties have caused this Amendment to be duly executed by their duly authorized representatives on the dates indicated below their respective signatures.

COSO CLEAN POWER, LLC,	SOUTHERN CALIFORNIA EDISON COMPANY,
a Delaware limited liability company.	a California corporation.
Ву:	Ву:
Name: Joseph Greco Title: Senior Vice President	Name: Title:
Date: // - /8 - 09	Date:

In WITNESS WHEREOF, the Parties have caused this Amendment to be duly executed by their duly authorized representatives on the dates indicated below their respective signatures.

COSO CLEAN POWER, LLC,	SOUTHERN CALIFORNIA EDISON COMPANY,
a Delaware limited liability company.	a California corporation.
By:	By:
Name: Joseph Greco Senior Vice President	Name: Marc Ulrich Vice President Title: Renewable and Alternative Power
Date: 1/- 18-09	Date: 11/24/09



## **ATTACHMENT NO. 1**

Exhibit B-1
Proposed Expansion Plan



## **EXHIBIT B-1**

Proposed Expansion Plan

Seller expects to implement a comprehensive, capital-intensive, generation enhancement program for the existing Generating Facility Unit and the auxiliary equipment and the geothermal field/resource with respect to the Project (but not involving the construction and addition of new major electrical components which would change the electrical characteristics of the units) as outlined in general terms herein:

- Water Augmentation (Hay Ranch) Seller expects to drill into an aquifer underlying the Hay Ranch property in order to produce groundwater for supplemental injection into the geothermal reservoir at the resource location.
- **Production Well Drilling** Seller expects to drill up to 12 new production wells to bring additional geothermal resource to the Generating Facility.
- **Turbine Steam Path Modifications** (turbine rotors) To supplement the beneficial effects of water augmentation described above, Seller is evaluating upgrading the turbine rotors for efficiency improvements. The intent will be to match turbine design flow and pressure conditions to the resource's current conditions, which would allow for continuous utilization of the older wells for a longer period of time as their flow characteristics change.
- Gas Removal System Modifications Seller is evaluating the installation of mechanical gas compressor systems to more efficiently remove non-condensable gases from the main condensers and transport the gas to H2S abatement facilities for processing.
- **Piping Modifications** Seller is evaluating a program designed to upgrade/modify the existing steam transfer piping system.
- **Binary Systems** Seller is evaluating the feasibility of installing binary power generation systems at the site to utilize the thermal energy remaining in the brine that does not flash to steam before it is injected back into the reservoir.

\*\*\* End of EXHIBIT B-1 \*\*\*

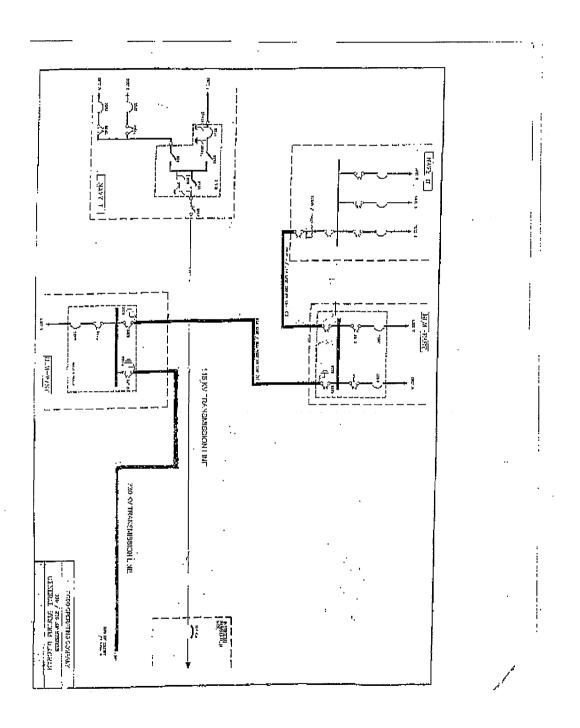


## ATTACHMENT NO. 2

Exhibit B-2 [Single-Line Electrical Diagrams]



EXHIBIT B-2 Single Line Electrical Diagrams



\*\*\* End of EXHIBIT B-2 \*\*\*



## **ATTACHMENT NO. 3**

## **EXHIBIT L**

Procedure for Partial or Full Return of Agreement Deposit

## **EXHIBIT L**

Procedure For Partial Or Full Return Of Agreement Deposit

1. Seller's Notice of Demonstration Hour.

Seller shall provide at least two (2) weeks prior Notice to SCE of the date and hour selected by Seller during which Seller intends to demonstrate the Initial, Intermediate or Final Net Contract Capacity, as applicable ("Demonstration Hour"); provided, such Demonstration Hour shall be between the hours of 9:00 a.m. and 5:00 p.m. PPT. Seller shall make reasonable efforts to accommodate SCE's request to reschedule the Demonstration Hour. During any such Demonstration Hour, Seller must operate all of the Initial, Intermediate and Final Generating Facility Units simultaneously as follows:

- (a) During any test of the Initial Net Contract Capacity, the Metered Amounts of the Intermediate Generating Facility Units shall be 70 MWh or greater, and the Metered Amounts of the Final Generating Facility Units shall be 60 MWh or greater, during the Demonstration Hour.
- (b) During the initial test of the Intermediate Net Contract Capacity, the Metered Amounts of the Final Generating Facility Units shall be 60 MWh or greater during the Demonstration Hour. For any other test of the Intermediate Net Contract Capacity, the Metered Amounts of the Final Generating Facility Units shall be 67.5 MWh or greater during the Demonstration Hour.

Unless SCE provides timely Notice to Seller that additional days are required to substantiate interval data downloaded from the ISO-Approved Meters or Check Meters, SCE shall, within thirty (30) days of the day on which such Demonstration Hour occurred, provide Seller Notice of SCE's determination of the Initial, Intermediate or Final Net Contract Capacity, as applicable. If Seller is unable to meet the requirements of Section 1(a) or (b), as applicable, then the test will be declared invalid and SCE and Seller will determine the time of a new Demonstration Hour by mutual agreement.

2. Seller's Request for Agreement Deposit Refund.

Seller shall provide Notice to SCE of its request for a refund of the Agreement Deposit based upon either of the following:

- (a) Termination pursuant to Section 2.05(a), Section 2.05(b)(i) (in which case Seller shall be refunded the entire Agreement Deposit); or
- (b) Seller is entitled to seek a refund of up to one third (1/3) of the Agreement Deposit upon demonstration of each of the Initial, Intermediate and Final Net Contract Capacity at the commencement of the Initial, Intermediate or Final Term Period, as applicable, pursuant to Sections 3.05(c) or 3.05(d).



- 3. Return of Agreement Deposit for Termination or Demonstrating Initial, Intermediate and Final Net Contract Capacity.
  - (a) Provided that SCE does not dispute Seller's Notice of request for a refund of the Agreement Deposit pursuant to Item 2(a) above, SCE shall return the Agreement Deposit to Seller, or Letter of Credit to the issuing bank, within ten (10) Business Days of such Notice, unless SCE provides timely Notice to Seller that additional days are required to substantiate data.
  - (b) If (i) the Initial or Intermediate Net Contract Capacity is greater than or equal to 68 MW and 136 MW respectively, or (ii) the Final Net Contract Capacity is equal to 287 MW, each as demonstrated within thirty (30) days after commencement of the Initial, Intermediate or Final Term Period, as applicable, as determined in accordance with Item 1 above,
    - then Seller shall qualify to receive a return of one third (1/3) of the Agreement Deposit.
  - (c) If (i) the Demonstrated Initial Net Contract Capacity is less that 68 MW, (ii) the Intermediate Net Contract Capacity is less that 136 MW, or (iii) the Final Net Contract Capacity is less than 287 MW, each as demonstrated within thirty (30) days after commencement of the Initial, Intermediate or Final Term Period, as applicable, as determined in accordance with Item 1 above,
    - then Seller shall qualify to receive a return of only a portion of the one third (1/3) of the Agreement Deposit applicable to the Initial, Intermediate or Final Net Contract Capacity being demonstrated, as set forth in Section 3.05(d).
  - (d) Based upon the information in Item 1, calculate the amount of the applicable portion of the Agreement Deposit refund due Seller pursuant to Sections 3.05(c) and 3.05(d).
  - (e) Provide Notice to Seller of the amount of the applicable portion of the Agreement Deposit being returned pursuant to Item 3(c), the amount of Agreement Deposit forfeited and the reason(s) for the forfeiture, as applicable.
  - (f) Return any Agreement Deposit due Seller if such Agreement Deposit was posted in the form of cash.
  - (g) If Seller is only entitled to a partial return of the Agreement Deposit, SCE shall (i) submit a drawing certificate on the Letter of Credit for the amount of Agreement Deposit forfeited by Seller, if any, and (ii) with respect to the Initial and Intermediate Net Contract Capacity, amend the Letter of Credit to reflect the remaining balance of Agreement Deposit covered by the Letter of Credit, and with respect to the Final Net Contract Capacity, return the Letter of Credit to the issuing bank.



# Southern California Edison

Confidential Information

RAP ID #3103 Coso Clean Power, LLC

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



**Execution Copy** 

#### **AMENDMENT NO. 4**

to

## RENEWABLE POWER PURCHASE AND SALE AGREEMENT

between

#### SOUTHERN CALIFORNIA EDISON COMPANY

and

#### COSO GEOTHERMAL POWER HOLDINGS, LLC,

(RAP ID #3103)

This Amendment No. 4 to Renewable Power Purchase and Sales Agreement (this "Amendment No. 4"), is made and entered into as of January 12, 2010 (the "Amendment No. 4 Effective Date"), by and between Coso Geothermal Power Holdings, LLC ("Seller"), a Delaware limited liability company, and Southern California Edison Company ("SCE"), a California corporation. SCE and Seller are hereinafter sometimes referred to individually as a "Party" and jointly as the "Parties." Capitalized terms used but not defined herein shall have the meaning set forth in the Agreement (as defined below).

## RECITALS

This Amendment No. 4 is entered into between the Parties with reference to the following facts:

A. SCE and Coso Clean Power, LLC ("CCP") have entered into that certain Renewable Power Purchase and Sales Agreement, dated as of November 15, 2006, as amended by that certain Amendment No. 1 to Renewable Power Purchase and Sales Agreement, dated as of July 5, 2007, as further amended by that certain Amendment No. 2 to Renewable Power Purchase and Sales Agreement, dated September 29, 2009 ("Amendment No. 2"), and as further amended by that certain Amendment No. 3 to Renewable Power Purchase and Sales Agreement, dated November 18, 2009 ("Amendment No. 3") (as amended, the "Agreement").

- B. In connection with a financing transaction consented to by SCE pursuant to that certain Consent, dated as of December 7, 2007 (the "Leveraged Lease Consent"), by and among SCE, Coso Power Developers, Coso Finance Partners, Coso Energy Developers, CCP, Seller, certain "Owner Lessors" party thereto, and U.S. Bank National Association, as collateral agent to certain lenders, indenture trustees and collateral agents of the Owner Lessors, CCP's rights and obligations under the Agreement were assigned to the Owner Lessors and sub-assigned to Seller.
- C. SCE and Seller have agreed that Seller shall provide an additional Six Million Dollars (\$6,000,000) of Performance Assurance in lieu of the Secured Interests required under Section 8.04 of the Agreement on the terms and conditions specified in this Amendment No. 4, subject to Seller obtaining the required approval, if any, from its Lenders for such modification to the Agreement. If Seller is unable to obtain such Lender approval, the Parties have agreed to a procedure for execution of the Security Documents, as set forth herein.
- D. Amendment No. 3 sets forth certain increases in the Energy Price ("Energy Price Increase"). However, Amendment No. 3 is subject to CPUC Approval of Amendment No. 3. Therefore, the Parties intend that, pending CPUC Approval of Amendment No. 3 (as defined herein), SCE will calculate Energy Payments based upon both the Energy Price set forth in the Agreement prior to execution of Amendment No. 3, and also based upon the new Energy Price set forth in Amendment No. 3. Seller will be paid an Energy Payment based upon the pre-Amendment No. 3 Energy Price, and the difference between that amount and the Energy Payment based upon the Energy Price pursuant to Amendment No. 3 will be held in escrow by SCE for Seller's account, as set forth herein.
- E. The Parties now wish to amend the Agreement in accordance with the intentions of the Parties describe above.

#### **AMENDMENT**

NOW, THEREFORE, in consideration of the foregoing, the mutual promises contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

1. Amendment to Section 1.05: Performance Assurance Amount.

Section 1.05 is hereby deleted in its entirety and replaced with the following:

"1.05 Performance Assurance Amount.

Forty-eight million three hundred sixty thousand dollars (\$48,360,000) to be posted as set forth in Section 8.02(a)."

## 2. Amendment to Section 8.02(a): Posting of Performance Assurance.

Section 8.02(a) is hereby amended by deleting the first paragraph and replacing it with the following, and renumbering Sections 8.02(a)(i) and 8.02(a)(ii) to 8.02(a)(iv) and 8.02(a)(v) respectively:

"On or before the commencement of each of the Initial Term Period, the Intermediate Term Period, and the Final Term Period, Seller shall post the Performance Assurance Amount as follows: (i) \$16,120,000 for the Initial Term Period, (ii) \$32,240,000 (in the aggregate) for the Intermediate Term Period, and (iii) \$48,360,000 (in the aggregate) for the Final Term Period, each as set forth below.

With respect to posting the Performance Assurance applicable to each of the Initial, Intermediate and Final Term Periods, Seller shall post \$14,120,000 on or before the commencement of each of the Initial, Intermediate or Final Term Period, as applicable. Following the first Demonstration Hour after the commencement of each of the Initial, Intermediate and Final Term Periods, concurrently with SCE's Notice to Seller pursuant to Sections 1 and 3(e) of Exhibit L of SCE's determination of the Initial, Intermediate or Final Net Contract Capacity, as applicable, and of the amount of the Agreement Deposit to which Seller is entitled as a refund, if any, SCE shall also provide Notice to Seller (i) confirming that such amount has been retained by SCE as Performance Assurance; and (ii) stating the amount of additional Performance Assurance that Seller is required to post for the Initial, Intermediate or Final Term Period, as applicable, in order to equal the total Performance Assurance Amount as set forth in the preceding paragraph. Seller shall post the additional amount of Performance Assurance specified in such Notice for each of the Initial, Intermediate and Final Term Period, as applicable, within five (5) days after receipt of such Notice from SCE."

### 3. Amendments With Respect to Secured Interests Provisions.

- a. Section 2.03(a)(iii)(9) is hereby deleted in its entirety and replaced with the following:
  - "[Intentionally Deleted]".
- b. Section 2.04(a)(viii) is hereby deleted in its entirety and replaced with the following:
  - "[Intentionally Deleted]".
- c. Section 6.01(m) is hereby deleted in its entirety and replaced with the following: "[Intentionally Deleted]".
- d. Section 8.04 is hereby deleted in its entirety and replaced with the following:

- "8.04 [Intentionally Deleted]".
- e. Section 8.05(a) is hereby deleted in its entirety and replaced with the following:
  - "(a) Seller and each Owner shall, from time to time as requested by SCE, execute, acknowledge, record, register, deliver and/or file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid and enforceable under all applicable laws the rights, liens and priorities of SCE with respect to the Security Interest provided for herein;".
- f. Section 8.06 is hereby deleted in its entirety and replaced with the following:
  - "8.06 [Intentionally Deleted]".
- g. Exhibit A is hereby amended by deleting the terms "Secured Interests" and "Security Documents."
- h. Exhibit A is hereby amended by deleting the term "Financial Defaults" and replacing such term as follows:
  - "74. "Financial Defaults" means the following defaults that are not eligible for EDR: defaults under (i) Section 6.01(d) (Credit Default); (ii) Section 6.01(f) (Guarantor Default) (other than Section 6.01(f)(i)); and (iii) Section 6.01(g)(iii) (Restricted Financing Default)."
- 4. <u>Amendments With Respect to Escrow of Increased Energy Payment Amounts Prior to CPUC Approval of Amendment No. 3.</u>
  - (a) Section 4.02 is amended to make the existing language in Section 4.02 referenced as "Section 4.02(a)", and to add a new Section 4.02(b) as follows:
    - "(b) <u>Interim-Period Energy Payment Calculations</u>.

Notwithstanding Section 4.02(a), during the Interim Period:

(i) The "Base Interim-Period Energy Payment" shall equal the sum of the monthly TOD Period Energy Payments for all TOD Periods in the month. Each monthly TOD Period Energy Payment shall be calculated pursuant to the following formula, where "n" is the TOD Period being calculated:

TOD PERIODn ENERGY PAYMENT  $= A \times B \times C$ 

Where:

- A = \$81.76/MWh/1000.
- B = Energy Payment Allocation Factor for the TOD Period being calculated.
- C = The sum of Metered Amounts in all hours for the TOD Period being calculated in kWh.
- (ii) The Contingent Interim-Period Energy Payment shall be an amount equal to (x) the Energy Payment calculated using the method set forth in Section 4.02(a), minus (y) the Base Interim-Period Energy Payment.
- (b) New Sections 4.03(e) and 4.03(f) are added to the Agreement as follows:
  - "(e) <u>Interim-Period Energy Payments.</u>

During the Interim Period, SCE shall, no later than thirty (30) days after the end of each calendar month during Initial Synchronization and during the Term (or the last day of the month if the month is February), or the last Business Day of the month if such 30<sup>th</sup> day (or 28<sup>th</sup> or 29<sup>th</sup> day for February) is a weekend day or holiday, do each of the following:

- (i) Send a statement to Seller showing:
  - (1) The Metered Amounts for each TOD Period during the month for which the payment is being made;
  - (2) A calculation of the Base Interim-Period Energy Payment;
  - (3) A calculation of the Contingent Interim-Period Energy Payment;
  - (4) The ISO Charges and ISO Sanctions pursuant to Exhibit O, which will be available approximately one hundred twenty (120) days following the last day of a calendar month (for electrical deliveries during that month) or thirty (30) days after the ISO final settlement data is available to SCE for such deliveries, whichever is sooner;
- (ii) Send to Seller, via wire transfer, SCE's payment of said Base Interim-Period Energy Payment, plus simple interest at the Interest Rate for each day or portion thereof that the payment is wire-transferred later than such date; and

- (iii) Credit to a notional account for the benefit of Seller (subject to the rights of SCE as provided in this Agreement) the Contingent Interim-Period Energy Payment.
- (f) <u>Interest and Payment of Accrued Contingent Interim-Period Energy</u> Payments.

All Contingent Interim-Period Energy Payments shall earn interest at the Interest Rate, compounded monthly, and such interest amounts shall also be credited to the notional account. SCE shall pay the Accrued Contingent Interim-Period Energy Payments on or before the first day of first calendar month following CPUC Approval of Amendment No. 3. In the event that SCE does not obtain CPUC Approval of Amendment No. 3 or if this Agreement is terminated prior to CPUC Approval of Amendment No. 3, SCE shall have no obligation to pay the Accrued Contingent Interim-Period Energy Payments, and Seller's only compensation for Product delivered during the Interim Period shall be the Base Interim-Period Energy Payments."

## 5. <u>Amendment to Exhibit A: Defined Terms.</u>

Exhibit A is hereby amended as follows:

- (a) The following defined terms are added thereto:
  - (i) "1.0 "Accrued Contingent Interim-Period Energy Payments" means the sum total of the monthly Contingent Interim-Period Energy Payment and the interest, if any, accrued thereon."
  - (ii) "10.1 "Base Interim-Period Energy Payment" shall have the meaning set forth in Section 4.02(b)(i)."
  - (iii) "28.1 "CPUC Approval of Amendment No. 3" 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 as amended by Amendment No. 3 in its entirety, including payments to be made by SCE, subject to CPUC review of SCE's administration of the Agreement;
    - b) Finds that any procurement pursuant to this Agreement as amended by Amendment No. 3 is procurement from an eligible renewable energy resource for purposes of determining SCE's

compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the RPS Legislation. CPUC Decision 03-06-071, or other Applicable Law; and

c) Finds that any procurement pursuant to this Agreement as amended by Amendment No. 3 constitutes incremental procurement or procurement for baseline replenishment by SCE from an eligible renewable energy resource for purposes of determining SCE's compliance with any obligation to increase its total procurement of eligible renewable energy resources that it may have pursuant to the RPS Legislation, CPUC Decision 03-06-071, or other Applicable Law.

CPUC Approval of Amendment No. 3 will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable."

- "22.1 "Contingent Interim-Period Energy Payment" shall have the (iv) meaning set forth in Section 4.02(b)(ii)."
- "96.1 "Interim Period" means the period between the Amendment No. 3 (v) Effective Date and the earlier of (i) CPUC Approval of Amendment No. 3, or (ii) an Early Termination Date."
- In the defined term "Security Interests", the word "Interests" is replaced by the (b) word "Interest".

#### 6. Amendment to Exhibit L

Exhibit L of the Agreement is amended as follows:

- (a) Item 2(b) is deleted in its entirety.
- (b) Items 3(f) and 3(g) are deleted in their entirety and replaced with the following:
  - Notwithstanding any provision of this Agreement to the contrary, "(f) including but not limited to Sections 3.05(c)(ii)-(iv) and 3.05(d), SCE shall have the right to retain as Performance Assurance any portion of the Agreement Deposit to which Seller is entitled as a refund, and any interest accrued thereon, if applicable."

#### 7. Miscellaneous.

(a) Reservation of Rights. Each of the Parties expressly reserves all of its respective rights and remedies under the Agreement.

- (b) <u>Legal Effect</u>. Except as expressly modified as set forth herein, the Agreement remains unchanged and, as so modified, the Agreement shall remain in full force and effect.
- (c) Governing Law. THIS AMENDMENT NO. 4 SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA WITHOUT REGARD TO ANY CONFLICT OF LAWS PROVISIONS THEREOF. EACH PARTY WAIVES ITS REPSPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.
- (d) <u>Successors and Assigns</u>. This Amendment No. 4 shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.
- (e) <u>Authorized Signatures: Notices</u>. Each Party represents and warrants that the person who signs below on behalf of that Party has authority to execute this Amendment No. 4 on behalf of such Party and to bind such Party to this Amendment No. 4. Any written notice required to be given under the terms of this Amendment No. 4 shall be given in accordance with the terms of the Agreement.
- (f) Seller Ratification of Amendment No. 2 and Amendment No. 3 and SCE Acceptance Thereof. Pursuant to the terms and conditions of the Leveraged Lease Consent, Seller acknowledges that it (and not CCP) should have executed Amendment No. 2 and Amendment No. 3 at the time such amendments were executed and hereby ratifies Amendment No. 2 and Amendment No. 3 by execution of this Amendment No. 4, and confirms that it shall be bound by such Amendment No. 2 and Amendment No. 3 as if it were an original signatory thereto. SCE hereby acknowledges and accepts Seller's ratification of Amendment No. 2 and Amendment No. 3.
- g) Effective Date and Termination of Amendment No. 4. This Amendment No. 4 shall be effective as of the Amendment No. 4 Effective Date. Seller shall promptly submit, if required, this Amendment No. 4 to its Lenders for review and approval and use its commercially reasonably efforts either to obtain such approval ("Lender Consent for Amendment No. 4"), or to determine that approval is not required, no later than the date of the first Demonstration Hour for the Initial Term Period (the "Capdemo Date"). Seller shall provide SCE Notice that Seller has received Lender Consent for Amendment No. 4 within five (5) Business Days after Seller's receipt of the same if deemed to be required or, in the event Seller determines that Lender approval is not required, within five (5) Business Days after making such determination.

If Seller has not obtained the Lender Consent for Amendment No. 4, on terms and conditions reasonably satisfactory to Seller, or otherwise informed SCE that

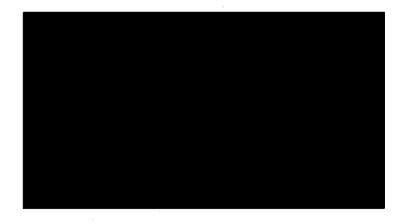
Lender Consent for Amendment No. 4 is not required, on or before the Capdemo Date, (i) Sections 1, 2, 3 and 6 of this Amendment No. 4 shall be null and void and of no further force or effect; (ii) SCE and Seller shall execute the Security Documents and intercreditor documents with Seller's Lenders as required by Section 8.04 of the Agreement in a form mutually acceptable to the Parties within sixty (60) days after the Capdemo Date; and (iii) Seller shall post an additional seven million dollars (\$7,000,000) of Performance Assurance no later than five (5) days after the Capdemo Date, which amount shall be released by SCE to Seller within five (5) days after the date of execution of the Security Documents and intercreditor documents referenced in subsection (ii) above. The Parties agree to cooperate in good faith in order to execute any Security Documents and intercreditor documents with Seller's Lenders as required by Section 8.04 of the Agreement within the time period specified above.

- (h) <u>Further Agreements</u>. This Amendment No. 4 shall not be amended, changed, modified, abrogated or superseded by a subsequent agreement unless such subsequent agreement is in the form of a written instrument signed by the Parties.
- (i) <u>Counterparts</u>; <u>Electronic Signatures</u>. This Amendment No. 4 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 Amendment No. 4 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 Amendment No. 4 as to the Parties and may be used in lieu of the original Amendment No. 4 for all purposes.

[Remainder of Page Intentionally Left Blank]

In WITNESS WHEREOF, the Parties have caused this Amendment to be duly executed by their duly authorized representatives on the dates indicated below their respective signatures.

COSO GEOTHERMAL POWER HOLDINGS, LLC,	SOUTHERN CALIFORNIA EDISON COMPANY,
a Delaware limited liability company.	a California corporation.
Ву:	Ву:
Name: John W. O'Connor Chief Financial Officer	Name: MARC L. WIRCHI Title: VICE PRESCORDIT, RENEWARLE AND ALTERN ATTIVE PLAN
Date: iliilio	Date: 1/12/2010



**Execution Copy** 

#### **AMENDMENT NO. 5**

to

#### RENEWABLE POWER PURCHASE AND SALE AGREEMENT

between

#### SOUTHERN CALIFORNIA EDISON COMPANY

and

## COSO GEOTHERMAL POWER HOLDINGS, LLC

(RAP ID #3103)

This Amendment No. 5 to Renewable Power Purchase and Sales Agreement (this "Amendment No. 5"), is made and entered into as of August 25, 2010 (the "Effective Date"), by and between Coso Geothermal Power Holdings, LLC ("Seller"), a Delaware limited liability company, and Southern California Edison Company ("SCE"), a California corporation. SCE and Seller are hereinafter sometimes referred to individually as a "Party" and jointly as the "Parties." Capitalized terms used but not defined herein shall have the meaning set forth in the Agreement (as defined below).

#### **RECITALS**

This Amendment No. 5 is entered into between the Parties with reference to the following facts:

- A. SCE and Seller are Parties to that certain Power Purchase and Sale Agreement, dated as of November 15, 2006, as amended (the "Agreement" or the "PPSA"); and
- B. SCE and Seller wish to include in the Agreement the new non-modifiable terms ordered by Decision No. 10-03-021 of the California Public Utilities Commission ("CPUC").

## **AGREEMENT**

In consideration of the promises, mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, as set forth herein, the Parties agree to amend the Agreement as follows:

#### 1. AMENDMENT

- (a) The second paragraph of Section 3.01 is deleted and replaced with the following:
  - "Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project."
- (b) New Sections 10.01(j), (k), (l), and (m) are added as follows:
  - "(j) Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that:
    - (i) The Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and
    - (ii) The Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard.

To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

(k) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewable Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall

not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

- (l) For purposes of Sections 10.01(j) and 10.01(k), "commercially reasonable efforts" means that Seller is not required to expend sums in excess of fifty thousand dollars (\$50,000) in any one Term year
- (m) Seller warrants that all necessary steps to allow the renewable energy credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract."
- (c) Section 10.07 is deleted and replaced in its entirety as follows:

"Governing Law.

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

- (d) Exhibit A is amended by adding the following defined terms thereto in alphabetical order:
  - (i) "Amendment No. 5" means the fifth amendment to this Agreement.
  - (ii) "Amendment No. 5 Effective Date" means the date upon which the last Party executes Amendment No. 5."
  - (iii) "Buyer" means SCE.
  - (iv) "Delivery Term" means the Term.

#### 2. MISCELLANEOUS

- (a) <u>Reservation of Rights</u>. Each of the Parties expressly reserves all of its respective rights and remedies under the Agreement.
- (b) <u>Legal Effect</u>. Except as expressly modified as set forth herein, the Agreement remains unchanged and, as so modified, the Agreement shall remain in full force

and effect.

- (c) Governing Law. THIS AMENDMENT NO. 5 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 AMENDMENT NO. 5.
- (d) <u>Successors and Assigns</u>. This Amendment No. 5 shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.
- (e) <u>Authorized Signatures; Notices</u>. Each Party represents and warrants that the person who signs below on behalf of that Party has authority to execute this Amendment No. 5 on behalf of such Party and to bind such Party to this Amendment No. 5. Any written notice required to be given under the terms of this Amendment No. 5 shall be given in accordance with the terms of the Agreement.
- (f) <u>Effective Date</u>. This Amendment No. 5 shall be deemed effective as of the date upon which the last Party executes this Amendment No. 5 ("Amendment No. 5 Effective Date").
- (g) <u>Further Agreements</u>. This Amendment No. 5 shall not be amended, changed, modified, abrogated or superseded by a subsequent agreement unless such subsequent agreement is in the form of a written instrument signed by the Parties.
- (h) Counterparts; Electronic Signatures. This Amendment No. 5 may be executed in one or more counterparts, each of which will be deemed to be an original of this Amendment No. 5 and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Amendment No. 5 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 Amendment No. 5 as to the Parties and may be used in lieu of the original Amendment No. 5 for all purposes.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment No. 5 to be executed by their duly authorized representatives on the dates indicated below their respective signatures.

COSO GEOTHERMAL POWER HOLDINGS, LLC,	SOUTHERN CALIFORNIA EDISON COMPANY,
a Delaware limited liability company.	a California corporation.
By: Name: Joseph Greco	By: Mhy Marell' Name: Mi'ke Maask.
Title: Senior Vice President	Title: V. Reaton
Date:	Date: 8/27/10

